Magic is not in it Staying the Same, but in the Changes– Legal Harmonisation of Substantive Criminal Law in the Eurepean Union and its Appearance in Hungarian Criminal Law[1]

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European criminal law came a long way – starting out as intergovernmental cooperation in criminal matters – before it became a real common European Union policy, in the framework of which the European Union may lay down specific legal harmonisation obligations for the Member States. Nowadays, criminal law affected by the European Union evolved into a significantly developing discipline as the legislation of the Member States must comply with the European requirements. During the past sixteen years, EU membership has introduced a considerable number of obligations for Hungary in the field of legislation – this paper aims to give a critical summary of this phenomenon.

Keywords: Hungary, European criminal law, legal harmonisation, substantive criminal law

1. Introduction

Hungary acceded to the European Union[3] on 1 May 2004,[4] which imposed a two-way obligation on Hungarian criminal legislation. Certain provisions which restricted economic activities contrary to the provisions of the EU had to be removed from criminal law[5], however, simultaneously with

[1] The quote on which the though in the title is based was written by Louise Penny, a Canadian author of mystery novels: „*She knew the magic wasn't in it staying the same, but in the changes."* Louise Penny, *Still Life: A Chief Inspector Gamache Novel,* St. Martin's Paperbacks, New York, 2005, p. 200. Nota bene: the change appears cumulatively in the area we examine, namely, in some sense the European Union itself may be considered as a state of the European integration projected to a certain moment in time. Barna Miskolczi, *Európai büntetőjog: elszalasztott, vagy csak elhalasztott lehetőségek*?, Miskolci Jogi Szemle, No. 2, 2019, p. 167. Meanwhile, *Ákos Farkas* especially emphasizes that the formation thereof is not a finished process but is still ongoing today. Ákos Farkas, *Az EU büntetőjog korlátai*, Ügyészségi Szemle, No. 2, 2018, p. 76.

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[3] Hereinafter: European Union/EU.

[4] See also Ákos Kara, *Nemzetközi kötelezettségek, ajánlások és az új Btk,* Jogtudományi Közlöny, No. 10, 2015, pp. 453–464.

[5] Valsamis Mitsilegas, *From Overcriminalisation to Decriminalisation: The Many Faces of Effectiveness in European*

decriminalisation, criminalisation obligations also emerged.[6] However, in the field of criminal law, Hungarian legal harmonisation tasks are not limited only to the relevant Treaties, directives, frameworks, decisions, and regulations of the EU but the Hungarian legal system had to incorporate the achievements of the development of European criminal law as a whole.[7] The process started as early as after the conclusion of the Association Agreement[8]; in doing so, during the first phase the international conventions adopted within the frameworks of the United Nations and the Council of Europe were built into the criminal law. Afterwards, from 1998, the speed of legal approximation accelerated. One might say that during this period almost all laws amending the Criminal Code included a reference to legal harmonisation in the interest of EU accession.[9]

However, after our accession to the EU, we could witness the transformation of almost the entirety of criminal law in the broader sense in Hungary. The Criminal Code which had been enacted during the Socialist era was repealed by the legislator through the adoption of a new act, mostly due to its countless amendments and the breakdown of its internal consistency.[10] Afterward the reform of the criminal enforcement law[11] and lastly the reform of the laws on criminal procedure[12] was also carried out in Hungary. In course of the codifications the legislator – naturally – considered the EU legal harmonisation requirements as very important priorities.

In my opinion, the importance that all legal professionals have proper knowledge in this special area of the interaction between criminal law and the EU law as well[13] cannot be stressed enough in current time, especially in the light of the fact that the EU is proceeding towards the realisation of the *single area of justice*[14], and the endeavours of the EU appear in the development of traditional cooperation in criminal matters, the deepening of legal harmonisation and the uniformisation of substantive and procedural law instruments as well. We have to acknowledge that Hungarian criminal law cannot be exempted from the influence of EU law. The issues under examination are present simultaneously at the theoretical and/or practical level, thereby vesting a serious task in the EU and the Member States, therefore on all the relevant public bodies of the Hungarian state[15], and obviously those of the other Member States as well. It is precisely in the spirit of these that I consider it important not only to summarise the results of the sixteen years of our accession to the EU

Criminal Law, New Journal of European Criminal Law, Vol. 5, No. 3, 2014, p. 417.

[6] Imre Wiener A., *Büntetőpolitika – Büntetőjog* (Jogszabálytan), in Imre Wiener A. (Ed.), *Büntetendőség, büntethetőség: büntetőjogi tanulmányok,* KJK MTA Állam- és Jogtudományi Intézet, Budapest, 1997, p. 15.

[7] Krisztina Karsai, *Magyar büntetőjog az európai integráció sodrásában*, Jogtudományi Közlöny, No. 2, 2002, p. 87.

[8] The Association Agreement was concluded in 1991.

[9] Anikó Pallagi, *Büntető politika az* új évszázad *első* éveiben, Ph.D. Thesis, Debrecen, 2014, p. 213.

[10] The previously effective Criminal Code, Act IV of 1978 (hereinafter: former Criminal Code/former CC) was replaced by Act C of 2012 on the Hungarian Criminal Code (hereinafter: new Criminal Code/effective Criminal Code/Criminal Code/CC) which entered into force on 1 July 2013.

[11] The previously effective legislation was the Law Decree XI of 1979 on the Execution of Penalties and Preventive Measures (a type of source of law used during the period before the regime change, it is not an act, but it is equivalent to an act) which was replaced by Act CCXL of 2013 on the Enforcement of Punishments, Measures, Certain Coercive Measures and Detention for Contraventions (hereinafter: Enforcement Act) which entered into force on 1 January 2015.

[12] The previously effective Criminal Procedure Code, Act XIX of 1998 (hereinafter: former Criminal Procedure Code/former CPC) was replaced by Act XC of 2017 on Criminal Procedure Code (hereinafter: new Criminal Procedure Code/new CPC) which entered into force on 1 July 2018.

[13] Krisztina Karsai, *Az európai büntetőjogi integráció alapkérdései,* KJK KERSZÖV, Budapest, 2004, p. 90.

[14] Péter Polt, *A költségvetés büntetőjogi védelmének egyes elméleti és gyakorlati kérdései: Hazai gyakorlat és uniós mechanizmusok,* Ludovika Egyetemi Kiadó, Budapest, 2019, p. 14. Hereinafter referred to as Polt 2019a.

[15] Péter Polt, *Nemzetközi bűnügyi együttműködés újabb fordulat előtt*, Miskolci Jogi Szemle, No. 2, 2019, p. 332. Hereinafter referred to as Polt 2019b.

– which period now involves a sufficient amount of experience – but also to provide the possibility that English speaking readers will have access to these relevant chapters of Hungarian criminal law.

Accordingly, in the first part of the study, I focus on laying the foundations necessary for the discussion of the topic, covering the beginnings of criminal law integration at the EU level, the development of the concept of European criminal law, especially in the views of Hungarian legal scholars, and the basic knowledge to be clarified in the context of criminal law harmonisation. With regard to the second part of the study, it should be noted that it would be an impossible mission to summarise criminal law changes in Hungary due European legal harmonisation in one single study in their entirety. For this very reason, after outlining a wider picture, I try to demonstrate a 'bouquet' of some outstanding sections of the harmonisation of the Hungarian substantive criminal law, of the crimes most exposed to the changes brought about by the harmonisation of EU law, as well as the regulation of some crimes "inspired by" EU criminal law. This might hopefully highlight the essence of the process and show the constant change of the field in question, as it alluded to in the title of the study as well.

