

MODERN STUDIES IN EUROPEAN LAW



THE CONSTITUTIONAL
DIMENSION OF EUROPEAN
CRIMINAL LAW

ESTER HERLIN-KARNELL

The Constitutional Dimension of European Criminal Law

Ester Herlin-Karnell



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2012

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

© Ester Herlin-Karnell 2012

Ester Herlin-Karnell has asserted her right under the Copyright, Designs and Patents Act 1988,
to be identified as the author of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or
transmitted, in any form or by any means, without the prior permission of Hart Publishing,
or as expressly permitted by law or under the terms agreed with the appropriate reprographic
rights organisation. Enquiries concerning reproduction which may not be covered by the above
should be addressed to Hart Publishing Ltd at the address above.

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-176-4

Typeset by Hope Services, Abingdon
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

THE CONSTITUTIONAL DIMENSION OF EUROPEAN CRIMINAL LAW

Criminal law is one of the most rapidly changing areas of contemporary EU law and integration. The Treaty of Lisbon has elevated it to a central place in the constitution of the EU, within the dynamic area of freedom, security and justice. The phenomenon of EU criminal law as such is, however, far from new but has developed on an ad hoc basis, not least as a result of the case law of the European Court of Justice. Central to the Court's reasoning in this area has been the principle of effectiveness. A main theme running through the book is, therefore, the role of the axiom of effectiveness, which is critically examined, with particular attention to its use by the European Court of Justice in recent leading cases. This book explores the constitutional principles underlying it, both those determining the substantive values it embodies, and those determining its scope and extent. Other chapters consider the phenomenon of preventative criminalisation at EU level and the protection of subsidiarity and proportionality in EU criminal law. The balance between effective EU action, proper control of competence and adequate protection of individual rights is of growing importance as EU criminal law expands, but, as this book suggests, has not yet been fully articulated or entrenched by the institutions of the EU.

Volume 30 in the series Modern Studies in European Law

Modern Studies in European Law
Recent titles in this series:

- Unfair Contract Terms in European Law: A Study in Comparative and EC Law *Paolisa Nebbia*
- Energy Security: The External Legal Relations of the European Union with Major Oil and Gas Supplying Countries *Sanam S Haghghi*
- EU Criminal Law *Valsamis Mitsilegas*
- Effective Judicial Protection and the Environmental Impact Assessment Directive in Ireland *Áine Ryall*
- Network-Based Governance in EC Law: The Example of EC Competition and EC Communications Law *Maartje de Visser*
- Legitimacy in EU Cartel Control *Ingeborg Simonsson*
- Mixed Agreements Revisited: The EU and its Member States in the World
Edited by Christophe Hillion and Panos Koutrakos
- Reflexive Governance: Redefining the Public Interest in a Pluralistic World
Edited by Olivier De Schutter and Jacques Lenoble
- The Impact of EU Law on Minority Rights *Tawhida Ahmed*
- Direct Investment, National Champions and EU Treaty Freedoms: From Maastricht to Lisbon *Frank S Benyon*
- The Cyprus Issue: The Four Freedoms in a Member State under Siege
Nikos Skoutaris
- The European Union and Global Emergencies: A Law and Policy Analysis
Edited by Antonis Antoniadis, Robert Schütze and Eleanor Spaventa
- Public Liability in EU Law: *Brasserie, Bergaderm* and Beyond
Pekka Aalto
- Professional Services in the EU Internal Market: Quality Regulation and Self-Regulation *Tinne Heremans*
- Environmental Integration in the EU's External Relations: Beyond Multilateral Dimensions *Gracia Marín Durán and Elisa Morgera*

For the complete list of titles in this series, see
'Modern Studies in European Law' link at
www.hartpub.co.uk/books/series.asp

Preface and Acknowledgements

In this book, I examine the progression to supranational criminal law and how effectiveness has driven this trend. In this EU constitutional tale, I investigate the phenomenon of a European criminal law based on 'effectiveness' by first tracing the notion of effective enforcement and thereafter exploring the constitutional question of effectiveness in a transnational setting. In particular, I endeavour to show the dynamics of effectiveness as a competence question by telling the *Commission v Council* (environmental crimes) story. In addition, I ask to what extent the Lisbon Treaty has provided for the proper groundwork in this area.

