

Criminal Law Responsibility and Guaranties in the EU Common Legal Area

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Basic idea

Despite the significant *acquis* and many legal instruments adopted so far at the European Union (EU) level, the actual situation of judicial cooperation in criminal matters – as showed in annual reports of the Commission – is far from being fully satisfactory.

Judicial cooperation in criminal matters has still to face too many obstacles, and especially the persistent lack of trust and common understanding among practitioners, which reveal the lack of full awareness of common legal ground already in place. As a result, judicial cooperation in criminal matters is still not working smoothly.

A true European approach in the definition of contents and methodology of training of all legal practitioners in this field is needed in order to develop the idea of an existing common legal environment among Member States, to be fully implemented and improved. Not only general issues but also specific practical matters have to be dealt with a European perspective and following an approach showing the existence of a common legal understanding, even when such issues arise only in some Member States' legal order.

The protection of the European Union's financial interest (PIF) sector is one of the core sectors of EU, and it is to be considered as the 'avant-garde' of EU initiatives in criminal matters. Then, it can be dealt with as a pilot sector.

A. Guidelines

1. Aim of the training curriculum

Reshaping judicial training in criminal law matters from an ius commune perspective.

2. General Methodology

Training contents are organized by (a) starting from what all Member States have already in common, either as a consequence of implementing procedures of EU legal texts and the compliance with jurisprudence of the European Court of Justice (ECJ) and of the European Court of Human Rights (ECtHR), or as already existing common legal traditions; (b) and then approaching specific/controversial issues of single Member States' legal systems as peculiar issues (conflicting or not conflicting with common features).

3. Capacities

Trainees/participants are expected to:

- understand:
 - what a ‘common legal area’ means and implies,
 - the functioning of the EU integrated system of legal orders,
 - institutional EU framework and competences and its interconnection with national authorities’ ones,
 - EU legal order dynamics and their impact on Member States’ systems of criminal justice, and
 - the reason behind the impact of EU law on national systems of criminal justice, *id est* to protect fundamental EU interests (since Member States are under an obligation to provide such a protection to be effective and adequate and refrain from adopting measures that could create obstacles to EU integration process);
- be prepared to deal with:
 - transnational cases and
 - national cases, anyway affected by EU law.

In promoting the curriculum, training agencies have to stress the current situation where cases increasingly involve conducts realized in more than one Member State and then require appropriate knowledge of EU law, of the main instruments of judicial cooperation and also basic knowledge of other legal systems. Moreover, the point should be stressed of the importance to know about tools offered by EU law to all practitioners, depending on their respective role. The current situation is also to be stressed of cases consisting in ‘merely’ internal affairs, since they do not involve other Member States, but that are nevertheless affected by EU law: facing these cases needs awareness about tools offered by EU law.

4. Trainers

Academics and practitioners in criminal law having an international profile. This characteristic is an essential aspect. The innovation of the module relies essentially on the approach suggested and it requires, then, that trainers share the EU perspective/approach embraced by the curriculum.

Trainers must be experienced especially with respect to the need to link the EU principles with practical issues of the interests for practitioners.

5. Audience

Legal practitioners (mainly judges and prosecutors, and defence lawyers). The training curriculum proposed is composed of some common compulsory contents to be developed by competent training authorities that enjoy a great room for discretion in doing so. As a matter of the fact, they might want to further tailor the curriculum proposed in order to fit with possible different categories of practitioners.

Following the approach of the project, it would be highly desirable to implement the proposed curriculum by considering the possibility that at least part of the training will have a mixed audience. This could be very useful in order to create the opportunity for different perspectives to be showed with respect to the same case/topic and consequently exchange experiences.

No specific distinction was made between junior/senior judges/prosecutors. The reason behind this choice is again the possibility for training national authorities, when implementing the curriculum, to tailor it according to the different category they are addressing.

6. Different uses of the Curriculum

The proposed training curriculum is conceived as to be implemented by national or European training agencies.

- a) By national training authorities:
 - initial training, delivered before or on taking up duties and
 - continuous training, delivered after taking up duties.

The training proposed is conceived as a model for *initial training*: the audience should have – as basic preconditions – (i) a law degree (or others, as long as with EU basic courses) and (ii) have passed EU and criminal law exams.

It is up to the national authorities to use the curriculum also for *continuous training*: In this case, training will have to be differentiated for each category (judges/prosecutors and/or barristers). Moreover, national authorities will have to take care of the distinction between experienced judges/barristers (with knowledge of EU law) and senior judges/barristers who could not have a basic understanding of EU law. In the latter case, the proposed contents have to be tailored/integrated with general/basic knowledge of EU law which are not covered by the proposed training modules.

- b) By European training agencies:
 - cross-border training by European training entities and
 - Exchange Programme for Judicial Authorities (European Judicial Training Network – EJTN).

In case the curriculum is implemented by a European training agency, an integration of the programme will be necessary with respect to the second part of each module which must be devoted to the comparative dimension of the principle and a panorama of solutions in the main Member States' legal orders.

7. Curriculum's structure and contents

Nine modules (one introductory module, plus seven principle-based modules, plus one special part module). The proposed curriculum is based on the idea of a 'principles-based training'.

The introductory module covers the main EU general principles having an impact on criminal law and it aims to give a general overview of the main dynamics of EU law. The principles-based modules cover the main EU criminal law principles. A special part module is devoted to PIF offences (the pilot sector of the action).

Topics concerning PIF offences and competent institutions are presented in the introductory module and also developed as transversal issues in the principles-based modules, as a subject matter of basic seminars or workshops.

It is up to national authorities to integrate the proposed curriculum with further special part modules dealing with offences/criminal phenomena other than PIF offences. These additional modules have to be organized following the structure and methodology proposed.

Each proposed module indicates minimum (compulsory) contents of basic seminars. Workshops are compulsory too, but training authorities enjoy a broader discretion in defining their contents.

Moreover, the same can choose to organize workshops for all the audience or for smaller groups. In the latter case, participants may choose among several options, according to their interest.

Each module is divided into:

- ◆ **Part I**, dealing with the *ius commune* with respect to each principle, covering the core of the principle at the EU level plus existing/emerging common trends in the Member States' legal orders. Workshops, in this phase, should be devoted to the analysis of the European Court of Justice (ECJ) and European Court of Human Rights (ECtHR) leading cases, especially focusing on the explanation of the European Courts reasoning.
- ◆ **Part II**, dedicated to outstanding/debated issues arising at the national level with respect to the implementation of the general principle at stake. Such issues have to be dealt with stressing compatibility or non-compatibility with the principle as recognized at the European level in the perspective of finding practical solutions in order to comply with European law. Moreover, they have to be dealt with stressing problems they can raise when they arise in cross-border cases which need judicial cooperation. Presentation in the basic seminars and discussion in workshops should be made in a way they can be of guidance for participants to find viable solutions to achieve smooth cooperation.

Suggested implementation. The nine modules are conceived as possible autonomous training modules. Therefore, a short training curriculum could be implemented by combining the general introductory module with one or more other modules. The option of a shortened combination is useful when adapting the training curriculum into continuous training. The introductory module can be implemented also as the content for an autonomous training.

8. (Each) Module's structure and methodology

Basic seminars and workshops. Each module is composed of:

- ◆ **Basic seminars:** These are training events in which the overall structure of the respective field of law is presented (according to the definition of EJTJN training guidelines in European Criminal Justice – 2012). The objective of these seminars is to introduce participants to the topic and allow them to gain comprehensive understanding of the field.

Each module includes a first basic seminar named 'Setting the scene' aiming at providing participants not only with the general presentation of the contents of the module but especially to show the special developments and connections of the same in order to meet the special approach followed in the proposed curriculum. Issues concerning terminology and especially possible discrepancies of legal notions at the European level and at the national ones are to be presented in this seminar.

Suggested implementation.

