

Introduction to the PIF Directive

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CONTENT

1. Introduction into the Topic

- Road to the Directive

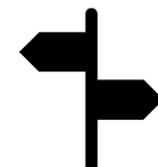
2. What is this Directive?

- Aims, structure

3. Issues of Implementation

- Components

4. Model Scenarios



1. ROAD TO THE PIF DIRECTIVE

Birth of the financial interests of the European Communities - with the separated budget

Their protection:

- a) Treaty on European Union (1992) Article K.3. - legal basis for a criminal law convention
- b) PIF - Convention (1995) - criminal law content (minimum definitions and sanctions of fraud)
- c) Council Regulation (EC, Euratom) No 2988/95 - administrative measures, irregularities

Indirect management of the EU budget (by the MS as delegated task) needs to have the same level of protection as it is provided under the direct management carried out by the Commission

Reality:

- large scale VAT frauds - threats to the common VAT system; money laundering and corruption
- diverging national rules; different level of protection



ROAD TO THE PIF DIRECTIVE

- PIF Convention - struggled application and ,too' soft instrument
- Re-constructing the EU with the Lisbon Treaty (2007 / 2009)
 - *abolishment of the pillar system;*
 - *Charter of Fundamental Rights of the EU;*
 - *appearance of the European Public Prosecutor's Office (and enhanced cooperation)*
- Replacement of the PIF Convention
- Abolishing divergences AND designing substantive legal framework for future EPPO



2. THE PIF DIRECTIVE

Financial interests of the EU -

Article 2 Section 1 a)

Union's financial interests' means ***all revenues, expenditure and assets*** covered by, acquired through, or due to:

- (i) the Union budget;
- (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets ***directly or indirectly managed and monitored by them.***

Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law



DIRECTIVES

DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 July 2017

on the fight against fraud to the Union's financial interests by means of criminal law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Committee of the Regions ⁽¹⁾

RULING IN A DIRECTIVE – ADDED VALUE

NATIONAL LEGISLATURE

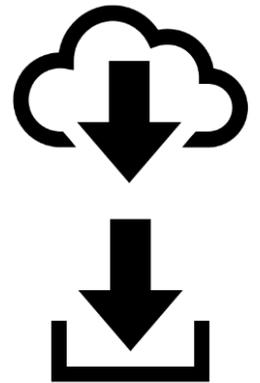
- obligation to implement (criminal code, criminal procedural law, law of international cooperation, eventually financial law etc.)

NATIONAL JUDICIARY

- indirect effect: obligation for complying interpretation
- Charter of Fundamental Rights of the EU

MEMBER STATE AS ADDRESSEE

- in case of non compliance: infringement procedure against the MS
- under certain circumstances: direct effect in favour of the individual



STRUCTURE OF THE PIF DIRECTIVE

Article 1 – subject matter

Article 2 – definitions and scope

Article 3 – offence of fraud

Article 4 – other offences (money laundering, corruption, misappropriation)

Article 5 – inchoate offences

Article 6 – liability of legal persons

Article 7 – sanctions (natural persons)

Article 8 – aggravating circumstances

Article 9 – sanctions (legal persons)

Article 10 – freezing and confiscation

Article 11 – jurisdiction

Article 12 – limitation period

Article 13 – recovery

3. PARTICULAR ISSUES OF IMPLEMENTATION

- Identical protection is impossible (minimum ruling; national implementation; national legal doctrines; national legal practice & culture)
- Risk of forum shopping due to not homogenous (identical) protection
- Risk factors (substantive criminal law)
- Large discretion of the MS
 - Minimum rules



RISK FACTORS FOR MAINTAINING DIFFERENCES

VAT fraud



Article 2, (2) In respect of revenue arising from VAT own resources, this Directive shall apply **only in cases of serious offences against the common VAT system**. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.

- *Different level of VAT percentage within the MS!*

Misappropriation



Article 4, (3) Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence. For the purposes of this Directive, 'misappropriation' means the **action of a public official** who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

- such offences are often not limited to public officials (trust!)



RISK FACTORS FOR MAINTAINING DIFFERENCES

Public officials



For the purposes of this Directive, ‘public official’ means:

...

(b) any other person assigned and exercising a public service *function* involving the management of or decisions concerning the Union’s financial interests in Member States or third countries

- *private persons, civil organisations?*

Inchoate offences



Article 5 (1) Member States shall take the necessary measures to ensure that **inciting, and aiding and abetting** the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

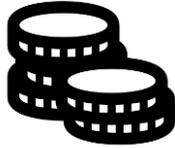
Article 5, (2) Member States shall take the necessary measures to ensure that an **attempt to commit** any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.