This book is initially based on my doctoral thesis recommended for the DPhil at Oxford University on 3 December 2009. I am extremely grateful to Steve Weatherill for all his guidance and help. I am indebted to him for having accepted me as a DPhil student in 2005 and for having offered an intellectually challenging but very friendly environment at Somerville College. Without him this book would not have come into existence. I am also very grateful to my DPhil examiners Paul Craig and Valsamis Mitsilegas not only for inspiring my way of thinking about law, but also for their very useful comments in the viva that greatly improved this manuscript and gave me the confidence to write this book.

I would also like to thank Andrea Biondi for encouraging me at various stages in my academic life and for reading parts of the book and being the person who originally inspired me to embark on the DPhil journey. Moreover, I would like to thank Gareth Davies for his thought-provoking discussions, insightful comments and his mentorship at the VU University of Amsterdam. I am particularly grateful to Theodore Konstadinides for his invaluable comments and encouragement while drafting this book. Thanks also to Gerard Conway, Christina Eckes and Tarcisio Gazzini for helpful suggestions on various aspects of this book. I also thank Harry Panagopoulos for help with proof reading of the initial DPhil thesis on which this book is based. Last but not least, I thank Richard Hart and the staff at Hart Publishing, for believing in this project and for their patience with the submission of the manuscript.

In Oxford thanks are due to many. I would especially like to thank Nina Bausek, Sanja Bogojevic, Alica Hinarejos, Jan Komarek, Dorota Leczykiewicz, Vanessa Mak and Katja Ziegler for having been part of a stimulating and unique study setting in Oxford. I am also grateful to Jenny Dix and Katja Ziegler (again) at the Institute of European and Comparative Law for having given me the opportunity to continue to visit the Bodleian Law Library as an academic visitor, with the kind support from the Royal Swedish Academy grant.

vi *Preface and Acknowledgements*

But most of all I thank my parents for their love and support and for keeping me up-to-date on horses. Special thanks are also due to my brother for supplying me with the best equestrian hoof care.

Amsterdam, July 2011
Ester Herlin-Karnell

Table of Cases

CASES BEFORE THE COURT OF JUSTICE OF THE EUROPEAN UNION AND THE GENERAL COURT

Case C-6/64 <i>Costa v ENEL</i> [1964] ECR 585	55
Case C-82/71 <i>Sail</i> [1972] ECR 1-00119	15
Case C-22/70 <i>Commission v Council (ERTA)</i> [1971] ECR 263	70, 75
Case C-8/73 <i>Massey-Fergusson</i> [1973] ECR 897.....	68, 71
Case C-39/73 <i>Rewe</i> [1973] ECR 1039	48
Case C-8/74 <i>Procureur du Roi v Benoit and Gustave Dassonville</i> [1974] ECR 837	95
Case C-203/80 <i>Casati</i> [1981] ECR 2595	18
Case C-14/83 <i>von Colson</i> [1984] ECR 1891	48
Case C-63/83 <i>Kent Kirk</i> [1984] ECR 2689.....	19
Case C-294/83 <i>Les Verts</i> [1986] ECR 1339	62
Case C-314/85 <i>Foto-Frost</i> [1987] ECR 4199.....	55
Case C-137/85 <i>Maizena</i> [1987] ECR 1-4587	14, 17
Case C-80/86 <i>Officer van Justitie v Kolpinghuis Nijmegen</i> [1987] ECR 3969	54
Case C-186/87 <i>Cowan v Le Trésor Public</i> [1986] ECR 195	18
Case C-68/88 <i>Commission v Greece</i> [1989] ECR I-2965	16, 17
Case C-326/88 <i>Anklagemyndigheten v Hansen & son</i> [1990] ECR I-2911	17, 154
Case C-61/89 <i>Proceur de la Republique</i> [1990] ECR 837	68
Case C-106/89 <i>Marleasing</i> [1990] ECR I-4135	44
Case C-300/89 <i>Commission v Council</i> [1991] ECR I-2867	74, 80, 83, 92, 98, 102
Cases C-6 and C-9/90 <i>Francovich</i> [1991] ECR 1-5357	45, 48
Case C-240/90 <i>Germany v Commission</i> ECR I-0538	14, 69
Case C-267/91 <i>Keck</i> [1993] ECR I-6097	94
Case C-91/92 <i>Faccini Dori</i> [1994] ECR I-3325	47
Case C-384/93 <i>Alpine investment</i> [1997] ECR I-1141.....	186
Case C-358/93 <i>Bordessa</i> [1995] ECR 1-361	22, 187
Opinion 2/94 <i>Accession to the ECHR</i> [1996] ECR 1-1759	5, 69
Case C-163/94 <i>Sanz de Lera</i> [1995] ECR-1-4821	18
Case C-194/94 <i>CIA Security</i> [1996] ECR I-2201	47
Cases C-74/95 & C-129/95 <i>Criminal proceedings against X</i> [1996] ECR 1-6609	20
Case C-354/95 <i>National Farmer's Union</i> ECR [1997] I-4559	20