- Audience: all the participants (maximum 60 people).
- The basic seminars should start from a *practical (fictitious) case* addressing the matter at stake. The aim is to immediately catch and maintain the attention of the audience. Participants have to be put in the best conditions to follow the theoretical lecture immediately understanding its practical implication. The trainers must be able to show the link between the general principle at stake and the many practical issues.
- At the end of the lecture, sometime must be dedicated to *questions & answers*.

- ◆ **Workshops:** These are events in which the focus is on practical training (according to the definition of EJTN training guidelines in European Criminal Justice – 2012). Training methods used in a workshop should range from case studies to moot courts and other role games. Topics for workshops indicated in the prospect are to be considered as mere examples.

Suggested implementation.

- Audience: smaller groups (maximum 20 people),
- *Case study:* presentation of leading case partially added with facts that encompass relevant aspects,
- *Group work* with subsequent interactive presentation of results with workshop participants,
- Exchange of experience with workshop participants, and
- *Questions & answers.*

Workshops will represent the main activity of the curriculum. In general, a practical/interactive approach has been considered as the general one to be followed. Anyway, basic presentations and workshops could have partially different learning goals depending on the subject matter covered. In particular, workshops will surely be the most significant activity in the second part of the module, dedicated to special and peculiar national issues.

Aim of the training modules is not (it cannot be) an exhaustive teaching about the principles selected. The training proposed has to give methodological tools and the basic knowledge to be then applied also in different situations arising in the daily activity.

9. Timing

An approximate timing is indicated at the beginning of each module, giving the option between 1 or 2 days training. However, this has to be considered as a mere indication (essentially, corresponding to the minimum contents and the workshops suggested in the module). In fact, the actual timing will result from the decision of national authorities concerning possible further developments (contents of basic seminars and number/length of the various workshops).

In order to calculate the approximated timing, the duration for basic seminars is assumed in 1.30 hours covering traditional ex cathedra lecture plus question & answers. Duration of interactive events (such as workshops) is left to the discretion of the training agency.

10. Material

The module is conceived to be ideally based on the Handbook: R. Sicurella, V. Mitsilegas, R. Parizot, and A. Lucifora (eds), *General Principles for a Common Criminal Law Framework in the EU. A Guide for Legal Practitioners*, Giuffrè, Milan, 2017. In addition, it would be highly desirable that a *syllabus* is provided by the competent training authority for each module collecting the most relevant legal texts, EU and ECtHR case law, and National Constitutional and High Courts leading decisions connected to the principle at stake. The syllabus should provide a ‘reasoned’ presentation of the legal material that is to be presented in a way it shows connections with European Law and also commonalities among the Member States’ legal systems. The syllabus should be distributed before the running of the training module in order to facilitate a proper background preparation necessary to actively participate during the basic seminars and, above all in workshops.

B. TRAINING MODULES

INTRODUCTORY MODULE

EU legal order dynamics and their impact on national criminal justice systems Primacy of EU law and MSs criminal law competence – sincere cooperation – mutual recognition – EU competence in criminal law matters – criminal law and protection of fundamental rights – protection of EU fundamental interests, especially PIF

PRINCIPLES-BASED MODULES

Principle of legality Accessibility and foreseeability of criminal law, legality and judicial interpretation

Principle of guilt/fault *Mens rea*, *error juris*, strict liability and responsibility of legal persons

Principle of proportionality Article 5 TFUE, Article 49, 53 EUCFR, *ultima ratio*, harm principle, proportionality of the punishment, sentencing issues, impact assessment and multilevel constitutionalism

Defence rights Article 48 EUCFR, EU directives harmonizing procedural safeguards, defence rights (scope), effects of directives in procedural criminal law, defence rights in transnational context and European public prosecutor investigations and defence rights

Presumption of innocence Article 48 EUCFR, evidence, investigation, judgment and European investigation order

Principle of effective remedy Article 47 EUCFR, Article 6 ECHR, independent and impartial tribunal previously established by law and fair and public hearing within a reasonable time

Ne bis in idem *Bis, idem*, enforcement of sentences, conflicts of jurisdiction, Article 50 EUCFR and Article 54 CISA

SPECIAL PART MODULE

PIF offences Union's financial interests, principle of assimilation, Articles 83 and 325 TFEU, fraud, PIF Directive, OLAF and EPPO

Acronyms: Member State/Member States (MS), Framework Decision (FD), European Charter of Fundamental Rights (EUCFR), European Court of Justice (ECJ), European Court for Human Rights (ECtHR), European Convention for the protection of Human Rights (ECHR), European Commission Office for the Fight against Fraud (OLAF), European Public Prosecutor's Office (EPPO), European Arrest Warrant (EAW), Convention for the Implementation of the Schengen Agreement (CISA).

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European Union

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- Green Paper on criminal law protection of the financial interests of the Community and the establishment of a European Prosecutor (and 2003 follow-up), COM/2001/0715 final.
- Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, 2000 (2001/C 12/02).
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Council of Europe and other institutions

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- *Luedicke v. Germany*, application nos 6210/73; 6877/75; 7132/75, ECLI:CE:ECHR:1980:0310JUD000621073.
- *Massa*, application no. 14399/88, ECLI:CE:ECHR:1993:0824JUD001439988.
- *Mills v. UK*, application no. 35685/97, ECLI:CE:ECHR:2001:0605JUD003568597.
- *Pham Hoang*, application no. 13191/87, ECLI:CE:ECHR:1992:0925JUD001319187.
- *Pretto et al. v. Italy*, application no. 7984/77, ECLI:CE:ECHR:1983:1208JUD000798477.
- *Radio France*, application no. 53984/00, ECLI:CE:ECHR:2003:0923DEC005398400.
- *S. and Marper v. United Kingdom* (Grand Chamber), applications nos 30562/04 and 30566/04, ECLI:CE:ECHR:2008:1204JUD003056204.
- *Salabiaku*, application no. 10519/83, ECLI:CE:ECHR:1988:1007JUD001051983.
- *Salduz v. Turkey*, application no. 36391/02, ECLI:CE:ECHR:2008:1127JUD003639102.
- *Stübing v. Germany*, application no. 43547/08, ECLI:CE:ECHR:2012:0412JUD004354708.

- *Sud Fondi Srl*, application no. 75909/01, ECLI:CE:ECHR:2009:0120JUD007590901.
- *Taxquet v. Belgium*, application no. 926/05 ECLI:CE:ECHR:2010:1116JUD000092605.
- *X. Y. v. The Netherlands*, application no. 8978/80, ECLI:CE:ECHR:1985:0326JUD000897880.
- *Zolotukhin v. Russia*, application no. 14939/03, ECLI:CE:ECHR:2005:0908DEC001493903.

Introductory module	EU LEGAL ORDER DYNAMICS AND THEIR IMPACT ON NATIONAL CRIMINAL JUSTICE SYSTEMS	
Keywords and timing	Primacy of EU law and MS criminal law competence – sincere cooperation – mutual recognition – EU competence in criminal law matters – criminal law and protection of fundamental rights – protection of EU fundamental interests, especially PIF	Eight hours for a 1-day training – 14 for a 2-day one. In the latter case, the suggestion is to hold two workshops per each part
Main learning goals	<ul style="list-style-type: none"> • To understand: <ul style="list-style-type: none"> – EU general transversal dynamics and issues able to influence scope and application of all EU principles examined during the training and to affect, as a consequence, the implementation of EU law by MS, – the system of integrated legal orders (EU – MS), – the reason behind the impact of EU law on national systems of criminal justice, <i>id est</i> to protect fundamental EU interests, such as the Union budget, – the impact of EU legal system dynamics on the national criminal justice system (direct and side/indirect effects of EU law on national criminal law) and – the impact of fundamental rights protection in a system of multilevel governance. • Being able to: <ul style="list-style-type: none"> – apply tools/powers/instruments recognized to national authorities by EU law and – identify when EU law applies. 	
Basic seminars	Minimum contents	Instruments and case law
Setting the scene	<ul style="list-style-type: none"> • Transversal and comprehensive approach of this module, which analyses EU dynamics and general issues keen on affecting national legal systems, with regard to all EU principles examined during the training • Overview of the most relevant practical issues which will be deeply studied during the workshops • Overview of the most challenging issues concerning terminology, which will be individually analysed during the seminars 	<i>Please see instruments and case law quoted below</i>