2. Thoughts about the European Criminal Law – on the Way to 'Find itself'[16]

2.1. The Beginnings of Criminal Law Integration Within the Framework of the European Union

Up until 1993 – when the EU was established and the *Maastricht Treaty*[17] entered into force[18] – there was hardly any consideration as to whether a community-level criminal law and the harmonisation of the Member States' criminal law rules were necessary, and even after that this question arose only in connection with the possible means of protection against frauds infringing the interests of the European Communities'[19] financial interests.[20] It seemed unimaginable that the Member States would allow European "involvement" in their legal systems in the field of criminal law.[21]

Namely, the position that criminal law falls outside of the scope of competence of the EC, and the Member States did not explicitly transfer their sovereignty to the EC in the field of criminal justice, therefore the EC does not have a criminal legal system[22] was dominant for a long time in the history of European integration.[23] In his study written in 1995, *Károly Bárd* still reported about the dominant opinion according to which criminal law was connected to the national culture much more

[16] Miskolczi 2019, p.160.

[17] *Treaty on European Union,* OJ C 191, 29.7.1992, pp. 1–112.

[18] Ernő Várnay & Mónika Papp, *Az Európai Unió joga,* Complex Kiadó, Budapest, 2010, p. 54.

[19] Hereinafter: European Communities/EC.

[20] Farkas 2018, p. 75. See also Sándor Madai, *A csalás büntetőjogi értékelése,* HVG ORAC, Budapest, 2011, pp. 265–275.

[21] Sándor Madai, *Changes in the Regulation of Corruption Crimes in the Hungarian Criminal Code,* in Ákos Farkas & Gerhard Dannecker & Judit Jacsó (Eds.), Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Particular Emphasis on the National Legislation on Tax Fraud, Corruption, Money Laundering and Criminal Compliance with Reference to Cybercrime, Wolters Kluwer, Budapest, 2019, p. 304.

[22] Mónika Weller, *Az Európai Közösség büntetőjoga*, Állam és Jogtudomány, No. 3–4, 1998, p. 331.

[23] See also Ernst B. Haas, *The Uniting of Europe*, Stevens & Sons, London, 1958.; Ben Rosamond, *Theories of European Integration,* St. Martin's Press, New York, 2000.

compared to other branches of law, therefore it is much more resistant to integration attempts.[24] This is also referred to as the *thesis of cultural dependency*: comparing the crossing of national boundaries in criminal law, or the possibility thereof with the argument of the close connection of criminal law to the society, culture and to national sovereignty.[25] As it was already noted by *Bárd* as well – while acknowledging the connection of criminal law and its application to national traditions[26] – the connection examined is in essence not stronger than in the case of other branches or fields of law.[27]

The criminal policy[28] of the EU was brought into being by *practical necessity.*[29] Together with the free movement of persons and the elimination of border control among the Member States the situation of offenders changed as well since it became easier to move, abscond and hide from the authorities within Europe. The more and more noticeable internationalisation of crime and the emergence of new cross-border forms of crime appeared as important factors.[30] Thus *new dimensions of criminal offences* appeared, which made it ever so clear that the traditional national legislation and practice (often substantially different even in terms of principles in each state) are practically useless against those forms of crimes that constitute the most severe risk to the European societies.[31] Namely, different criminal law protection may also result in the perpetrators 'sensitiveness' to such differences in the Member States choosing their place of operation or 'trying to fall under' the jurisdiction of a Member State where they could count on less serious legal consequences.[32] By the way, this approach is not an unknown phenomenon in criminal law: for example, there is an – essentially similar – institution of '*forum shopping*' known in international private law.[33] The same applies to *cybercrime and economic crime* as well, as these *types of criminal offences* go beyond not only the territorial but also the functional limits of national criminal law.[34] It can be mentioned as an additional crucial reason that together with the establishment of the EU, certain *supranational legal subjects* which had not existed before but now required criminal law protection were formed.[35] All these made it inevitable that the substantial differences among the criminal regulations of the Members States should be lessened, and 'interoperability' should be made possible

[24] Károly Bárd, *Európai büntetőpolitika*, in Árpád Erdei (Ed.), Tények és kilátások – Tanulmányok Király Tibor tiszteletére, Közgazdasági és Jogi Könyvkiadó, Budapest, 1995, p. 150.

[25] Karsai 2004, p. 17.

[26] Katalin Ligeti, *Büntetőjog és bűnügyi együttműködés az Európai Unióban*, KJK KERSZÖV, Budapest, 2004, p. 15.

[27] Bárd 1995, p. 157. Moreover, Krisztina Karsai points out the common features which characterize the criminal law of all states or the development thereof (*e.g.* the same principles, the reinforced protection of human rights, etc.) Karsai 2004, pp. 17–20.

[28] Petra Bárd, *Jogállamiság és európai büntetőpolitika,* Jogtudományi Közlöny, No. 9., 2016, p. 437.

[29] See also Jean Pradel & Geert Corstens, *Droit Pénale Européen,* Dalloz, Paris, 2002, pp. 5–6.

[30] Polt, 2019b, pp. 331–332.

[31] Ferenc Irk, *Globalizációs kihívás – új (preventív) kontrollstratégiák,* in Géza Finszter & László Korinek & Zsuzsanna Végh (Eds.), A tudós ügyész, HVG ORAC, Budapest, 2017, p. 113.; Sándor Madai, *Új büntetőjog? Közpénzvédelem az Európai Unióban,* in Tamás Horváth M. & Ildikó Bartha & Judit Varga (Eds.), Honnan hová? A közpénzek védelméről, Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen, 2017, p. 259.

[32] Sándor Madai, *Nem csalás, de ámítás? Dogmatikai megjegyzések a PIF Irányelvhez*, Miskolci Jogi Szemle, No. 2, 2019, pp. 134–135.

[33] Bence Udvarhelyi, *Büntető anyagi jogi jogharmonizáció az Európai Unióban,* Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica, Tomus XXXI, 2018, p. 296.

[34] Urich Sieber, *Grenzen des Strafrechts – Grundlagen und Herausforderungen des neuen strafrechtlichen Forschungsprogramms am Max-Planck-Institut für ausländisches und internationales Strafrecht,* Zeitschrift für die Gesamte Strafrechtswissenschaft, Vol. 119, No. 1, 2007, p. 31.

[35] Such as the budget of the EU, the financial interests of the EU or the purity of its public life. Ágnes Pápai-Tarr, *Merre tovább európai büntetőjog?,* Debreceni Jogi Műhely, No. 4, 2007, p. 26.

among the legal systems.[36]

In practice, the *process of 'legal harmonisation' (legal approximation)* means the phasing out of the differences of the national (Member State) legal systems in the interest of some kind of common goal, without the introduction of identical rules. Meanwhile, institutionalised legal harmonisation means a specific *method,* where national legislations are transformed so that through the introduction of identical or similar legal instruments and legal solutions, legislation becomes more suitable for realising the EU's goals. Similarly, the legal harmonisation of criminal law is by definition suitable for eliminating the differences among the Member States' legal systems, however, this shall never be the end in itself; it shall always be carried out to achieve a common, substantial goal. In case of the legal harmonisation of substantive law – which is the subject of our current assessment – this goal is the essentially identical consideration and regulation of the same acts, therefore, among others, achieving identical strictness, through which the abovementioned 'forum shopping' can also be eliminated.[37]

2.2. The Ever-Evolving Concept of European Criminal Law

In 2020 *Ferenc Nagy* still found that the expression 'European criminal law' shall be construed as an umbrella term for the European legislative development process rather than as a particular branch of law in the classical sense; besides, *Nagy* found it more appropriate to consider it as the process of Europeanisation and cross-border cooperation in criminal law.[38] Furthermore, *Krisztina Karsai* noted that the term 'European criminal law' did not refer to a well-defined field of law until the *Treaty of Lisbon* [39] entered into force. Legal scholars used it as a blanket term to cover the extraordinarily heterogeneous results of the development processes that were occurring in the subsystems of Member States' criminal regulations.[40]

Today the concept of 'European criminal law' is generally accepted, which is used by the legal literature – most often in the strict sense of the term –, and according to *Ákos Farkas,* [41] it is linked to the EU and is embodied in the criminal law legislation and institutional system related to the relationship between the EU and the Member States and that of the EU and EU citizens.[42] In other words, the term is understood as the existing and evolving system of regulations and instruments of the substantive criminal law and criminal procedural law of the EU[43], which is a new field of law

[36] Karsai 2004, p. 27.