Case C-170/96 <i>Commission v Council</i> [1998] ECR I-2763	78
Case C-348/96 <i>Donatella Calfa</i> [1999] ECR I-11	18
Case C- 212/97 <i>Centros</i> [1999] ECR I-1459	188
Case C-230/97 <i>Awoyemi</i> [1998] ECR I-06781	22
Case C-186/98 <i>Nunes & de Matos</i> [1999] ECR I-4883	16
Case C-376/98 <i>Germany v Parliament and Council</i> [2000]	
ECR I-8419	9, 66, 71, 74, 88, 91, 99
Case C-377/98 <i>Netherlands v Parliament and Council</i> [2001]	
ECR I-7079	102, 115
Case T-13/99 <i>Pfizer</i> [2002] ECR II-3305	167
Case C- 333/99 <i>Commission v France</i> ECR [2001] I-1025	16
Case C-60/00 <i>Mary Carpenter</i> [2002] ECR I-6279	19
Case T-141/00 <i>Artegodan</i> [2002] ECR II-4945	167, 175
Case C-210/00 <i>Käseri Champignonien Hofmeister (KCH)</i> , [2002]	
ECR I-06453	14
Case C-465/00 C-138/01 139/01 <i>Rundfunk et al</i> [2003] ECR I-4989	90
Case C-101/01 <i>Lindquist</i> [2003] ECR I-12971	91
Case C-109/01 <i>Akrich</i> [2003] ECR I-9607	188
Case T-315/01 <i>Kadi</i> [2005] ECR II-3649	72
Case C-187/01 and C-385/01 <i>Gözütok and Brugge</i> [2003] ECR I-1354	18, 40
Case C-397/01 <i>Pfeiffer v Deutsches Rotes Kreuz</i> [2004] ECR I-8835	45, 49, 60
Case C-491/01 <i>ex parte BAT and Imperial Tobacco</i> [2002] ECR I-11543	92, 114
Case C-187/01 and C-385/01 <i>Gözütok and Brugge</i> [2003] ECR I-1354	18, 40
Case T253/02 <i>Ayadi v Council</i> [2006] ECR II-2139	123
Case C-457/02 <i>Antonio Nisselli</i> [2004] ECR I-10853	16
Cases C-387/02 C-391/02 and C-403/02 <i>Silvio Berlusconi & others</i> [2005]	
ECR I-3565	21
Case T 228/02 <i>OMPI</i> ECR [2006] ECR II-4665	54
Case C-105/03 <i>Criminal proceedings against Maria Pupino</i> [2005]	
ECR I-5285	10, 24, 42, 53, 75, 136, 235
Case C-176/03 <i>Commission v Council</i> [2005]	
ECR I-7879	1, 10, 29–35, 41–2, 56, 58–9, 64–5, 67, 70–1, 76, 79, 88, 90, 143, 146, 154, 180, 189, 216, 235
Case C-210/03 <i>Swedish Match</i> [2004] ECR I-11893	94, 95, 100
Case C-380/03 <i>Germany v Parliament and Council</i> [2006]	
ECR I-11573	92, 96, 97, 102, 104
Case C-540/03 <i>Parliament v Council</i> [2006] ECR I-5769	27
Case C-66/04 <i>UK v Council and Parliament</i> [2005] ECR I-10553	93, 156
Case C-144/04 <i>Mangold v Helm</i> [2005] ECR I-9981	49, 140
Case C-317/04 C-318/04 <i>European Parliament v Council</i> [2006]	
ECR I4721	76, 94, 100, 102
Case C-354/04 C-355/04P <i>Segi v Council</i> ECR [2007] I-6157	52, 54, 55, 75, 103
Case C-77/05 <i>UK v Council</i> [2007] ECR I-11459	133
Case C-91/05 <i>Commission v Council</i> [2008] ECR I-03651	77, 79