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Basic seminars	Minimum contents	Instruments and case law
The principle of sincere cooperation and legislature	<ul style="list-style-type: none"> • Scope and content of the obligation of providing for criminal provisions, in the light of ECJ case law and treaties provisions • EU competence in criminal matters and national legislature • Challenging issues: • clash between conflicting obligations (obligations of criminal protection vs. protection of fundamental rights) and • limit imposed on EU and national legislature in criminal matters. 	<ul style="list-style-type: none"> – Article 4, para. 3.2, TEU – ECJ, C-68/88, <i>Greek Maize</i>; ECJ, C-176/03, <i>Environmental Crime (Commission v. Council)</i>; ECJ, C-440/05, <i>Ship-source Pollution</i> – Article 280 TEC, Lisbon Treaty: Article 83 TFEU (paras. 1 and 2) and Article 325 TFEU (para. 4) – Not binding documents of Commission, Council and Parliament on criminal law policy – ECJ, C-387/02, C-391/02 and C-103/02 <i>Berlusconi and others</i>; ECJ, C-105/14, <i>Taricco</i>; ECJ, C-41/76, <i>Donckerwolke</i>; <i>Skanavi and Chryssanthakopoulos</i>; ECJ, C-348/96, <i>Calfa</i>; ECJ, C-36/02, <i>Omega</i>; ECtHR X. Y. v. <i>The Netherlands</i>; S. and Marper v. <i>United Kingdom</i> (Grand Chamber); <i>Belpietro v. Italy</i>. EU Charter of Fundamental Rights. Recent ECJ case-law: ECJ, C-293/12, <i>Ireland Digital Rights</i>; ECJ, C-362/14, <i>Schrems</i>
The principle of sincere cooperation and the judiciary	<ul style="list-style-type: none"> • The disapplication of domestic law and the duty of consistent interpretation: scope and content of the obligations on the national courts • The limits to disapplication and consistent interpretation in criminal matters • The role of the national judges in a multilevel system of protection of fundamental rights 	<ul style="list-style-type: none"> – ECJ, C-26/62, <i>Van Gend and Loos</i>; ECJ, C-243/78, <i>Simmenthal</i>; ECJ, C-6/64, <i>Costa v. Enel</i>; ECJ, C-10/97 to C-22/97, <i>IN.CO.GE</i>; ECJ, C-14/83, <i>Von Colson</i>; ECJ, C-106/89, <i>Marleasing</i>; ECJ, C-255/97, <i>Pfeiffer</i>; ECJ, C-282/10, <i>Dominguez</i>; ECJ, C-105/03, <i>Pupino</i>; ECJ, C-322/88, <i>Grimaldi</i> – ECJ C-105/14, <i>Taricco</i>; ECJ, C-380/07, <i>Angelidaki</i>; ECJ, C-282/10, <i>Dominguez</i>; ECJ, C-80/86, <i>Kolpinghuis Nijmegen</i>, ECJ, C-399/11, <i>Melloni</i>; ECJ, C-617/10, <i>Åkerberg Fransson</i>

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Basic seminars	Minimum contents	Instruments and case law
The principle of mutual recognition in criminal matters	<ul style="list-style-type: none"> • The principle of mutual recognition: genesis and evolution • The concept of mutual trust and the protection of fundamental rights as the foundation of mutual recognition • Mutual recognition and harmonization of substantive and procedural criminal law • European Arrest Warrant and other EU mutual recognition instruments (overview) 	<ul style="list-style-type: none"> – Tampere Conclusion 1999; COM(2000)495; Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, 2000; Hague Programme; TEU and TFEU; EUCFR; FD on EAW, 2002/584/JHA; FDs on mutual recognition of financial penalties, confiscation orders and proposal for a regulation of freezing and confiscation orders, custodial sentences, probation and alternative sanctions; FD on the supervision order, 2009/829/JHA, European investigation order and European protection order; FDs/ Directives on the harmonization of criminal offences; Council Resolution of 30 November 2009 (2009 Roadmap); EU FDs/ Directives on the harmonization of procedural rights – ECJ, C-120/78, <i>Cassis de Dijon</i>; ECJ, C-187/01, <i>Gözütok and Brügger</i> (and brief overview of ECJ case law on the ne bis in idem principle); ECJ, C-303/05, <i>Advocaten voor de Wereld</i>; ECJ, C-192/12 PPU, <i>Melvin West</i>; ECJ, C-396/11, <i>Radu</i>; ECJ, C-399/11, <i>Melloni</i>; ECJ, C-168/13, <i>Jeremy F.</i>; Opinion 2/13; ECJ, C-237/15 PPU, <i>Lanigan</i>; ECJ, C-404/15, <i>Aranyosi and Căldăraru</i>
Defence guarantees and mutual recognition	<ul style="list-style-type: none"> • Evolution of defence guarantees in the practice of EU mutual recognition: from the Amsterdam Treaty to the Lisbon Treaty • Effects of the new system of individual procedural guarantees (i) on the cooperation's mechanisms and on every EU national system and (ii) on legislative acts with vertical direct effect ex Article 82.2 	<ul style="list-style-type: none"> – FDs 2002/584/JHA and 2008/978/JHA; 1999 Tampere Programme; 2000 Communication; 2001 Draft Programme; 2003 Green Paper; 2004 Proposal. 2009 Council Resolution; 2010 Stockholm Programme (2010/C 115/01); Articles 47, 48 and 50 EUCFR; Article 6 ECHR; Article 82.2 TFEU;

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Basic seminars	Minimum contents	Instruments and case law
	<p>but also with horizontal direct effect mandated to implement the judicial cooperation</p> <ul style="list-style-type: none"> • Problematic issues: (i) weak position of the defence in EPPO regulation and (ii) risk of heterogeneous standard of defence guarantees safeguard at national and EU level 	<p>Directives 2010/64/EU, 2012/13/EU, 2013/48/EU and 2016/343/EU</p> <ul style="list-style-type: none"> – Articles 2.7 and 3.6 Directive of 2010, Article 5 of 2012 Directive, Article 10 of 2013 Directive and Article 1.3. Directive 2014/41/EU – Article 9 of 2013 OLAF regulation, Council Regulation on the EPPO
<p>Protection of EU fundamental interests, especially in the PIF sector</p>	<ul style="list-style-type: none"> • History of PIF and the link between fraud and corruption • EU competence in the PIF sector • EU offices and agencies fighting PIF offences: Eurojust, Europol, OLAF and EPPO 	<ul style="list-style-type: none"> – 1976 Proposal; Article 209a TEC; PIF Convention & Protocols; Regulation No. 2988/95; Article 280 TEC and proposed Article 280 bis TEC; EUCFR; 2001 Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor (and 2003 follow-up); Eurojust Council Decision; Articles 83, 85, 86 and 325 TFEU; OLAF Regulation; Europol Regulation; PIF Directive; EPPO Regulation
Workshops		
<p>The principle of sincere cooperation and legislature</p>	<ul style="list-style-type: none"> – ECJ case law as starting point to explain scope and content of obligations of criminal protection and to better understand current Treaty provisions (ECJ, C-68/88, <i>Greek Maize</i>; ECJ, C-176/03, <i>Environmental Crime (Commission v. Council)</i>; ECJ, <i>Ship-Source Pollution (Commission v. Council)</i>, C-440/05) – EU competence in criminal matters and national legislature: clash between conflicting obligations (namely, obligation of criminal protection vs. protection of fundamental rights) – analysis of relevant ECJ case law (before Lisbon: <i>Berlusconi and others</i>/post Lisbon: ECJ, <i>Taricco</i>) – Limits imposed to EU and national legislature in criminal matters (namely, proportionality) – analysis of relevant ECJ and ECtHR case law: ECJ, C-41/76, <i>Donckerwolke</i>; ECJ, <i>Skanavi</i>, C-193/94; ECJ, C-348/96, <i>Calfa</i>; ECJ, <i>Omega</i>, C-36/02. ECtHR <i>X. Y. v. The Netherlands</i>; <i>S. and Marper v. United Kingdom</i> (Grand Chamber); <i>Belpietro v. Italy</i>. EU Charter of Fundamental Rights. Recent ECJ case-law: ECJ, <i>Ireland Digital Rights</i>, C-293/12; ECJ, <i>Schrems</i>, C-362/14 	