- *different doctrine-based national solutions*



RISK FACTORS FOR MAINTAINING DIFFERENCES

Money laundering v tax savings



[The definition of money laundering in this directive is not exactly the same as the definition in the Anti Money Laundering Directive 2015/849.]

- *self-laundering*

Less damage / less advantage



Article 7 (4) Where a criminal offence referred to in point (a), (b) or (c) of Article 3(2) or in Article 4 involves **damage of less than EUR 10 000 or an advantage of less than EUR 10 000**, Member States may provide for sanctions other than criminal sanctions.

- *some MS introduce administrative (regulatory) responsibility*

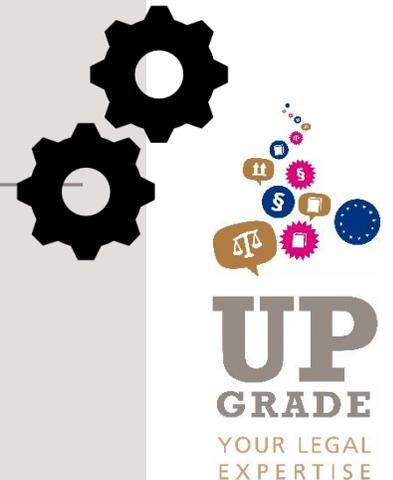
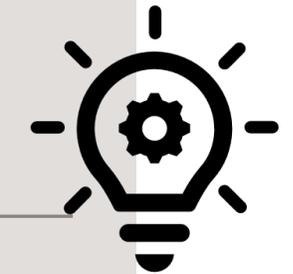


4. HOW DOES IT WORK? Model Scenarios

the directive has been implemented in every MS

– EPPO

–non-cooperating MS still exist within the EPPO regime



1

- National criminal law procedure
- Personal presence
- PIF offence
- National jurisdiction
- [EIO]

SUBSTANTIVE CRIMINAL LAW

- 1) criminal code has been changed - temporal scope of the criminal code (if relevant)
- 2) the statutes of the offences are harmonised
 - A) minimum-ruling
 - B) indirect effect (obligation for an interpretation which complies the directive)

PROCEDURAL CRIMINAL LAW

- 3) before EPPO: in every MS own CP
- 4) when EPPO starts:
 - A) non-cooperating MS (within EPPO regime) this is the only procedure, own CP
 - B) EPPO-MS - see Model Scenario No.4
- 5) Instruments of mutual recognition - catalogue offence
European Investigation Order - in such case the execution cannot be refused
- 6) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 7) CFR belongs to the reference framework (judges!!!)

2

- National criminal law procedure
- In absentia
- PIF offence
- National jurisdiction
- [EAW, EIO, ESO]

SUBSTANTIVE CRIMINAL LAW

- 1) criminal code has been changed - temporal scope of the criminal code (if relevant)
- 2) the statutes of the offences are harmonised
 - A) minimum-ruling
 - B) indirect effect (obligation for an interpretation which complies the directive)

PROCEDURAL CRIMINAL LAW

- 3) before EPPO: in every MS, own CP
- 4) when EPPO starts:
 - A) non-cooperating MS (within EPPO regime) this is the only procedure, own CP
 - B) EPPO-MS - see Model Scenario No. 4
- 5) Instruments of MR - catalogue offence
EAW no double criminality ...
ESO if the defendant is in another MS; no double criminality...
EIO refusal is forbidden
- 6) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 7) CFR belongs to the reference framework (judges!!!)

3

- MS criminal law procedure
- PIF offence
- Incoming requests

PROCEDURAL CRIMINAL LAW

1) Instruments of mutual recognition - catalogue offence

European Investigation Order - in such case the execution cannot be refused

European Arrest Warrant - execution is (almost) automatic

European Supervision Order - in case of consent

2) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

3) CFR belongs to the reference framework (judges!!!)

4

- investigative procedure by EPPO
- EPPO-MS
- PIF offence

PROCEDURAL CRIMINAL LAW

- 1) EPPO MS - regulation
- 2) *national authorities cooperate - EAW, ESO*
- 3) *EIO will not be needed*
- 4) *national judiciary will perform trial phase*
- 5) indirect effect of framework decisions and directives (obligation for an interpretation which complies with the EU-norm)

FUNDAMENTAL RIGHTS

- 6) CFR belongs to the reference framework (judges!!!)