Case C-105/03 <i>Criminal proceedings against Maria Pupino</i> [2005] ECR I-5285	10, 24, 42, 53, 75, 136, 235
Case C-119/05 <i>Lucchini</i> [2007] ECR I-6199	48
Case C-222/05 <i>Van der Weerd</i> [2007] ECR 4233	50
Case C-303/05 <i>Advocaten voor de Wereld</i> ECR [2007] I-3633	10, 38, 127
Case C-305/05 <i>Ordre des barreaux francophones and germanophones et al</i> ECR [2007] I- 5305	153
Case C-467/05 <i>Giovanni Dell’Orto</i> ECR [2007] I-5557	10, 27, 28
Case C-440/05 <i>Commission v Council</i> [2007] ECR I9097	10, 60, 76, 79, 121, 126
Case C-432/05 <i>Unibet v Justitiekanslern</i> [2007] ECR I-2271	50
Case C-438/05 <i>International Transport Workers’ Federation v Viking Line</i> <i>ABP</i> [2007] ECR I-10779	48
Case C-341/05 <i>Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet</i> [2007] ECR I-11767	48
Case C110/05 <i>Commission v Italy</i> [2009] ECR I-000	95
Case C-415/05P <i>Kadi</i> [2008] ECR I-6351	5, 62, 103, 219
Case C-133/06 <i>Parliament v Council</i> [2008] ECR I-3189	77
Case C-303/06 <i>Coleman</i> [2008] ECR I-5603	50
Case C-301/06 <i>Ireland v Parliament and Council</i> [2009] ECR I-00593	98, 101, 102, 151, 174
Case C-450/06 <i>Varec SA</i> [2008] ECR I-581	38
Case C-275/06 <i>Productores de Música de España (Promusicae) et al</i> [2008] ECR I-271	38
Case C-404/07 <i>Katz</i> [2008] ECR I-7607	28
Case C-127/08 <i>Metock</i> [2008] ECR I-6241	188
Case T-256/07 <i>OMPI II</i> [2009] ECR I-0000	54
Case T-284/08 <i>OMPI III</i> [2009] ECR I-0000	54
Case C-546/08 <i>Commission v Sweden</i> [2009] ECR I-105	210
Case C-123/08 <i>Wolzenburg</i> [2009] ECR I-09621	39, 40, 233
Case C-306/09 <i>IB delivered on 21 October 2010 nyr</i>	40
Case C-261/09 <i>Mantello</i> 7 September 2010 nyr	40
Case C-555/07 <i>Kükükdeveci</i> [2010] ECR I-00365	49
Case C-460/06 <i>Paquay</i> [2007] ECR I-8511	51
Case C-166/07 <i>European Parliament v Council</i> [2009] ECR Page I-07135 ...	77, 102
Case C-58/08 <i>Vodafone</i> , judgment of 8 June 2010 nyr	96–8
Case C-546/08 <i>Commission v Sweden</i> [2009] ECR I-00105	210
Case C-185/09 <i>Commission v Sweden</i> [2010] ECR I-00014	210
Case C-208/09 <i>Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien</i> , 22 December 2010 nyr	116
Case T-18/10 R <i>Inuit Tapiriit Kanatami</i> , pending	105

CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

<i>Engel and others v Netherlands</i> , Series A, No. 22; [1979–1980]	14, 58, 124, 176
<i>Orzuk v Germany</i> (Series A, No. 73); [1984] 6 EHRR (365, 21/02/) 1984 ...	58, 124
<i>Salabiaku v France</i> ECHR, Ser A, No 141.A 1988	154
<i>Kokkinakis v Greece</i> ECHR, (Ser A, NO 260-A), 1993	20
<i>CR and SW v UK</i> (1995) 21 EHRR	206
<i>Cantoni v France</i> ECHR, Reports 1996-V	20
<i>Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland</i> (45036/98) 2006 EHRR 1	19, 232