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Workshops	
The principle of sincere cooperation and the judiciary	<ul style="list-style-type: none"> – How can the national judge strengthen the protection of fundamental rights? – Problematic issues connected with disapplication – The indication of applicable law – The risk of retroactivity of detrimental solutions
The principle of mutual recognition in criminal matters	<ul style="list-style-type: none"> – The ECJ and the principle of Mutual Trust – The ECJ case-law on the European Arrest Warrant
Defence guarantees and mutual recognition	<ul style="list-style-type: none"> – Analysis of the defence mechanisms for participation of the suspected or accused person to the different forms of practical cooperation in criminal matter (e.g. the defence powers of intervention in the transnational evidence gathering procedures) – The procedural defence guarantees in the context of the EU bodies activity against transnational crimes: the OLAF investigations

Principle-based module	PRINCIPLE OF LEGALITY	
Keywords and Timing	Accessibility and foreseeability of criminal law, legality and judicial interpretation	Eight hours for a 1-day training – 14 for a 2-day one. In the latter case, the suggestion is to hold two workshops per each part
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • To understand the <i>ius commune</i>: <ul style="list-style-type: none"> – the core of the <i>nullum crimen</i> principle at the EU (and ECHR) level as protected by legality sub-principles, – the common legal framework as encompassing EU positive law, ECJ leading cases and common trends in MSs legal systems and • the impact of EU law with respect to the principle even in purely national cases. 	
Basic seminars	Minimum contents	Instruments and case law
Assumptions	<ul style="list-style-type: none"> i. Substantial definition of 'criminal' matters (offence and penalty) ii. Legality refers to the 'material' notion of criminal law iii. Accessible and foreseeable 'law', understood as statute law and jurisprudence 	<ul style="list-style-type: none"> i. ECJ, C-489/10, <i>Bonda</i>, ECtHR <i>Engel</i> ii. ECJ <i>Pupino</i>, C-105/03; ECtHR, <i>Coeme v. Belgium</i> iii. ECJ, <i>Dansk Rørindustri</i>, C-189/02 P, ECtHR <i>Scoppola</i>

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Basic seminars	Minimum contents	Instruments and case law
Obligations stemming from sub-principles covered by the nullum crimen at EU level	<ul style="list-style-type: none"> i. Prohibition of retrospective application of criminal law ii. Retrospective application of 'lighter penalties' iii. Retrospective application of <i>lex mitior</i> iv. Accessibility and precision of criminal provisions v. Prohibition of analogy vi. Prohibition of unforeseeable extensive interpretation 	<ul style="list-style-type: none"> i. Article 49 EUCFR and Article 7 ECHR, ECJ Kirk ii. Article 49 EUCFR iii. ECJ, C-387/02, C-391/02 and C-103/02 <i>Berlusconi and others</i> iv. ECHR Kokkinakis v. ECJ <i>Pretore di Salò</i>, C-14/86 vi. ECJ <i>Pretore di Salò</i>, C-14/86
Common/Emerging trends among MS	<ul style="list-style-type: none"> i. Democratic control ii. Prohibition of extensive interpretation of criminal law iii. Foreseeability of changes in the (well-established) jurisprudence 	
Workshops		
	Accessibility and foreseeability: the reasoning of ECJ and ECtHR	
	Retroactivity/non-retroactivity of favourable/detrimental judicial interpretation (ECtHR <i>Conrada</i>)	
Part II	Special and peculiar national issues	
Main learning goals	Understand: Which issues, at the national level, present the risk of non-compliance with the EU dimension of the principle? Which issues arise in areas that are not directly affected by EU law? Through examples of cases related to PIF offences and economic crimes.	
Basic seminars	Minimum contents	Instruments and case law
	– Set the scene for the understanding of the national issues	
	– An overall comparison between the content of the principle at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints	

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Basic seminars	Minimum contents	Instruments and case law
Current developments	What are the recent developments in EU law, ECJ case law and ECtHR case law concerning the principle of fault	Newest ECJ and ECtHR case law combined with various national case law (and if appropriate doctrine)
Workshops		
	The different scope of legality at EU and national level (ECJ <i>Taricco</i>)	
	Retroactivity of <i>lex mitior</i> (ECtHR <i>Scoppola</i>)	

Principle-based module	PRINCIPLE OF GUILT/FAULT	
Keywords and Timing	<i>Mens rea</i> and related issues	Eight hours for a 1-day training – 14 for a 2-day one. In the latter case, the suggestion is to hold two workshops per each part
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • To understand: <ul style="list-style-type: none"> – the scope of the principle of fault according to EU law (including EUCFR), – the specific obligations stemming from EU law (including leading cases of ECJ) and directed at the national legal practitioner (judge, lawyer, prosecutor, civil servants, etc.) and – the requirements stemming from ECHR – mainly ECtHR case law. 	
Basic seminars	Minimum contents	Instruments and case law
Setting the scene – Introductory seminar providing fundamental understanding	<p>b. Individual fault as a fundamental requirement for criminal law in all States</p> <p>c. Strict criminal liability is acceptable but only under certain (common) criteria</p> <p>a. The distinction between criminal and administrative sanctions applicable throughout EU</p> <p>b. The common trend that the element of fault is also fundamental to administrative sanctions</p> <p>c. The boundaries set – throughout EU – by the principle of fault on the severity of sanctions (proportionality)</p>	<p>b. ECJ, <i>Käserei Champignon Hofmeister</i>, C-210/00; ECJ, <i>Estel</i>, C-83/83; BGH judgment from 18 March 1952</p> <p>c. ECJ, <i>Hansen & Son</i>, C-326/88; ECtHR, <i>Salabiaku</i></p> <p>a. ECJ, <i>Germany v. Commission</i>, C-240/90; CJEU <i>Käserei Champignon Hofmeister</i></p> <p>b. EC Regulation 2988/95; ECJ, <i>Käserei Champignon Hofmeister</i>, C-210/00</p> <p>c. Article 49(3) EUCFR, Regulation 2988/95</p>

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Basic seminars	Minimum contents	Instruments and case law
Specific obligations regarding 'fault'	b. Derogation from the principle of fault is allowed – common criteria for derogation from the principle of fault (a.o. crime prevention and the deterrent effect) c. Derogation from the principle of fault is also acceptable for administrative sanctions d. Presumption of fault must be rebuttable e. A leeway must be open for error juris situations f. Does EU law have an autonomous concept of mens rea? a. What – if any – are the challenges of EPPO in relation to the principle of fault?	b. ECJ, <i>Ebony Maritime</i> , C-177/95; ECJ, <i>Hansen & Son</i> , C-326/88 a. ECJ, <i>Käserei Champignon Hofmeister</i> , C-210/00; ECJ, <i>Van der Ham</i> , C-396/12 b. ECtHR <i>Pham Hoang</i> , ECtHR <i>Janosevic</i> and ECtHR <i>Radio France</i> c. ECtHR <i>Sud Fondi Srl</i> and ECtHR <i>Varvara</i> d. ECJ, <i>Van der Ham</i> , C-396/12; ECJ, C-72/11, <i>Afrasiabi</i> ; ECJ, <i>Rinkau</i> , C-157/81 e. Proposal COM (2013) 534 final and working doc, SWD (2013) 274 final
Workshops		
Common/emerging trends among MS	Discuss the reason why: 1) The principle of fault is fundamental to criminal law throughout EU. 2) The degree of fault (mens rea) is relevant for sentencing throughout EU. 3) All EU countries do have a system of liability for legal persons no matter the nature (criminal, administrative or civil) of this liability.	
Requirements and needs stemming from EU cooperation and EU law (I)	Identify and discuss the reasons why 1) The notion of mens rea is not harmonized by EU for national criminal sanctions. 2) The notion of mens rea in the <i>van der Ham</i> compared to mens rea in <i>Afrasiabi</i> case and in Regulation 2988/95. 3) The EU law does not require a system of criminal sanctions for legal persons. What is the way of reasoning of the ECJ? Could conflicts of jurisdiction occur due to different notions of mens rea and how could they be overcome (also for EPPO)?	
Requirements and needs stemming from EU cooperation and EU law (II)	Identify and discuss the scope of the elements making derogation from the principle of fault (applying a strict liability) acceptable for the ECJ. Identify and discuss the potential challenges of a strict criminal liability for transnational cooperation in criminal matters, including challenges related to the EAW and the EPPO. Could conflicts of jurisdiction occur due to strict criminal liability being applicable in one country but not another (and in relation to EPPO prosecution)?	