5 -1

- investigative procedure by EPPO
- non-EPPO-MS
- PIF offence

PROCEDURAL CRIMINAL LAW

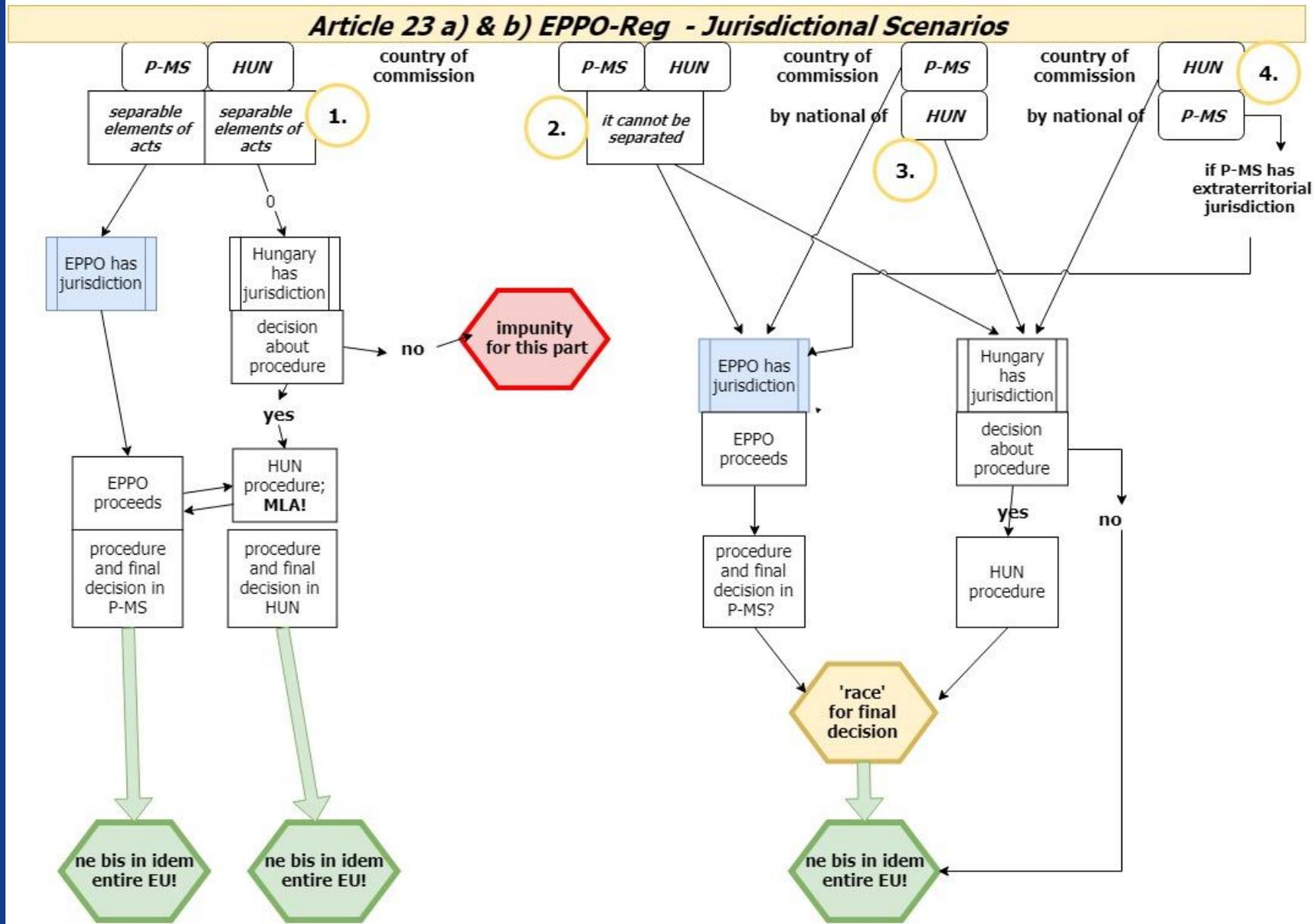
- 1) possibility of overlapping factual jurisdiction (see the graph)
- 2) *national authorities can cooperate - EAW, ESO, EIO*
- 3) *run for ne bis in idem = competition for final decision*
- 4) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 6) CFR belongs to the reference framework (judges!!!)

5 - 2

- investigative procedure by EPPO
- non-EPPO-MS
- PIF offence



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Many thanks for
your attention.

Q&A

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