NATIONAL CASES

English courts

<i>Oxford v Moss</i> (1978) 68 CR. App R 183	193
<i>R v Cuthbertson</i> [1981] AC 470	192–3
<i>R v Home Secretary ex parte Simms</i> [1999] 1 AC 69	206
<i>R v Montila and others</i> , [2004] UKHL 50	201
<i>Bowman v Fels</i> , [2005] EWCA Civ 226, 8 March	195, 199, 200, 208
<i>House of Lords, Dabas v High Court of Justice (Criminal Appeal from Her Majesty’s High Court of Justice)</i> [2007] UKHL 6, 28 February 2007	26
<i>A et al v HM Treasury</i> [2007] EWHC 869 (Admin), 24 April 2008, 280, 281	205
<i>A et al v HM Treasury</i> [2008] EWCA Civ 1187, judgment of 30 October 2008	206
<i>HM Treasury v Mohammed Jabar Ahmed and others (FC)</i> , UK Supreme Court [2010] UKSC 2, judgment given on 27 January 2010	203
<i>Bank Mellat v HM Treasury</i> , [2011] EWCA Civ 1	207
<i>R v Rollins</i> [2009] EWCA Crim 1941	207

German Constitutional Court

BVerfG 2 BvE 2/08 from 30 June 2009	116, 126, 139
Decision of 2 March 2010, 1 BvR 256/08	140
BVerfG 1 BvR 568/08	140
BVerfG 2 BvR 2661/06 (Honeywell)	140

Table of Treaties, Conventions and other Legislative Instruments

TREATIES AND CONVENTIONS

International Covenant of Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, Article 15.....	20
Vienna Convention 1988	148, 152, 192, 194
Europol Convention 1995	161
Rome Statute of the International Criminal Court 1998, Article 24	21
Charter of fundamental rights of the European Union 2000	
Article 49	18, 20, 21, 54, 66, 127, 177, 231
Article 47	46, 50, 53, 231
Treaty establishing the European Community (consolidated version 2002).....	132, 138, 223
Article 10	16, 24, 30, 67, 70
Article 67	33, 77, 229
Article 68	229
Treaty on European Union (consolidated version 2002)	
Article 1	113
Article 35	12, 54, 227
Article 47	5, 28, 30, 32, 41, 63, 66, 67, 76–83, 86, 88–9, 101–05, 109, 125, 131–2, 137, 143–4, 152, 158, 235
Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950	8, 14, 19, 58, 69, 153, 200, 223
Treaty on European Union (consolidated version 2010):	
Art 2.....	56, 90, 111, 223, 233
Art 3.....	90, 94, 111, 187, 223, 233–4
Art 4.....	11, 15–17, 21–2, 24, 28, 43–4, 48, 53–5, 65–7, 70, 85, 113, 116, 126, 136, 181
Art 5.....	2, 30, 65, 68–9, 71, 75, 78, 90, 100–01, 108, 112–13, 117–18, 180
Art 6.....	38, 56, 223, 231
Art 13.....	5, 43, 53, 72, 85, 129
Art 40.....	63, 68, 78, 82, 137
Treaty on the Functioning of the European Union (consolidated version 2010):	
Art 7.....	2, 65–6, 72, 86
Art 20.....	134, 232
Art 26.....	74, 89–90, 94
Art 67.....	34, 64–5, 84, 85, 172, 179, 226–7

Art 69.....	113, 120–1, 166
Art 71.....	166, 228
Art 75.....	56, 82–4, 158, 179, 226
Art 82.....	2, 34–5, 76, 84, 88, 125, 134–5, 178–9, 226
Art 83.....	2, 6, 34–5, 64, 65, 84, 87–8, 109, 134, 139–40, 143–5, 147, 177, 179, 192, 226
Art 84.....	63, 177
Art 114.....	5–7, 31, 44, 63, 66, 69, 74–5, 80, 83, 87–109, 119, 138–140, 142–4, 146–7, 151–2, 156, 158, 164, 173–4, 185, 187, 189, 235, 237
Art 352.....	44, 63, 66–73, 75–7, 86–7, 98, 119, 123, 138–40, 142–4, 158
Statute of the Court of Justice and amendments to the Rules of Procedure of the Court of Justice 2008	229