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Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> ● To be able to identify: <ul style="list-style-type: none"> – commonalities (between the States) in spite of some diversity and – which issues, at the national level, present the risk of non-compliance with EU law and therefore need adjustment at legislative or practical level? ● To be able to apply in national criminal cases (at the practical level for lawyers, judges, etc.): <ul style="list-style-type: none"> – requirements stemming from EU law. 	
Basic seminars	Minimum contents	Instruments and case law
Overview of challenging issues	<ul style="list-style-type: none"> ● Set the scene for the understanding of the national issues (relationship between EU law and national law) ● Set the scene for understanding the potential problems of transnational cases (EAW etc.) ● An overall comparison between the content of the principle of fault at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints ● Overview of issues arising between Member States: <ul style="list-style-type: none"> – strict criminal liability (compare e.g. Germany with the United Kingdom and Denmark), – criminal liability of legal persons (compare e.g. Germany with Denmark or France), – discuss the special ‘status’ or even kind of fundamental character of the principle of fault (compare e.g. Germany, Spain and your own national legal system concerning severity of the sanctions), 	

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Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> – discuss the concept of recklessness (compare e.g. the United Kingdom and your own national system) and – discuss the recognition or rejection of error juris as a ground of defence (compare e.g. Spain with the United Kingdom/ Denmark). 	
Current developments	What are the recent developments in EU law, ECJ case law and ECtHR case law concerning the principle of fault?	Newest ECJ and ECtHR case law combined with various national case law (and if appropriate doctrine)
Workshops		
Notion of mens rea (related to workshop 1 of PART I)	How is the notion of <i>mens rea</i> in your country identical to (or different from) the notion of <i>mens rea</i> as presented in the cases <i>van der Ham</i> and <i>Afrasiabi</i> ? Take both your national criminal law and – if you have one – administrative sanctioning system into consideration. Identify and discuss the requirements stemming from ECJ case law and how these requirements comply with or could be transformed into your legal system in an adequate way. What are the challenges stemming from the requirement of <i>mens rea</i> under your national legal system in relation to the EAW and the EPPO and how would you try to deal with it in a specific case in order to comply with EU law?	
Presumptions of fault, error juris and so on (related to workshop 2 of PART I)	What does it mean, when the ECtHR requires the presumption of fault to be rebuttable? Take your point of departure in the cases <i>Sud Fondi</i> and <i>Varvara</i> . Compare the cases to the case of <i>Hansen & Son</i> . How can ECJ allow strict criminal liability? Do you have presumptions of fault in your legal system? Does it violate EU law or ECtHR? What are the challenges stemming from presumption of fault in relation to the EAW and EPPO from the point of view of your legal system and how could they be overcome?	
Strict criminal liability (related to workshop 2 of PART I)	Does your own legal system have sanctions conflicting with the principle of fault? Do you apply the elements making derogation from the principle of fault acceptable (compare to <i>Hansen & Son</i> , <i>Ebony Maritime</i> , <i>Sud Fondi</i>). How would you deal with a sanction applied (according to national law of another Member State or EU regulation) on the basis of strict liability? What are the challenges stemming from a strict criminal liability in relation to the EAW and EPPO from the point of view of your legal system and how could they be overcome?	

Principle-based module	PRINCIPLE OF PROPORTIONALITY	
Keywords and Timing	Legal interest, ultima ratio, endangerment crimes, long prison sentences and sentencing	Two-day training would be optimal; if 1-day training: assuming 1.30 hours for each basic seminar, the suggestion is to hold two seminars for part I and one seminar for part II, with one workshop for each part
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • Understand the different meanings of the word Proportionality in EU Law • Understand the Proportionality Principle in the framework of multilevel constitutionalism • Know the practical application of the principle in the ECJ and ECH 	
Basic seminars	Minimum contents	Instruments and case law
Setting the scene	<ul style="list-style-type: none"> • Presentation of the links between proportionality and the basic principles of criminal law, understanding the grounds and limits of criminal law done by constitutional judges • Present the different structures of proportionality principle in ECJ, ECH and national courts • Present the relation between proportionality and other principles as culpability or legality • Distinguish the different meanings of proportionality in EU Law 	<ul style="list-style-type: none"> – European Commission in their Communication 'Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies' Brussels, 20 September 2011 – Council Conclusions of 30 November 2009 – ECPI: Manifesto on European Criminal Policy – ECJ <i>Internationale Handelsgesellschaft</i>, C-111/70, ECJ, <i>Watson</i>, C-698/15, ECJ, <i>Grogan</i>, C-159/90, ECJ, <i>Skanavi</i>, C-193/94, ECJ, <i>Thompson</i>, C-7/78, ECJ, C-348/96, <i>Calfa</i>, ECJ, <i>Zoni</i>, C-90/86, ECJ, C-358/93 and C-416/93, <i>Borsdessa</i>, <i>Donckerwolcke</i>
The margin of appreciation's doctrine	<ul style="list-style-type: none"> • Understanding the grounds and limits of the control of the criminal law done by constitutional judges 	<ul style="list-style-type: none"> – ECtHR <i>Stübing</i>, <i>Kokkinakis</i>, <i>Lehideux</i>, <i>Cantoni</i> – ECJ, <i>Fedesa</i>, C-331/88
Multilevel constitutionalism	<ul style="list-style-type: none"> • Present the relation between supranational and national systems of fundamental rights and the interaction process between constitutional judges. Cross-references: <i>Introductory modul.</i> 	<ul style="list-style-type: none"> – ECJ, <i>El Dridi</i>, C-61/11 PPU

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Basic seminars	Minimum contents	Instruments and case law
Common/Emerging trends among MS	<ul style="list-style-type: none"> • Legal interest as limit of the criminal law • Endangerment, suspicion and possession offences • Offender-based criminal law • Constitutional consistent interpretation • Proportionality and sentencing 	
Workshop	<p>The workshops will be carried out mainly from the discussion and resolution of cases, so that the student can discover how the principle of proportionality influences the interpretation and validity of the national and European laws. However, depending on the level of the students, an introductory presentation on the contents of the principle of proportionality and its use by the courts will be necessary</p>	
Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> • To apply the principle of proportionality in domestic cases • Proportionality principle and criminal policy with empirical foundations • Problematics areas of criminal law in light of proportionality principle • Obligation to criminalize and proportionality 	
Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> • Overview of challenging issues: setting the scene for the understanding of national trends and peculiarities • An overall comparison between the content of the principle at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints • Current developments 	<ul style="list-style-type: none"> – National legislation and case law – National legislation and case law – Most recent case law and legislation
Workshops	<p>The second type of workshop shall focus on the study of areas of criminal law that are especially controversial from the standpoint of the principle of proportionality such as sexual crimes, terrorism, sentencing and so on. It can be different in each country. The purpose of the workshops is to discuss about criminal rules that in each country are less in line with the criminal law principles deriving from the proportionality.</p>	