[37] Krisztina Karsai, *A jogharmonizáció általános tanai*, in Ferenc Kondorosi & Katalin Ligeti (Eds.), Az európai büntetőjog kézikönyve, Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008, pp. 433–435.

[38] Ferenc Nagy, *Az európai büntetőjog fejlődési irányairól és jogállami alapjairól,* Acta Universitatis Szegediensis: Acta Juridica et Politica, No. 61, 2002, p. 307.

[39] *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007*, OJ C 306, 17.12.2007, pp. 1–271.

[40] Krisztina Karsai, *Alapelvi (r)evolúció az európai büntetőjogban*, A Pólay Elemér Alapítvány Iurisperitus Betéti Társasága, Szeged, 2015, pp. 15–16.

[41] In Hungary, *Ákos Farkas* was the first who referred to this field of law as *European criminal law*, in 1997. Farkas 2018, p. 76.

[42] Ákos Farkas, *Az európai büntetőjog értelmezési tartománya,* in Ákos Farkas (Ed.), Fejezetek az európai büntetőjogból, Bíbor Kiadó, Miskolc, 2017, p. 17.

[43] Ákos Farkas, *Az európai büntetőjog fejlődésének irányai a Lisszaboni Szerződés után*, in Zsuzsanna Juhász & Ferenc Nagy & Zsanett Fantoly (Eds.), Ünnepi kötet Dr. Cséka Ervin professzor 90. születésnapjára, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, Szeged, 2012, pp. 139–140.

that together with international criminal law transforms the traditional approach of criminal law.[44]

However, at the same time – as it is highlighted by *Péter Polt*[45] – we obviously cannot refer to the complete legal harmonisation of substantive criminal law. There is no 'single European criminal law concept', moreover, there is no 'single European criminal law' either and it is hard to imagine the existence of such[46], since – as ipointed out by *Barna Miskolczi* – a *criminal law* consistent with our traditional criminal law approach and *assuming governmental existence* cannot be established in the EU, due to the particularities thereof.[47] According to the – widely used and taught – consideration of the European criminal law concept described above, this notion means a *living criminal law*, since in the framework of judicial cooperation in criminal matters the Member States use countless instruments on a daily basis. However, these means of cooperation continue to assume a criminal law ecosystem linked to the existence of the state *in the traditional sense*, and which are only functioning because the Member States have their own (substantive and procedural) criminal laws – it is these that (supplemented by the principles of cooperation in criminal matters, of course) constitute a proper legal foundation for the cooperation of the bodies concerned. However, this is not a criminal law 'without a state' or 'above a state'. Furthermore, as it is also noted by *Miskolczi*, an EU-level *'integration criminal law' in the non-traditional sense*[48] would not be inconceivable, however, the efforts leading to the establishment thereof have not brought about a breakthrough yet.[49]

Similarly, Ákos Farkas also notes that European criminal law is not a 'fully-fledged' field of law, but rather one that is indeed young and turbulent, as well as unsteady in some respect, which still faces numerous unsolved issues, and a single criminal law system is not foreseen by the researchers of the field either, but rather they systemise a set of legislation arising from multiple sources.[50] As the most important lesson of discussing the definition issues *Barna Miskolczi* states that the European criminal law is still on the way to 'find itself'[51], noting that international criminal law is struggling with similar conceptual problems.[52] Currently, *Krisztina Karsai* also defines European criminal law as an independent area of law that derives from the body of EU criminal legislation and is adopted in accordance with the *Treaty on the Functioning of the European Union*,[53] furthermore she proclaims that – along the lines of the purity of the branches of law – the Member State-level 'manifestation' of these laws, in other words, the Member States' 'harmonised' national

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[44] See also Valsamis Mitsilegas, *EU Criminal Law*, Oxford, Portland, 2009.

[45] Polt 2019a, p. 10.

[46] István László Gál & Mihály Tóth, *Az uniós jog és a magyar jogrendszer viszonya – büntető anyagi jogi jogharmonizáció,* in Péter Tilk (Ed.), Az uniós jog és a magyar jogrendszer viszonya, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, 2016, pp. 463–494.

[47] Miskolczi 2019, p. 161.

[48] This emerges from the very revelation that the 'traditional' European criminal law is unable to react to numerous fundamental issues. Barna Miskolczi, *Az európai büntetőjog alternatív értelmezése – büntetőjogi védelem az EU érdekeit sértő csalás ellen,* Ph.D. Thesis, Pécs, 2018, p. 4.

[49] See Miskolczi 2018, p. 12.

[50] Farkas 2018, p. 76.

[51] See Miskolczi 2019, pp. 160–161.

[52] Miskolczi 2018, p. 8. refers to the following: *"As opposed to international private law, even the compound word, i.e. the joint use of the expressions "international" and "criminal law" already seem troublesome."* Béla Blaskó & Péter Polt, *A büntetőjog fejlődésének nemzetközi tendenciáiról*, in Péter Ruzsonyi (Ed.), Tendenciák és alapvetések a bűnügyi tudományok köréből, Nemzeti Közszolgálati és Tankönyv Kiadó, Budapest, 2014, p. 41.

[53] *Consolidated Version of the Treaty on the Functioning of the European Union,* OJ C 202, 7.6.2016, p. 47.

HL C 326, 2012.10.26., pp. 47–390. Hereinafter: TFEU.

laws cannot be considered as part of the European criminal law.[54]

2.3. Changes in the light of the Treaty of Lisbon

Upon the entry into force of the *Treaty of Lisbon* in 2009, the EU cooperation in criminal matters entered a new phase as well.[55] The TFEU abolished the pillar-based structure of the EU and it granted explicit legal harmonisation power to the EU in the field of criminal law, therefore the criminal law which until then had been an area subject to intergovernmental cooperation – where the decision necessary for solving the problems emerging in course of the cooperation could be made by the Member States only unanimously – was elevated to the EU level and was given a supranational dimension.[56] The provisions on criminal law harmonisation are included in Articles 82 and 83 of the TFEU: Article 82 (2) regulates criminal procedural law harmonisation, while Article 83 regulates substantive criminal law harmonisation,[57] which is particularly relevant regarding the matter at hand.

Article 83 (1) TFEU specifies the following: tuhe European Parliament and the Council may, by means of *directives* adopted following the ordinary legislative procedure, establish *minimum rules* concerning the definition of criminal offences and sanctions in the *areas of particularly serious crime* with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. The TFEU lists ten so-called 'eurocrimes'[58], but it should be highlighted that this list is not exhaustive[59]: as criminal activity develops, other criminal acts which fulfil the criteria defined in this paragraph may be involved in its scope by the Council as it may adopt a decision acting unanimously after obtaining prior approval from the European Parliament.[60] As *Balázs Elek* highlights[61], these areas include acts related to racism and xenophobia since they constitute violations of the central principles of freedom, security, and justice; they also represent components of the prohibition of discrimination, a fundamental right.[62]

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[54] Karsai 2015, p. 16.

[55] Polt 2019b, p. 331.

[56] Instead, criminal law is supranational if the mandatorily applicable criminal law provisions are determined by a separate EU body, and if the crimes are sanctioned by a separate EU Court. Karsai 2004, p. 117.; Farkas 2018, p. 84.

[57] It is interesting, as *Ákos Farkas* notes as well: It appears from the literature that European criminal law would be limited to substantive criminal law, since most of the literature is related to that, although European criminal procedural law is also part of it. Without this, it would be impossible to enforce criminal law at a European level. Ákos Farkas, *Outline of the Development of European Criminal Law from the 1990s to the Present*, in Ákos Farkas & Gerhard Dannecker & Judit Jacsó (Eds.), Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Particular Emphasis on the National Legislation on Tax Fraud, Corruption, Money Laundering and Criminal Compliance with Reference to Cybercrime, Wolters Kluwer, Budapest, 2019, p. 35.

[58] These areas are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. TFEU Art. 83 (1).

[59] Bence Udvarhelyi, *Az Európai Unió anyagi büntetőjoga a Lisszaboni Szerződés után*, Patrocinium, Budapest, 2019, pp. 120.