PROTOCOLS

The Protocol nr 1 on the Role of the National Parliaments in the European Union.....	70, 119, 121, 208
The Protocol nr 2 on the Application of the Principles of Subsidiarity and proportionality	70, 114, 115, 119, 121
Protocol nr 21 on the position of the UK and Ireland with regard to the AFSJ.....	135, 192
Protocol nr 25 on the exercise of shared competence	80
Protocol nr 27 on the internal market and competition.....	98
Protocol nr 36 on transitional provisions attached to the Lisbon Treaty.....	36, 53, 77, 135, 192, 233
Palermo Conventions 2000	212, 220
Second Protocol of the Convention on the protection of the European Communities Financial Interests [1997] OJ 221/11	182, 184
Protocol 30 of the Amsterdam Treaty.....	114, 122

EU SECONDARY LEGISLATION

Directives

Directive 1968/151/EEC [1968] OJ L65/8	21
Directive 1998/43 [1998] OJ L 213/9	91
Directive 91/308/EEC [1991] OJ L 166/77	148, 153
Directive 2001/97/EC [2001] OJ L 344.....	148, 150
Directive 2003/6/EC OJ L 96/16.....	107, 193
Directives 2004/17/EC and 2004/18/EC [2004] OJ L 134.....	163
Directive 2004/48/EC [2004] OJ L 157.....	179

Directive 2004/72/EC [2004] OJ L 162	107
Directive 2004/80/EC [2004] OJ L 261/15	27
Directive 2005/ 60/EC [2005] OJ L309/15.....	7, 147, 148, 152–5, 164, 170, 178
Directive 2006/70/EC [2006] OJ L 214/23	170
Directive 2008/99/EC [2008] OJ L 328/28.....	184
Directive 2009/52/EC [2009] OJ L 168/24.....	184

Regulation

Regulation No 2988/95 [1995] OJ L 312	183
Regulation No 1889/2005 [2005] OJ L 309	155–6
Regulation 717/2007 [2007] OJ L 171/32	96
Regulation 1007/2009 [2009] OJ 2009 L 286/36	105

Framework decisions

Framework Decision 2000/383/JHA OJ L/39/4	29
Framework Decision 2001/220/JHA OJ L/82.....	24
Framework Decision 2008/978 OJ L 350/72.....	177
Framework Decision 2002/475/JHA [2002] OJ L 330/21	152, 157, 159, 182, 184, 221
Amending Framework Decision 2008/919/JHA [2008] OJ L 300/42	152, 157, 158, 159, 221
Framework Decision 2002/584/JHA [2002] OJ L 190/1	23
Framework Decision 2003/80/JHA [2003] OJ L29/55.....	29
Framework Decision 2003/22/JHA OJ L 196/45.....	160
Framework Decision 2005/212/JHA OJ L 68/49	160
Framework Decision 2006/783/JHA OJ L 328	160

EU decisions

Commission Decision 2004/535/EC [2004] OJ L 183	100
Council Decision 2004/496/EC [2004] OJ L 183	100
Commission Decision 2006/581/EC OJ 2006 L	172

EU documents

COM (2000) 1 final, Communication on the precautionary principle	167–9, 175
Proposal for a Directive on the Protection of the Environment through Criminal law.....	29

COM (2005) 583 final/2, 24 Nov 2005, Communication on Case C-176/03.....	15, 88, 154
COM (2005) 696, 23 Dec. 2005, Green paper on Conflicts of Jurisdiction and the Principle of ne bis in idem in Criminal Proceedings.....	18, 155
COM (2006)168 final proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.....	7, 93, 179, 181
COM (2006) 437 final. Developing a comprehensive and coherent EU strategy to measure crime and criminal justice: an EU Action Plan 2006–2010.....	172
COM (2007) 249 final. Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals.....	184
COM (2007) 650 proposal for an amending framework decision 2002/475/JHA	159, 165, 182
COM (2010) 0543 final, Commission communication on smart regulation.....	113
COM (2010) 517 final, on attacks against information systems and repealing Council	184
COM (2010) 547, Report from the Commission on subsidiarity and proportionality.....	122, 166
COM (2010) 171 Delivering an area of freedom, security and justice for Europe’s citizens.....	37, 122, 166, 226
COM (2010) 386 final, The EU Counter-Terrorism Policy: main achievements and future challenges	178
COM (2010) 517 final, on attacks against information systems and repealing Council Framework Decision 2005/222/JHA	184
COM(2010) 716 final, Reinforcing sanctioning regimes in the financial services sector	185
COM (2011) 15 final. Towards a more efficient European Public Procurement Market.....	163
COM (2011) 308 final, Fighting Corruption in the EU.....	163