Principle-based module	DEFENCE RIGHTS	
Keywords and timing	Article 48 EUCFR; EU directives harmonizing procedural safeguards; right to information; right to be present, right of access to a lawyer and right to legal aid; right to free interpretation and translation; right not to incriminate oneself; effects of directives in procedural criminal law; defence rights in transnational context; European Public Prosecutor investigations and defence rights; defence rights in European Arrest Warrant proceedings	This module is designed to be used as 1- or 2-day seminars. Basic seminars and workshops are tools that can be used flexibly. Basic seminars and workshops can be 1 day each. Parts of workshops can also be integrated as element of basic seminars, so that the training comprises 1 day in total only. Examples: 'Workshop A: Invoking European obligations at the national level' can be used in order to explore the practical issues 'Effects of directives in criminal proceedings and remedial means in case of violation of European standards of defence rights' (Part I – Basic Seminar II.2. and 3.). The Workshop tool: 'Arising problems of the Directives in case of EPPO investigations' can be integrated as element of a basic seminar which treats specific EU obligations in transnational cases, including EPPO investigations
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • Understand <ul style="list-style-type: none"> – the sources of defence rights at the European level and – the relationship between EUCFR (Article 48) and ECHR (Article 6). • Know <ul style="list-style-type: none"> – the main obligations contained in the directives on procedural safeguards. 	<ul style="list-style-type: none"> • Get aware of <ul style="list-style-type: none"> – common trends among EU Member States as regards defence rights. • Learn to apply <ul style="list-style-type: none"> – effects of directives on procedural safeguards in national criminal proceedings, in particular interpretation in conformity with directives and direct effect of directives and remedial means in case of violation of EU law.
Basic seminars	Minimum contents	Instruments and case law
Setting the scene (morning session)	<ol style="list-style-type: none"> a. Defence rights as fundamental rights, relationship between Charter and ECHR and solving divergences b. Overview of contents of the various EU Directives on procedural rights, including their main obligations (obligations common to all directives, special obligations and derogations) 	EUCFR (Articles 47, 48; 52(3)); ECHR (Article 6); general EU law textbook, ECJ, <i>Melloni</i> , C-399/11, Council Resolution of 30 November 2009 (2009 Roadmap); Directive 2010/64/EU (interpret/transl.); Directive 2012/13/EU (information); Directive 2013/48/EU (A2L); Directive (EU) 2016/343 (right to be present and silence); Directive (EU) 2016/1919 (legal aid)

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Basic seminars	Minimum contents	Instruments and case law
	<p>with indications to common understanding</p> <p>c. Overview of contents of common trends</p>	
Practical issues (afternoon session)	<p>a. Scope of Directives (autonomous interpretation)</p> <p>b. Effects of directives in criminal proceedings (when to apply the EU Directives?)</p> <p>c. Remedial means in case of violation of European standards of defence rights</p> <p>d. Importance of common trends for practice (e.g. for cooperation in criminal matters and building mutual trust)</p>	<p>a. ECJ general case law</p> <p>b. Examples on basis of ECJ or national case law, for example, national part of ECJ, C-216/14, <i>Covaci</i></p> <p>c. Preliminary ruling procedure before ECJ; individual complaint before ECtHR (textbook and case examples)</p> <p>d. Case example: extradition in case of in absentia proceedings before and after reform in Italy (see also the facts of BVerfG order of 15 December 2015 – 2 BvR 2735/14)</p>
Workshop		
Invoking European obligations at the national level	<ul style="list-style-type: none"> • For example, impacts of ECtHR case law on national legal order • National law providing for remedies • Preliminary ruling procedure before the ECJ by studying a case file • Complaint before the ECtHR by studying a case file • Example: Impacts of <i>Salduz</i> case law on national legal orders (ECLI:CE:ECHR:2008:1127JUD003639102) • Example: LG Aachen, <i>Beschl. v. 8.5.16</i>, Qs-605; ECJ, <i>Sleutjes</i>, C-278/16) • Examples should be retrieved from relevant case law of the country concerned (e.g. <i>Luedicke v. Germany</i>) 	
CJEU's interpretation of the Directives and its implementation in national procedure	<ul style="list-style-type: none"> • For example, sections 132 and 410 German Criminal Procedure Code – period of lodging an objection against penal order – service in case of residence abroad; impacts on restoring the status quo ante in case of lodging an objection against a penal order by a non-resident) • Pre-effects of Articles 3 and 6 of Directive 2016/343, National legislation prohibiting, during the trial stage of the proceedings, inquiry into whether there are reasonable grounds to suspect that the accused has committed an offence <ul style="list-style-type: none"> – ECJ, C-216/14, <i>Covaci</i> – ECJ Joined Cases C 124/16, C 188/16 and C 213/16 – Relevant literature reviews of the decisions – ECJ C-439/16 <i>PPU</i> 	

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Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> ● Deepening knowledge on <ul style="list-style-type: none"> – specific issues in the context of the obligations stemming from the various defence rights at the European level and – the relationship between national cases and the obligations stemming from the various defence rights at the European level. ● Getting aware of <ul style="list-style-type: none"> – emerging problems in the context of the directives at the national level and in transnational cases, – problems in case of EPPO investigations, – problems in case of European Arrest Warrant (EAW) proceedings and – gaps of approximation at the European level/substantial differences at the national level concerning defence rights. 	
Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> ● Setting the scene for understanding peculiar national issues in relation to the Directives on defence rights ● More in-depth presentation of Directives' obligations and related ECtHR case law in specific areas ● Giving an overview of implementation problems ● Giving an overview of the Directives' specific obligations in transnational cases, including EPPO investigations and EAW proceedings ● Giving an overview on 'challenging issues', that is, topics where still substantial differences exist and which have not been subject to approximation at European level but are still very important 	<ul style="list-style-type: none"> – See Directives as indicated above; for the correlation see also relevant literature, for example, T. WAHL, ERA Forum 2017, DOI 10.1007/s12027-017-0470-7 – Relevant national law and legislation procedures – Relevant provisions of EPPO Regulation and of directives
Workshops	<ul style="list-style-type: none"> ● Different levels of implementation and implementation problems of Directives' obligations on defence rights 	<ul style="list-style-type: none"> – Relevant references for preliminary rulings; implementation reports or material (if available), for example, reports of Fundamental Rights Agency, CCBE, Fair Trials International, and soon

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Basic seminars	Minimum contents	Instruments and case law
The impacts of directives in PIF-related contexts	<ul style="list-style-type: none"> • Example: the right not to incriminate oneself on the duty to produce documents in taxation and customs procedures 	– ECtHR, <i>Funke v. France</i> , ECLI:CE:ECHR:1993:0225JUD001082884; ECtHR, <i>J.B. v. Switzerland</i> , ECLI:CE:ECHR:2001:0503JUD003182796; national law, such as section 393 German Fiscal Code or section 9, 10 Act no. 442 of 9 June 2004 of DK; and/or relevant national case law, such as Spanish Constitutional Court judgment no. 18/2005
Defence rights in the transnational framework	<ul style="list-style-type: none"> • Topic 1: Applicability of Directives on defence rights in European Arrest Warrant cases, including indications of still problematic issues because of lack of approximation • Topic 2: Arising problems of the Directives in case of EPPO investigations 	– Fictitious or real-life cases

Principle-based module	PRESUMPTION OF INNOCENCE	
Keywords and timing	Article 48 of the Charter, evidence, investigation, judgment and European investigation order	Two-day training would be optimal; if 1-day training: the suggestion is to hold two seminars for part I and one seminar for part II, with one workshop for each part
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • Understand the core of the principle of the presumption of innocence at the EU (and ECHR) level and how this principle is linked with the evidence • Understand common legal framework and encompassing EU positive law and common trends • Understand the stakes of the presumption of innocence and obligations in terms of evidence in the framework of PIF offences, especially regarding OLAF's role 	
Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> • The definition of the presumption of innocence • The scope of the presumption of innocence 	<ul style="list-style-type: none"> • Charter (one article about the presumption of innocence; none about the evidence) • Directive of 9 March 2016 on the strengthening of certain aspects of the