[60] TFEU Art. 83 (1).

[61] Balázs Elek, *The Connection Between Harmonising Criminal Law and the Occurrence of an Error in Law – Presented Through Criminal Offenses Against the Natural Environment,* ELTE Law Journal, No. 2, 2018, p. 68.

[62] András Osztovits, *Az Európai Unió Alapító Szerződéseinek magyarázata 2*, Complex Kiadó, Budapest, 2008, pp. 1957–1958.; According to *Bence Udvarhelyi*, it would be necessary for the Council to exercise its powers under the Treaty and to extend the scope of the harmonisation competence to other offences, *e.g.* criminal offences against the environment, crimes against intellectual property, economic offences. Bence Udvarhelyi, *A Lisszaboni Szerződés és a büntetőjog – gondolatok az Európai Unió megújult büntetőjogi jogharmonizációs hatásköréről,* Állam- és

In addition to the above, Article 83 (2) TFEU regulates an *ancillary harmonisation competence,*[63] according to which, if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of an EU policy in an area which has been subject to harmonisation measures, the EU may establish *minimum rules* concerning the definition of criminal offences and sanctions in the area concerned. Such *directives* shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question.

According to the first condition, this competence can be applied in every EU policy area where *previous harmonisation measures* have already been adopted, that is to say, the EU has already adopted harmonised (non-criminal) rules in the area concerned. The second condition is that criminal sanctions have to be *essential for the effective implementation* of the aforementioned harmonised EU policy which requirement demands the EU legislator to prove that the current enforcement regime cannot achieve effective implementation of the policy concerned and that criminal law is more efficient than the existing less restrictive measures.[64] In this scope, according to the Commission, the following may be considered as policies of such nature: the *financial sector* – the criminal law aspects thereof, such as market manipulation or insider trading –, *the fight against fraud affecting the financial interests of the EU* and the *protection of the euro against counterfeiting through criminal law* to strengthen the public's trust in the security of means of payment.[65]

Both paragraphs (1) and (2) of Article 83 TFEU enable a so-called 'minimum harmonisation' based on which EU legal acts can provide for a minimum level of repression. The national legislator may not supplement its criminal offence definitions with additional components that would narrow the scope of culpability,[66] while it is entitled to introduce or maintain stricter rules.[67] It should also be noted that according to Article 83 TFEU, the instrument of legal harmonisation is the directive which is considered to be a much more effective instrument than the earlier (pre-Lisbon) framework decision.[68]

Jogtudomány, No. 3, 2016, pp. 131–132.; Crimes against taxation could also be a part of this sphere. Ádám Békés, *Nemzetek feletti büntetőjog az Európai Unióban*, HVG ORAC, Budapest, 2016, p. 123.

[63] The term 'regulatory' (Jacob Öberg, *Union Regulatory Criminal Law Competence after Lisbon Treaty*, European Journal of Crime, Criminal Law and Criminal Justice, No. 4, 2011, p. 289.), 'ancillary' (Perrine Simon, *The Criminalisation Power of the European Union after Lisbon and the Principle of Democratic Legitimacy,* New Journal of European Criminal Law, No. 3–4, Vol. 3, 2012, p. 249.) and 'functional' [Valsamis Mitsilegas, *EU Criminal Law Competence after Lisbon: From Securitised to Functional Criminalisation*, in Diego Acosta Arcarazo & Cian C. Murphy (Eds.), EU Security and Justice Law. After Lisbon and Stockholm, Hart Publishing, Oxford – Portland, 2014, p. 117.] criminal law competence also occurs in the English legal literature. In the Hungarian one, the adjective „*sui generis*" is also used concerning this competence [Krisztina Karsai, *EUMSz 83. cikk,* in András Osztovits (Ed.), *Az Európai Unió Alapító Szerződéseinek magyarázata 2*., Complex Kiadó, Budapest, 2008, p. 1734.]. Udvarhelyi 2019, p. 125.

[64] Bence Udvarhelyi, *Az uniós jog nemzeti büntetőjogra gyakorolt hatásai*, Pro Futuro, No. 2, 2016, pp. 79–93.

[65] In other harmonised policy areas, the potential role of criminal law as a necessary tool to ensure effective enforcement could also be explored further. Indicative examples could be road transport, data protection, customs rules, environmental protection, fisheries policy, internal market policies. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions, Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies Through Criminal Law,* COM (2011) 573 final, Brussels, 20.9.2011, pp. 10–11.

[66] Karsai 2008, p. 432–433.

[67] Sanne Buisman, *The Influence of the European Legislator on the National Criminal Law of Member States: It is All in the Combination Chosen*, Utrecht Law Review, No. 3. 2011, p. 138.

[68] Udvarhelyi 2019, p. 123.

3. Achievements in Hungarian Substantive Criminal Law

3.1. Money Laundering

In Hungary, having complied with the international and EU legal harmonisation obligations,[69] the criminal offence of *money laundering* was enacted by *Act IX of 1994* in the former Criminal Code (Section 303). According to the reasoning by the minister, the legal subject of the criminal offence was the interest related to the success of the fight against organised crime, as well as the interest related to the lawful functioning of financial institutions and other economic operators.[70] In order to comply with the international and EU requirements as much as possible, the legal definition has been amended numerous times, basically while no actual case-law was developed for the criminal offence.[71]

The new Criminal Code remains unchanged in that it contains two legal definitions related to money laundering – *money laundering* and *failure to comply with the reporting obligation related to money laundering* – these were incorporated in the chapter titled *"Money Laundering."* The legislation recounts four forms of *money laundering.* The first is *laundering money obtained by others illegally*, under Point a) Subsection (1) Section 399 of the Criminal Code, acting as 'service provider' in the interest of the perpetrator of the base crime, or under Point b) Subsection (1) and Subsection (2) Section 399 of the Criminal Code, when the criminal offence is committed 'similarly to dealing in stolen goods', and which serves the interests of other persons in addition to the perpetrator of the base crime. The second form punishes the *'laundering' of one's own money,* Subsection (3) Section 399 regulates the money laundering carried out by the perpetrator of the base crime and related to the assets obtained through his/her activity. By creating a *sui generis preparation form* in Subsection (5) Section 399, the legislator declares that the agreement to commit money laundering shall be punishable as well. Lastly, in Section 400 the legislator establishes the criminality of the *negligent form* of money laundering.

Concerning *the failure to comply with the reporting obligation related to money laundering* in Section 401, the legislator created a criminal offence committed purely via omission with respect to the persons listed in *Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing* who are obliged to notify the competent authority if they suspect money laundering in the course of their activities. The current Criminal Code also changed the previous related legal definitions in some aspects; part of these changes concerned the scope of the basic offences, while other changes concerned criminal conducts and the intent of the criminal offence. In addition, the scope of qualified cases and the grounds for exemption from criminal liability were slightly amended as well.[72]

Following Act CXXXVI of 2007, Hungary has (until the publication of this paper) adopted one

[69] See László Schubauer, *A pénzmosás elleni küzdelem magyarországi büntetőjogi eszközrendszerének kialakulása, változásai és továbbfejlesztésének lehetőségei*, in Miklós Hollán & Tünde Barabás A. (Eds.), *A negyedik magyar büntetőkódex: régi és újabb vitakérdések,* MTA Társadalomtudományi Kutatóközpont, Budapest, 2017, pp. 345–346.

[70] The Ministerial Reasoning of Act C of 2012 on the Hungarian Criminal Code.

[71] István László Gál, *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata,* HVG ORAC, Budapest, 2012, p. 53.