Miscellaneous documents

Developing a comprehensive and coherent EU strategy to measure crime and criminal justice: an EU Action Plan 2006–2010 COM(2006) 437 final.....	172
Commission staff working document, An examination of the links between organized crime and corruption. Sec (2008) 196, 8.2.2008.....	163
Law [2001] OJ C180E/238 and amended Proposal [2003] OJ C020E/284 Revised proposal for a Directive to combat intellectual property offences.6376/04 (codec), 2003/0024 (COD) 16 February 2004	179–80
The Hague Programme: 10 priorities for the next five years (OJ C 236, 24.9.2005)	12, 33, 37, 172, 232
The Stockholm Programme – An open and secure Europe serving and protecting the citizen (OJ C115/1, 02.12.2009).....	10, 12, 37–8, 86, 110, 113, 120, 122, 166, 172–4, 178, 226, 232, 238

NATIONAL LEGISLATION AND LEGISLATIVE INSTRUMENTS

UK legislation

Money Laundering Regulations 2007 SI 2007 No 2157	191, 195
Proceeds of Crime Act 2002 (c 29).....	191, 194
Serious Organized Crime Act, (c 15) 261	191
Drug Trafficking Act 1994	192
Prevention of Terrorism Act 1989.....	192
Criminal Justice Act 1988, as amended by Criminal Justice Act 1993 (c 36)	192
Terrorism Act 2000 and Terrorism Act 2006 (c 11)	158, 191, 203, 204, 206
Anti-Terrorism Crime and Security Act 2001 (c 24)	191, 202, 204, 205
Counter Terrorism Act 2008 (c 28).....	203, 205
Terrorism (United Nations Measures) Order 2001 (No 3365)	204
Al-Qa'ida and the Taleban (United Nations Measures) Order 2002 (SI 2002/111).....	204
Prevention of Terrorism Act 2005 (c 2)	203, 204

Swedish legislation

Swedish Penal Code, Brottsbalken (1962:700)	212, 213, 216, 222
Act on Criminal Responsibility for Financing of Particularly Serious Crime (2002:444).....	213, 218
Act on Criminal Responsibility for Terrorist Offences (2003:148)	213
Law (2009:62) implementing the Third Money Laundering Directive	210

Danish and Finnish legislation

Danish Criminal Code	220
Finnish Penal Code	220

Table of Contents

<i>Preface and Acknowledgements</i>	v
<i>Table of Cases</i>	xiii
<i>Table of Treaties, Conventions and other Legislative Instruments</i>	xvii
1 Introduction	1
I. Introduction	1
II. Brief Comment on the History of EU Criminal Law	3
III. Structure of the Book	4
A. Effectiveness as Enforcement	4
B. Constitutional Effectiveness	4
C. The Development of EU Precautionary Criminalisation and the Fight against Money Laundering	6
D. The Lisbon Treaty and Criminal Law: Old Problems and New Challenges	7
IV. Final Remarks	8
2 The Journey of Criminal Law in the EU	10
I. Introduction	10
II. What is at Stake?	11
A. The Framework of EU Criminal Law prior to the Lisbon Treaty	13
B. The Search for Effective Sanctions 15	
i. Positive Effect	16
ii. Negative Effect	18
iii. The Principle of Legality	19
iv. Legality: The Fundamentals	20
III. The Historic Third Pillar Web and the Concept of Mutual Recognition	22
A. <i>Pupino</i> and the Quest for ‘Depillarisation’/Effectiveness	24
B. <i>Advocaten voor de Wereld</i> and the EAW	26
C. <i>Dell’Orto</i> and the Wider Constitutional Question	27
IV. Supranational Criminal Law	29
A. Effectiveness Revised: <i>Commission v Council</i>	29
B. The Commission’s Communication	31
C. The <i>Ship Source Pollution</i> Ruling	31
D. The Failed Attempt to Transfer the Third Pillar via a Bridging Clause	33
E. The Changes brought by the Lisbon Treaty: Introduction	34
i. Article 82 TFEU: Procedural Criminal Law	34
ii. Article 83 TFEU: Substantive Criminal Law	35
iii. Enhanced Cooperation and Emergency Brakes	35