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Basic seminars	Minimum contents	Instruments and case law
	<p>(how understanding 'criminal proceedings?')</p> <ul style="list-style-type: none"> • The links between presumption of innocence and the evidence • The actors who have to respect the presumption of innocence: national public/judicial authorities; European authorities in particular OLAF and the forthcoming EPPO 	<p>presumption of innocence and of the right to be present at the trial in criminal proceedings</p> <ul style="list-style-type: none"> • Directive of 3 April 2014 regarding the European Investigation Order in criminal matters • Regulation (EU, EURATOM) n°883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
Practical issues	<ul style="list-style-type: none"> • Prohibition of appearances of guilt • Burden of proof • Admissibility of evidence and limits of evidence (by the principle of legality, principle of proportionality and the respect of fundamental rights) 	
Workshop		
Workshop A	Reasoning of the judge and presumption of innocence (ECJ, <i>Kalliopi Nikolaou v. Court of Auditors of the European Union</i> , C-220/13; ECJ, <i>Milev</i> , C-439/16 PPU; ECtHR, 12 April 2012, <i>Lagardère v. France</i>)	
Workshop B	The balance between the respect of the presumption of innocence and the efficiency of the investigation (cases concerning OLAF: Court of First Instance, 8 July 2008, T-48/05, ECJ, <i>Franchet and Byk v. Commission of the European Communities</i> , T-48/05; General Court, 21 May 2014, T-447/11, ECJ, <i>Lian Catinis v. European Commission</i> , T-447/11; General Court, 26 May 2016, T-110/15, ECJ, <i>International Management Group v. European Commission</i> , T-110/15)	
Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> • Understand: <ul style="list-style-type: none"> – Which issues, at the national level, present the risk of non-compliance with the EU dimension of the principle? – Which issues arise in areas that are not directly affected by EU law? – Through example of cases related to PIF offences and economic crimes. 	

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Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> • Set the scene for the understanding of the national issues • An overall comparison between the content of the principle at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints 	
Workshops		
Workshop A	Analysis of national legislations and case law to check whether the burden of proof is everywhere and every time supported by the prosecution or whether the burden of proof is distributed between the parties (e.g. the question of the reversed burden of proof for some criminal offences as money laundering) and what that could mean in terms of procedure: towards an adversarial proceeding in Europe?	
Workshop B	Analysis of national legislations and case law about the limits (and exclusion) of the evidence and the consequences in terms of cooperation in the European Union, especially for cases related to PIF offences	
Workshop C	Analysis of national legislations and case law, assessing how the coordination is made between the investigation of OLAF and the national investigation and evaluating whether there is a national – judicial – control on the OLAF investigation	
Principle-based module	Principle of fair trial and effective remedy	
Keywords and timing	Article 47 EUCFR, Article 6 ECHR, independent and impartial tribunal previously established by law, fair and public hearing within a reasonable time	Two-day training would be optimal; if 1-day training: assuming 1.30 hours for each basic seminar, the suggestion is to hold two seminars for part I and one seminar for part II, with one workshop for each part
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • Understand: <ul style="list-style-type: none"> – the core of the fair trial and effective remedy at the European level, – the relationship between Article 47 EUCFR and Article 6 ECHR and – the specific obligations stemming from EU regulations (including the main ECJ leading cases). 	

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Basic seminars	Minimum contents	Instruments and case law
Generalities	a. Definition of fair trial b. Standard of review of ECHR c. Standard of review of ECJU	d. Article 47 EUCFR and Article 6 (1) ECHR e. ECHR <i>Massa</i> f. ECJ, <i>Johnston</i> , C-222/84, ECJ <i>Krombach</i> , C-7/98, ECJ, <i>Les Verts</i> , C-294/83
Scope and contents of the principle: Obligations arising from the legal texts relevant at the European level as well as from the ECJ and ECtHR case law	a. Independent and impartial tribunal previously established by law b. Independence (external and internal) c. Fair and public hearing within a reasonable time (right to obtain a reasoned decision and public pronouncement of the judgment, right to information, public hearing before the court: in open court – as a general rule ‘the trial must be in public’) c. Hearing within a reasonable time d. The principle of effective judicial protection	a. ECJ, C-94/10, <i>Danfoss</i> , ECJ <i>Vaassen</i> , C-109/88, ECJ <i>Pretore di Salò</i> , C-14/86, ECJ, C-393/92, <i>Almelo and Others</i> , ECJ, <i>Job Centre</i> , C-111/94, ECJ, C-54/96, <i>Dorsch Consult Ingenieurgesellschaft mbH</i> b. ECJ, C-24/92, <i>Corbiau</i> , ECJ, <i>Schmid</i> , C 516/99, ECJ <i>Wilson</i> , C-506/04, ECtHR case <i>Campbell and Fell v. United Kingdom</i> c. ECJ <i>Kadi and Al Barakaat International Foundation</i> , C-402/05 P and C-415/05 P, ECJ <i>Samuel Sidney Evans Case</i> , C-63/01, ECtHR <i>Golder v. UK</i> , ECtHR <i>Axen v. Germany</i> , ECtHR <i>Pretto et al. v. Italy</i> , ECtHR, <i>Salinger & Kusovp. Austria</i> d. ECJ <i>Sumitomo Metal Industries</i> , C-405/03 P and C-405/04 P, ECtHR <i>Buchholz v. Germany</i> , ECtHR <i>Kemmache v. France</i> e. Articles 6 and 13 ECHR, ECJ, C-617/10, <i>Åkerberg Fransson</i> , ECJ, <i>Unión de Pequeños Agricultores</i> , C-50/00 P
Common/Emerging trends among MS	<ul style="list-style-type: none"> • The principle of fair trial in the aspect of judicial authority • The principle of effective judicial protection as a fundamental principle 	
Workshop		
Juries and fair trial	Identify and discuss the main reasons for having/not having a collaborative jury system, ECtHR <i>Taxquet v. Belgium</i> , ECHR <i>Mills v. the United Kingdom</i>	
Fair trial rights	<i>The relationship between national cases and the obligations stemming from the fair trial rights at the European level</i> , ECJ <i>Vaassen</i> , C-109/88, ECJ, <i>Krombach</i> , C-7/98, ECtHR <i>Massa</i>	
Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> • Understand: <ul style="list-style-type: none"> – Which issues, at the national level, present the risk of non-compliance with the EU dimension of the principle? – Which issues arise in areas that are not directly affected by EU law? – Through example of cases related to PIF offences and economic crimes. 	

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Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> • Set the scene for the understanding of peculiar national issues • An overall comparison between the content of the principle at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints 	
Workshops		
The scope of the principle of fair trial and the principle of effective judicial	Recognition of the remedy in the domestic sphere and evaluating whether there are any peculiar problems concerning the enforcement condition (<i>ECHR Hauschildt v. Denmark and ECHR R v. Gough</i>)	
Workshop 2	Specific national problems of the principle of fair trial and the principle of effective judicial remedy in the context of judicial authority as shaped by the CJEU's decisions, especially in the PIF sector (Directive 2012/13/EU regulations, British case Maxwell [2011] 4 All ER 941, British case <i>R v. Horseferry Road Magistrates' Court, Ex p Bennett</i> [1994] 1 AC 42, 74G)	