[72] Bence Udvarhelyi, *Változások a pénzmosás büntetőjogi tényállásában az új Btk. hatálybalépésével*, in István Stipta (Ed.), Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 7 November 2013, Miskolci Egyetem Tudományszervezési és Nemzetközi Osztály, Miskolc, 2013, pp. 313–318.

more piece of anti-money laundering[73] legislation.[74] This was *Act LIII of 2017 on the Prevention of Financing Money Laundering and Terrorism,* which implemented the provisions of a previously adopted Directive[75], and – facilitating the effective enforcement of the provisions of the Criminal Code – contains the most important elements of the new, currently effective Hungarian AML regulation.[76]

Based on the analysis of the effective Criminal Code it can be established that the Hungarian legal definition of money laundering is in complete compliance with the EU requirements, and within that with the money laundering definition specified in the currently effective Directive,[77] which aimed at the harmonisation of repressive means against money laundering and terrorist financing, instead of actions of preventive nature.[78] Moreover, the criminal conducts are specified in much finer detail in the Criminal Code compared to the provisions of the Directive.[79] In accordance with the requirements of the Directive, the money laundering committed by the perpetrator of the base crime (‘*laundering’ of one’s own money*) is also punishable, and while the Directive requires the sanctioning of intentional acts exclusively, under the Hungarian Criminal Code, the negligent criminal offence is punishable as well. The punishable forms of intentional money laundering are almost the same, the minor differences are mainly caused by the speciality of the Hungarian legal language.[80] However, the Member States are given the opportunity to apply such stricter legislation.

In the former decade, the judicial practice of money laundering in Hungary was almost entirely non-existent,[81] however, over the past years, something has changed. Concerning *money laundering*, the authorities registered only 67 cases in 2016 and 90 cases in 2017, but we could see 259 cases in 2018, and 188 cases in the year of 2019 in the latest official crime statistics.[82] Concerning

[73] Hereinafter: AML.

[74] Endre Nyitrai, *Criminal Regulations on Money Laundering in Hungary*, Journal of Eastern-European Criminal Law, No. 1, pp. 120–126.

[75] *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing,* OJ L 141, 5.6.2015, pp. 73–117.

[76] See Zsófia Papp (Ed.), *Magyarázat a pénzmosás és a terrorizmus finanszírozása megelőzéséről és megakadályozásáról,* Wolters Kluwer, Budapest, 2019.

[77] It should be mentioned that despite the ongoing transition of the previously effective Directive and whilst many firms was still bedding down new systems and processes to comply with the regulation, additional rules to counter the growing global threat of money laundering were introduced by the European Parliament on 23 October 2018, which will be transposed into Member States’ national laws by December 2020, and organisations within all Member States will be required to implement the new regulations by 3rd June 2021. Zack Cohen, *The Fight Against New Money Laundering Schemes*, Finance Monthly, https://www.finance-monthly.com/2019/10/the-fight-against-new-money-laundering-schemes/ (6 June 2020)

[78] *Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on Combating Money Laundering by Criminal Law,* OJ L 284, 12.11.2018, pp. 22–30.

[79] Judit Jacsó & Bence Udvarhelyi, *A Bizottság új irányelvjavaslata a pénzmosás elleni büntetőjogi fellépésről az egyes tagállami szabályozások tükrében*, Miskolci Jogi Szemle, No. 2, 2017, p. 56.; Jacsó & Udvarhelyi 2017a.

[80] Which is – as regards the wording of the regulation of money laundering –, according to Judit Jacsó and Bence Udvarhelyi, tend to be more complicated than the usual legal definitions included in the criminal codes of the Member States (especially the German legislation), which makes the work of the legal practitioners difficult. See Jacsó & Udvarhelyi 2017a., Judit Jacsó & Bence Udvarhelyi, *The fight against money laundering in Hungary,* in Ákos Farkas & Gerhard Dannecker & Judit Jacsó (Eds.), Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Particular Emphasis on the National Legislation on Tax Fraud, Corruption, Money Laundering and Criminal Compliance with Reference to Cybercrime, Wolters Kluwer, Budapest, 2019, p. 298.

[81] Judit Jacsó & Bence Udvarhelyi, *A pénzmosás elleni fellépés aktuális gyakorlati kérdései,* Magyar Jog, No. 1, 2017, pp. 711–715.

[82] *Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service,* https://bsr-sp.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=/BSRVIR/Regisztrált%20bűncselekmények%20száma%20az%20

the failure to comply with the reporting obligation related to money laundering, we could see a much more modest growth as regards the numbers of the registered cases, 1 case in 2016, 4 cases in 2018 and none in 2017 or 2019.[83]

It may, therefore, be concluded that in light of the fact that Hungary has inter alia more and more cases in practice, the currently effective Hungarian regulation of the AML – which, as stated, can be found in two acts, namely in *Act LIII of 2017* and in the Criminal Code – is effective enough.[84] It is also worth noting that significant changes can be reported not only from a Hungarian perspective but also at a European level, as the EU is upgrading its regulation permanently.[85] On 7 May 2020, the European Commission adopted an action plan for a comprehensive Union policy on preventing money laundering and terrorism financing built on six pillars.[86] To gather the views of citizens and stakeholders on these measures, the Commission launched a public consultation in parallel to the adoption of this action plan.[87]

3.2. Trafficking in Human Beings

In order to ensure the realisation of the objectives set out in the Directive[88] which is designated for facilitating European legal harmonisation, the criminal regulation applicable to trafficking in human beings changed as well. The legal definition of trafficking in human beings was established by *Act LXXXVII of 1998*[89] and its scope was extended in 2002.[90]

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[83] *Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service,* https://bsr-sp.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=/BSRVIR/Regisztrált%20bűncselekmények%20száma%20az%20elkövetés%20helye%20szerint_ver20180713094758.xlsx&Token=Mkt2Wis2Vm1BVjVENmVuM3c0NkttOW-ZGUzdkcXZhVjd0aTJSOXkxQ1JoaEZoYUcwc2hKMXB5ZzhoQzl3dFFjN0JyMlJ4OWtlNnpJNEF4UzRtbH-VpNnRnOHJzc2dsRFVsaGJra25FeU9QS21EUkNPbVFwaDlvYk9TUytQT0I3QXE= (7 June 2020)

https://bsr-sp.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=/BSRVIR/Regisztrált%20bűncselek-mények_ver20200602024745.xlsx&Token=K2JHUmJ6NC9TWFdkamp1ZU5KM0pXalcxOHpzd29rTE1X-OGxXbHQyTk9qQ1R1Z3NBQU9xRTA2REVjYy9zS2E0dDZoaWJyRUNob0RkdXZVYkxCNnln-Qnl1aytpNm1LMEFGMUdONjlVcnpneDFFQlVmaEpRYjQ2L01CNVN6aXVFRDU= (7 June 2020)

[84] István László Gál, *Economic Policy and Criminal Policy in the Practice: New Trends and Challenges in the Fight against Money Laundering in Europe and Hungary*, EU and Comparative Law Issues and Challenges Series, No. 2, 2018, p. 319.

[85] István László Gál, *25 Years of Fight against Money Laundering in Hungary,* Journal of Eastern-European Criminal Law, No. 2, 2019, p. 70.

[86] *Communication from the Commission on an Action Plan for a comprehensive Union policy on Preventing Money Laundering and Terrorist Financing,* COM (2020) 2800 final, Brussels, 7.5.2020, pp. 1–17.

[87] Feedback is welcome until 29 July 2020. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12176-Action-Plan-on-anti-money-laundering/public-consultation (6 June 2020).

[88] *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA,* OJ L 101, 15.4.2011, pp. 1–11.

[89] Section 43 of Act LXXXVII of 1998 (former CC 175/B). See Pallagi 2014, p. 218.

[90] Section 21 of Act CXXI of 2001.

The basic offence regulated in Subsection (1) Section 192 of the Criminal Code – which by now establishes complete legal harmonisation[91] – still contains the *sale and purchase*, *exchange,* or *transfer or receipt of another person as consideration,* as well as the *transport, harbouring, sheltering* or *recruiting* of another person for the purposes referred to above among the criminal conducts. The legal definition punishes the perpetrators on both sides of the sale and purchase or exchange. The most significant innovation of the legal definition is that – in accordance with the Directive – trafficking in human beings for the purpose of exploitation is regulated separately in Subsection (2) Section 192,[92] as an aggravating circumstance and the legislature tries to give an abstract definition of the term 'exploitation' that is left open to interpretation in the relevant Palermo Protocol.[93] According to the new explanatory note, exploitation is „*abusing the defenceless situation of a person for the purpose of gaining benefits."*[94] In addition, the new legal definition keeps the scope of the 'old' qualified cases as well, and extends it further regarding injured parties below the age of eighteen or fourteen.

Certain authors point out that in Subsection (1) Section 192 of the Criminal Code, in the basic offence not involving an exploitation purpose, it is not taken into consideration that the Directive punishes trafficking in human beings for the purpose of exploitation in case of adult injured parties, therefore the Hungarian legislation continues to specify the legal definition of trafficking in human beings *broader than it is prescribed by the Directive*.[95] Meanwhile, in other authors' opinion, the legislator substantially created a *completely new basic offence* with the amendment, which constitutes an individual form compared to the provisions of Subsection (2), hence making it slightly meaningless.[96]

3.3. Counterfeiting Currency

In Hungary, the legislator *amended* the legal definition of *counterfeiting currency* in the former Criminal Code (Section 304) in accordance with the provisions of the relevant Framework Decision[97] and *extended the scope* of criminal conducts with importing, exporting counterfeit or falsified

[91] Szandra Windt, *2013, az emberkereskedelem elleni fellépés éve Magyarországon*, Belügyi Szemle, No. 1, 2014, p. 59.

[92] Kara 2015, p. 459.

[93] The United Nations Office on Drugs and Crime (UNODC) 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the 'Palermo Protocol') is the most recent specialised global treaty on human trafficking. It covers trafficking for purposes of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, and removal of an organ. Hungary ratified this Document on 22 December 2006. 251–252. See also Katalin Kelemen & Marta C. Johansson, *Still Neglecting the Demand That Fuels Human Trafficking: A Study Comparing the Criminal Laws and Practice of Five European States on Human Trafficking, Purchasing Sex from Trafficked Adults and from Minors,* European Journal of Crime, Criminal Law and Criminal Justice, No. 3-4, 2013, p. 247–290.

[94] See CC Section 192 (8). The explanatory notes explain that in the meaning of the provision a benefit is not necessarily an economic benefit, but it can be any other kind of advantage obtained by exploiting the injured oarty. See Legislative proposal no. T/6958 (fn. 66), at p. 316. See https://www.parlament.hu/irom39/06958/06958.pdf (1 February 2020). In the former CC, there was no reference to exploitation in general, but the purposes of labour and sexual exploitation are listed among the aggravating factors (Article 175/B(2)(c)-(d)).

[95] Pallagi 2014, p. 219.

[96] Károly Kubisch, *A bűnszervezetben elkövetett emberkereskedelem felderítése és nyomozása,* Hadtudományi Szemle, No. 1, 2018, p. 332.

[97] *Council Framework Decision 2000/383/JHA of 29 May 2000 on Increasing Protection by Criminal Penalties and*

currency, or transporting those in transit through the territory of Hungary, with *Act CXXI of 2001*. The legislator furthermore created the legal definition of *aiding in counterfeiting operations* (Section 304/A), which punished production, obtainment, keeping, transfer, distribution or trading of any material, means, equipment or computer programme necessary for counterfeiting currency. In addition, in the legislation regulating money[98], the legislator changed the provisions specifying the concept of money, thereby granting the Euro protection equivalent to that of the domestic currency.

The new Criminal Code brought new features also in the regulation of the legal provision on counterfeiting currency. One of these changes is that the legislator created a new, separate chapter under the title *"Criminal Offences Relating to Counterfeiting Currencies and Philatelic Forgeries"*, with the following criminal offences: *counterfeiting currency, aiding in counterfeiting operations, forgery of stamps* and other criminal offences related to *cash-substitute payment instruments* – which used to be regulated among the *"Criminal Offences against the Economy"* in the former Criminal Code. Another substantial change is that – with reference to the Framework Decision – the new Criminal Code rejected to regulate that *privileged case* according to which the object of counterfeiting is coinage or the quantity or value involved is trivial or even less substantial, as it has been regulated by the previous legislation.[99] Similarly, the new Criminal Code abolished the individual legal definition of *disbursement of counterfeit currency*[100]*,* as well as increased the *sentence* vis-à-vis both the preparation and the qualified offence.

Examining the legislation, it is worth pointing out the sui generis delictum of *aiding in counterfeiting operations*, which was created explicitly for legal harmonisation reasons, and which gave rise to numerous critiques. According to several opinions, the creation of this individual legal definition was not necessarily required, since the application of the provisions related to *preparation* in the Criminal Code would have complied with the EU requirements as well.[101] This opinion is also supported by the fact that with regard to Article 3 of the *International Convention for the Suppression of Counterfeiting Currency*[102]*,* the aforementioned Framework Decision did little else than taking over the conducts of typically preparatory nature and simultaneously amended it with a reference to the technical achievements of our era.[103] The *distinction* of aiding in counterfeiting operations *from the preparation for counterfeiting currency* is also problematic;[104] the intent of the perpetrator cannot be directed at committing counterfeiting currency since in that case preparation for counterfeiting currency would be established. Moreover, since its introduction, practice has also proven that the legal definition of aiding in counterfeiting operations was unrealistic; the number of

Other Sanctions Against Counterfeiting in Connection with the Introduction of the Euro, OJ L 140, 14.6.2000, pp. 1–3.

98 See Act CCXXIII of 2012.

99 Former CC Section 304 (3).

100 Former CC Section 306.

101 József Gula, *A pénzhamisítás elleni fellépés az Európai Unióban*, in Miklós Lévay (Ed.), *Az Európai Unióhoz való csatlakozás kihívásai a bűnözés és más devianciák elleni fellépés területén*: *Tanulmánykötet,* Bíbor, Miskolc, 2004, pp. 108–142.

102 *International Convention for the Suppression of Counterfeiting Currency,* Geneva, 20 April 1929, League of Nations, Treaty Series, Vol. 112, p. 371. https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20112/v112.pdf (4 April 2020) which entered into force on 22 February 1931.

103 Judit Jacsó, *Pénzhamisítás*, in Ferenc Kondorosi & Katalin Ligeti (Eds.), *Az európai büntetőjog kézikönyve,* Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008, p. 489.

104 Gábor Miklós Molnár, *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, in Ervin Belovics & Gábor Miklós Molnár & Pál Sinku, *Büntetőjog II. Különös Rész. A 2012. évi C. törvény alapján,* HVG ORAC, Budapest, 2014, p. 772.

registered cases per year ranges between zero and two[105], and the Directive currently in force[106] also no longer makes the creation or sustaining of the legal definition necessary.[107] In summary, it can be established that although the legislation regarding counterfeiting currency formed having regard to EU requirements proved to be relatively time-resistant, fine-tuning by the legislator would have a favourable effect on enhancing the protection of the legal subject.[108]

3.4. Budget Fraud

Since Hungary acceded to the EU, the national and European budgets have gradually been "converging", by which I mean not only their *planning stage* but also the *legal protection* which extends to both budgets and has detailed regulation in the Fundamental Law of Hungary.[109] On the road leading to the establishment of the legal definition of budget fraud in the Criminal Code, the effective protection of the budget of the EU (EC) was the most pronounced one among the factors which led to this regulation.[110] The individual criminal offence named *"Infringing the financial interest of the European Communities"* was incorporated in the former Criminal Code by *Act CXXI of 2001*, in accordance with the PIF Convention.[111] Therefore, the Hungarian legislator – contrary to numerous other EU Member States – tried to fulfil its legal harmonisation obligation not by amending the existing, individual legal definitions of illegal acts committed against budgets but by creating a new, individual criminal offence.[112] The PIF Convention was incorporated in the former Criminal Code in a manner that the fraud definition of the Convention was converted into a legal provision, following the Hungarian principles of legislative editing (this became Section 314 of the former Criminal Code).[113]

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[105] Concerning *aiding in counterfeiting operations*, since the entry into force of the new CC, the authorities registered 2 cases in 2013, 1-1 case in 2017 and 2019 and none in the other years. *Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service*, https://bsr.bm.hu/document/open?url=https://bsr-sp.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=%2fBSRVIR%2fRegisztrált+bűncselekmények+száma+az+elkövetés+helye+szerint_ver20180713094758.xlsx&id=27 (2 April 2020) https://bsr.bm.hu/document/open?url=https://bsr-sp.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=%2fBSRVIR%2fRegisztrált+bűncselekmények_ver20200213123347.xlsx&id=72 (2 April 2020)

[106] *Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the Protection of the Euro and Other Currencies against Counterfeiting by Criminal Law, and Replacing Council Framework Decision 2000/383/JHA*, OJ L 151, 21.5.2014, pp. 1–8.

[107] József Gula, *A pénzhamisítás elleni fellépés nóvumai az Európai Unióban*, in Erika Róth (Ed.), Decem anni in Europaea Unione V.: Tanulmányok a bűnügyi tudományok köréből, Miskolci Egyetemi Kiadó, Miskolc, 2016, p. 173.

[108] Dávid Tóth, *A pénzhamisítás törvényi tényállása de lege lata és lege ferenda,* Magyar Jog, No. 9, 2017, p. 549.

[109] The Fundamental Law of Hungary (25 April 2011), Article 36. Péter Polt, *Hungarian Regulation on the protection of the financial interests of the European Union and prosecutorial actions against budget fraud in practice,* in Ákos Farkas & Gerhard Dannecker & Judit Jacsó (Eds.), Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Particular Emphasis on the National Legislation on Tax Fraud, Corruption, Money Laundering and Criminal Compliance with Reference to Cybercrime, Wolters Kluwer, Budapest, 2019, p. 139. Hereinafter referred to as Polt 2019c.

[110] Miskolczi 2018, p. 99.

[111] *Convention Drawn up on the Basis of Article K.3 of the Treaty on European Union, on the Protection of the European Communities' Financial Interests,* OJ C 316, 27.11.1995, pp. 49–57. Note: „PIF" is the French acronym for *protection des intérêts financiers* (protection of financial interests), used by the European legislature and also in case-law and legal writings. See also: Sándor Madai, *The regulation of Fraud and Tax Fraud in the Hungarian Criminal Code,* in Elena-Ana, Mihut (Ed.), Studies regarding criminality in the economic field Romanian and Hungarian legislations, Tóth Könyvkereskedés és Kiadó, Debrecen, 2008, pp. 200–218.

[112] Bence Udvarhelyi, *Az Európai Unió pénzügyi érdekeinek védelme a magyar büntetőjogban*, Miskolci Jogi Szemle, No. 1, 2014, p. 174.

[113] Sándor Madai*, Gondolatok az Európai Közösségek pénzügyi érdekeinek megsértéséről*, Rendészeti Szemle, No. 2,

By creating the legal definition of budget fraud, the Hungarian legislator fulfilled its obligation since that was consistent with the text of the PIF Convention. Despite this, it can be established that the solution chosen by the legislator was not the most fortunate one, since it *did not harmonise the legal definition sufficiently with the already existing similar legal definitions,* as a result of which the legislator made unjustified differences between the protection of the national and the EU budgets in multiple respects, and numerous distinguishing issues also arose in connection with the criminal offence.[114] Besides, both the legislator and the case law failed to interpret several important concepts, including – among others – the concept of *"aids"* and *"payments to the budget"*[115] which were newly incorporated in the legislative text from the Convention[116], and the legal definition did not really find its place in the former Criminal Code either.[117]

For all of the above reasons, the consideration of the legal definition was ambivalent among legal practitioners, and although the application of the law did not cause any problems concerning EC (later EU) aids, the criminal cases initiated regarding payments made to the EC budget were missing. This was not desirable for the EC either, especially because the PIF Convention aimed explicitly at efficiency – through uniform concepts and proportional sanctioning, etc. – in the fight against budget fraud.[118]

Over time, this disputed criminal offence was terminated and incorporated into *the new legal definition of budget fraud*.[119] The reason behind this was to eliminate the duality of several, special fraud-based neighbouring criminal offences aimed at damaging the budget which were to be found in the former Criminal Code, and thereby to avoid discrimination between them.[120] The legal definition of budget fraud was created as a result of consolidating nine crimes. On the *revenue side*, tax fraud, tax fraud committed concerning employment, excise violation, smuggling, VAT fraud, crime affecting the financial interest of the EU and any other forms of fraud that affect or causes damages to the budget are included in this legal definition. On the *expenditure side,* the new criminal offence unites the former definition of the unlawful acquisition of economic advantage, the crime affecting the financial interests of the EU and all the forms of fraud that violates or causes damage to the budget.[121] The legislator used this approach of regulation without any essential changes to the new Criminal Code and the result of this consolidation is expressed by the legal definition of budget fraud punishable under Section 396 of the new Criminal Code. Thus, Section 396 of the new Crim-

2010, pp. 96–97.

[114] The distinguishing was made more difficult for example by that the legal subject of three criminal offences included therein were partially identical, and the nature of the criminal conduct of all three criminal offences included the making of false statements or misrepresentation specified in some other form. Barna Miskolczi, *Mulasztás? Tűnődés a Btk. 314. §-a (1) bekezdésének b) pontja körül,* Ügyészek Lapja, No. 1, 2007, pp. 33–35.

[115] See Zsolt Pfeffer, *Fogalomhasználati problémák a pénzügyi jogban – közérthetőség kontra jog(ász)i precizitás,* Jura, No. 2, 2016, 1pp. 30-131.

[116] Miskolczi 2018, p. 99.

[117] It could be found among economic crimes, in the newly created Title IV, under the subheading *"Miscellaneous provisions"*.

[118] Miskolczi 2018, p. 99.

[119] By Act LXIII of 2011. Judit Jacsó & Bence Udvarhelyi, *Theoretical Questions of the Fight against Budget Fraud (VAT Fraud) in Hungary),* in Ákos Farkas & Gerhard Dannecker & Judit Jacsó (Eds.), Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Particular Emphasis on the National Legislation on Tax Fraud, Corruption, Money Laundering and Criminal Compliance with Reference to Cybercrime, Wolters Kluwer, Budapest, 2019, p. 128.

[120] Sándor Madai, *Hazai szabályozás és az Európai Unió pénzügyi érdekei,* in Tamás Horváth M. & Ildikó Bartha & Judit Varga (Eds.), Honnan hová? A közpénzek védelméről, Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen, 2017, p. 274.

[121] Polt 2019c, p. 140.

inal Code punishes fraudulent conduct exercised in respect of both payment obligations and any of the funds originating from any of the budgets listed in the explanatory note specified in Subsection (9) of the criminal offence.

The new legal definition of budget fraud eliminated the initial problems,[122] terminated the differences between the protection of the national and the EU budgets, the issues of cumulation generated by the previous legal definition, and it formulated the criminal conducts abstract enough to include all conducts causing damage to the budget, and simultaneously, it stays in compliance with the wording of the PIF Convention – and the wording of the Directive,[123] which replaced the Convention – and by now the legal definition of budget fraud became a well-functioning, efficient instrument for legal practitioners.[124] Although it is related partially to criminal procedural law, it is also important for our topic that it is becoming more and more apparent in cases of criminal proceedings initiated because of budget fraud – which manifests the protection of the financial interests of the EU – that by now European criminal law is a reality, in which – in addition to the protection of common interests – the consideration of criminal procedural law harmonisation and procedures conducted in other EU Member States are of paramount importance.[125]

3.5. The Regulation of Terrorist Offences

In developing the effective substantive criminal legislation concerning terrorism, the legislator intended to comply with – primarily, but not exclusively[126] – the legal harmonisation obligations specified in the 2002 Framework Decision[127], which legal instrument intended to approximate the terrorism-related criminal law concepts of the Member States.[128]

The criminal regulation compliant with the provisions of the 2002 Framework Decision was already established by *Act II of 2003* amending the former Criminal Code[129], by re-formulating the legal definition of the acts of terrorism; according to the prevailing opinion of legal literature, the time has come to establish the modern form of the legal definition in question through this re-formulation in Hungary.[130] As a result of the amendment, a *delictum complexum* was created, which, on the one hand, contained the acts of terrorism in the traditional sense which had already been criminalised, and on the other hand, made certain ordinary offences punishable, provided that those

[122] Udvarhelyi 2014, p. 188.

[123] *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,* OJ L 198, 28.7.2017, pp. 29–41.

[124] Barna Miskolczi, *A költségvetési csalás kodifikációját meghatározó tényezők,* Magyar Jog, No. 5, 2018, p. 289.

[125] Balázs Elek, *Az Európai Unió pénzügyi érdekeinek védelme és a költségvetési csalás a magyar Büntető Törvénykönyvben,* Miskolci Jogi Szemle, No. 2, 2019, p. 234.

[126] See Anna Viktória Neparáczki, *A terrorizmus finanszírozása bűntettének szabályozása a nemzetközi elvárásokra figyelemmel,* Ügyészségi Szemle, No. 2, 2017, p. 12.

[127] *Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism,* OJ L 164, 22.6.2002, pp. 3–7.

[128] The definition of terrorist offences should be approximated in all Member States, including those offences relating to terrorist groups. See recital 36 in the preamble to the Framework Decision concerned.

[129] Note: the former CC originally punished acts of terrorism among the criminal offences against the public order. However, this legal definition seemed more like the combination of kidnapping and blackmail, and it did not even refer to the political, ideological charge which is characteristic of the acts committed by terrorists. This inadequacy led to that the courts – having slightly misinterpreted the essence of the crime – delivered condemnations based on Section 261 of the former CC in cases that were quite far from acts of terrorism in the traditional sense. Róbert Bartkó, *A terrorizmus elleni küzdelem kriminálpolitikai kérdései*, Universitas, Győr, 2011, p. 211.

[130] Bartkó 2011, p. 231.

were committed for terrorism purposes. The regulation explained the *criminal conducts* (including the failure to report the criminal offence), as well as the *grounds for unlimited reduction of the penalty*, in eight paragraphs, while the ninth paragraph contained the *interpretative provisions* (such as the definition of "terrorist group").[131] In addition, as a result of an amendment, those persons became punishable as well who provide financial support for acts of terrorism without organised frameworks.[132]

In accordance with the international conventions concluded regarding the fight against terrorism, as well as EU obligations, the new Criminal Code *kept the definition* of the acts of terrorism consistent with the former Criminal Code, however, for the sake of better transparency and easier applicability, the legislator *divided the legal definition* – which used to be included in one section – into three separate parts, and aimed at criminalising any and all possible related activity,[133] and placed all these – also contrary to the previous regulation – in a separate chapter, among the *criminal offences against public security*. Sections 314 to 316 of the Criminal Code contain the two basic offences of the acts of terrorism, as well as the sui generis preparation form thereof, and the conduct of the person threatening to commit any of the basic offences, which is sanctioned more leniently by the Criminal Code as a privileged case; meanwhile, Section 317 of the Criminal Code punishes the *failure to report a terrorist act* as a criminal offence purely by omission. Finally, Section 318 of the Criminal Code contains *terrorist financing*, as the legal definition regulated as a sui generis accomplice conduct. The legal definitions are concluded by the *interpretative provisions* (definition of "terrorist group", reference to the definition of "financial means") in Section 319.

It is worth to highlight that the amendment of the Criminal Code established the opportunity to hold the *perpetrator of the acts of terrorism* criminally liable in case the perpetrator had been under the age of fourteen but had been above the age of twelve at the time of committing the criminal offence. Besides, *the organisation of a terrorist group* was added to the legal definition of the acts of terrorism, which activity is punishable in itself regardless of the purpose of the group and without any further condition, therefore even without any attempt of a terrorist attack. Furthermore, the *scope of the criminal conduct* of acts of terrorism was also supplemented by adding the conduct of traveling out of the country or across the territory of the country in order to join any terrorist group.[134]

As a new phase in the EU-level fight against terrorism, the 2002 Framework Decision was replaced by a Directive as of 2017,[135] which took over most of the provisions of the Framework Decision concerned, which had also been amended in the meantime. However, the Directive added *new criminal offences related to terrorist activity*[136] to the provisions taken over, which were essential steps towards the expansion of substantive criminal law action against terrorist financing.[137] Considering that in its previous form our legal definition named *'terrorist financing'* did not comply

[131] Former CC Section 261 amended by Act II of 2003.

[132] Former CC Section 261 (4) amended by Act XXVII of 2007.

[133] Péter Fábián, *A terrorcselekmény büntetőjogi szabályozásának jelen és aktuális kérdései,* Büntetőjogi Szemle, No. 2, 2018, p. 47.

[134] Péter Polt, *A terrorizmus multidiszciplinaritása,* in Imre Dobák & Zoltán Hautzinger (Eds.), Szakmaiság, szerénység, szorgalom: Ünnepi kötet a 65 éves Boda József tiszteletére, Dialóg Campus Kiadó, Budapest, 2018, p. 535.

[135] *Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA*, OJ L 88, 31.3.2017, pp. 6–21.

[136] The amendments of Directive 2017 are the following: Receiving training for terrorism (Art. 8), Travelling for the purpose of terrorism (Art. 9), Organising or otherwise facilitating travelling for the purpose of terrorism (Art. 10), Terrorist financing (Art. 11).

[137] Róbert Bartkó & Ferenc Sántha, *Az Európai Unió jogalkotása és hatása a terrorcselekmény hazai büntetőjogi szabályozására,* Acta Universitatis Szegediensis: Acta Juridica et Politica, No. 81, 2018, p. 83.

with the requirements of the Directive, the legislator amended and expanded this version of the criminal offence with – among others – further criminal conducts (Sections 318 and 318/A of the Criminal Code).

4. Closing Remarks

Sixteen years ago, when Hungary became a member of the EU, the majority of Hungarian legal professionals had yet to realise the impact this would have on national legislation and justice.[138] Naturally, the enumeration of the provisions above is merely illustrative regarding Hungarian legal harmonisation activity related to the most important areas; however, based on these, it can be established that the Hungarian legislator efficiently tries to shape criminal law in accordance with the European standards. Inserting European minimum criteria into the Criminal Code – which represents a specifically strict criminal policy – causes no real problem or interruption for the Hungarian legislator, since in a lot of cases the Hungarian legislation represents an even stricter approach.

It should also be noted that whilst in certain areas of crime there is a dire need for *joint and efficient action* in the interest of more efficient action,[139] it is also evident that the European criminal law is not a self-serving value but rather the *inevitable consequence* or spill-over effect *of European integration*.[140] Its current phenomena constitute a completely new criminal law path, however, if the changes and the new legal instruments do not damage the balance established through the criminal law guarantees and in the interest of the protection of human rights but rather align with the standards thereof, then – contrary to the opinion of those who express their fears – these changes and the new legal instruments do not enhance the erosion of the traditional national criminal law,[141] but conversely: these may contribute to the European criminal policy being interlaced with rationality, and also to that the criminal policy characteristics are retained. Thus, the real advantage of the European criminal policy lies in that it is able to *pass down the common European values,* such as the rule of law, democracy, human rights, as well as those *values of the Enlightenment,*[142] which we shall safeguard as valuable inheritance, if possible.

[138] Ágnes Czine, *Büntetőjogi integrációs lépések az Európai Unióban*, Ügyvédvilág, No. 7-8, 2014, pp. 20–23.

[139] Valsamis Mitsilegas, *From Overcriminalisation to Decriminalisation: The Many Faces of Effectiveness in European Criminal Law*, New Journal of European Criminal Law, No. 3, 2014, p. 417.

[140] For more details see Ernst B. Haas, *The Uniting of Europe*, London, Stevens & Sons, 1958.; Ben Rosamond, *Theories of European Integration,* New York, St. Martin's Press, 2000.

[141] Karsai 2004, p. 79.

[142] Petra Bárd, *Jogállamiság és európai büntetőpolitika,* Jogtudományi Közlöny, No. 9, 2016, p. 437.