Principle-based module	PRINCIPLE OF NE BIS IN IDEM	
Keywords and timing	Bis, idem, enforcement of sentences, conflicts of jurisdiction, Article 50 Charter, Article 54 CISA	Two-day training would be optimal; if 1-day training: the suggestion is to hold two seminars for part I and one seminar for part II, with one workshop for each part.
Part I	Ius commune – EU and MS' common trends	
Main learning goals	<ul style="list-style-type: none"> • To develop in-depth knowledge of the main EU-CoE legal instruments on <i>ne bis in idem</i> • To develop in-depth knowledge and understanding of the case law of the ECJ and the ECtHR in the field • To understand the importance of <i>ne bis in idem</i> in the framework of PIF offences 	
Basic seminars	Minimum contents	Instruments and case law
Setting the scene	Presentation of the content of the module, main issues dealt with, clarifications on expressions used (e.g. <i>ne bis in idem v. double jeopardy</i>).	<ul style="list-style-type: none"> – EUCFR, TFEU, TEU, CISA, ECHR, Protocol No. 7 to the ECHR – FD on EAW, 2002/584/JHA

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Basic seminars	Minimum contents	Instruments and case law
The definition of bis	Cross-references: Introductory module (the principle of mutual recognition in criminal matters, principle of mutual recognition and defence guarantees, principle of sincere cooperation and legislature).	– ECJ, <i>Gözütok and Brügger</i> , C-187/01, ECJ, <i>Miraglia</i> , C-469/03, ECJ, <i>Van Straaten</i> , C-150/05, ECJ, <i>Gasparini and others</i> , C-467/04, ECJ, C-297/07, <i>Bourquain</i> , <i>Turanský</i> , ECJ, <i>Mantello</i> , C-261/09, <i>M.</i> , <i>Kossowski</i>
The definition of idem	Cross-references: Introductory module (the principle of mutual recognition in criminal matters, principle of mutual recognition and defence guarantees, principle of sincere cooperation and legislature).	– ECJ, <i>Van Esbroeck</i> , C-436/04, ECJ, <i>Van Straaten</i> , C-150/05, ECJ, <i>Gasparini and others</i> , C-467/04, ECJ, <i>Kretzinger</i> , C-288/05, ECJ, <i>Kraaijenbrink</i> , C-367/05, ECJ, <i>Mantello</i> , C-261/09, ECtHR <i>Zolotukhin v. Russia</i> – FD on EAW, 2002/584/JHA
The enforcement condition	Cross-references: Introductory module (the principle of mutual recognition in criminal matters, principle of mutual recognition and defence guarantees, principle of sincere cooperation and legislature).	– ECJ, <i>Gözütok and Brügger</i> , C-187/01, ECJ, <i>Kretzinger</i> , C-288/05, ECJ, C-297/07, <i>Bourquain</i> , ECJ, <i>Spasic</i> , C-129/14 PPU
Concurrent jurisdictions on the transnational level	The issue of conflicts of jurisdiction in the EU: in this frame, the problems linked with conflicts of jurisdiction in the activities of the EPPO could also be discussed. Moreover, the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction can be addressed – although it is also applicable to some non-EU Member States – because of the insufficient regulation of the right to <i>ne bis in idem</i> therein provided. Cross-references: Introductory module (the principle of mutual recognition in criminal matters, principle of mutual	– Instruments useful to solve possible conflicts, such as Eurojust, especially in the light of Article 85(1)(c) TFEU, Eurojust Guidelines for deciding ‘which jurisdiction should prosecute?’ (issued in 2003 and revised in 2016), 2009 FD 2009/948/JHA on conflicts of jurisdiction and so on – ‘Green Paper on conflicts of jurisdiction and the principle of <i>ne bis in idem</i> in criminal proceedings’ (COM (2005) 696) – EPPO Regulation – 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction

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Basic seminars	Minimum contents	Instruments and case law
	recognition and defence guarantees, principle of sincere cooperation and legislature, defence rights).	
Concurrent jurisdictions on the national level	The debated applicability of <i>ne bis in idem</i> in case of concurrent domestic criminal and administrative proceedings on the same fact. In this lecture, therefore, the relevance of such a topic for the PIF sector has to be underlined. <i>Cross-references:</i> Introductory module (the principle of sincere cooperation and legislature, the principle of sincere cooperation and the judiciary, PIF), special module on PIF.	– ECJ, C-489/10, <i>Bonda</i> , , ECJ, C-617/10, <i>Åkerberg Fransson</i> , ECJ, <i>Orsi and Baldetti</i> , Joined Cases C-217/15 and C-350/15 – ECtHR, <i>Grande Stevens v. Italy, A. and B. v. Norway</i>
Common/emerging trends among MS		
	<ul style="list-style-type: none"> ● <i>Ne bis in idem</i> as a fundamental principle ● Foreign decision has to deal with the merits of the case ● Enduring validity of the enforcement condition ● Applicability of <i>ne bis in idem</i> in case of concurring administrative and criminal proceedings* ● Applicability of <i>ne bis in idem</i> when non-Schengen States are concerned* ● Interpretation of the ‘idem’ element at the national level as <i>idem factum</i>* ● At the national level, the following decisions can bar further investigations or prosecutions on the same facts (‘bis’ element): acquittals, including those based on the prescription of crime, <i>ordonnances de non-lieu</i>* and out-of-court settlements* ● * Contested issue/trend among some MS only 	
Workshop	Discussion in order to understand the different role and rationale of <i>ne bis in idem</i> in the various scenarios (Charter, CISA, Protocol No. 7 to the ECHR, Mutual recognition instruments, PIF-related instruments, European courts leading cases). <i>Cross-references:</i> Introductory module. (The principle of mutual recognition in criminal matters and Defence guarantees and mutual recognition provide an insight into the issue of mutual recognition, which is based on the same founding principle underpinning the applicability of <i>ne bis in idem</i> throughout the EU, i.e. mutual trust; the principle of sincere cooperation and legislature, where the issue of the protection of Union’s financial interests is further discussed; the principle of sincere cooperation and judiciary helps to understand how the EU sources addressed in the frame of the module should be taken into account by national authorities, and points out the problematic issues thereof.)	

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Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> • To apply the principle of <i>ne bis in idem</i> in domestic cases • To apply the principle of <i>ne bis in idem</i> in cross-border cases • To examine the relationship between the principle of <i>ne bis in idem</i> and conflicts of jurisdiction 	
Basic seminars	Minimum contents	Instruments and case law
	<ul style="list-style-type: none"> • Overview of challenging issues: setting the scene for the understanding of national trends and peculiarities 	
	<ul style="list-style-type: none"> • An overall comparison between the content of the principle at the EU level and its national dimension, encompassing both matches and constitutional/legal traditions constraints 	
	<ul style="list-style-type: none"> • Current developments 	– Most recent case law and legislation
Workshops	Analysis of national legislations and case-law, assessing how the concepts of <i>bis</i> and <i>idem</i> are interpreted in the domestic sphere and evaluating whether there are any peculiar problems concerning the enforcement condition. In this workshop, the issue of how <i>ne bis in idem</i> relates to ‘continuous conducts’ (one crime or different?) can also be addressed. <i>Cross-references</i> : Introductory module (the principle of sincere cooperation and legislature).	
	Analysis of national legislations and case law, assessing whether at the domestic level <i>ne bis in idem</i> applies in case of concurrent domestic criminal and administrative proceedings on the same fact, especially in the PIF sector. <i>Cross-references</i> : Introductory module (the principle of sincere cooperation and legislature, the principle of sincere cooperation and judiciary), special module on PIF.	

Principle-based module	PIF OFFENCES	
Keywords and timing	Union’s financial interests, principle of assimilation, Articles 83 and 325 TFEU, fraud, PIF Directive, OLAF, EPPO	Two-day training would be ideal; if 1-day training: the suggestion is to hold two seminars for part I and one seminar for part II, with one workshop per each part.
Part I	Ius commune – EU and MS’ common trends	
Main learning goals	<ul style="list-style-type: none"> • Understand: <ul style="list-style-type: none"> – the peculiarity of the PIF sector in the frame of EU (criminal) law and its development throughout the years, – the main steps which have led to the adoption of the PIF Directive, including the issues concerning the choice of legal basis, – the role of EU agencies and bodies in the fight against PIF offences and – the relevance of the Charter in the PIF sector, especially when the EPPO will be established (principle of legality, <i>ne bis in idem</i>, defence rights). 	

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Basic seminars	Minimum contents	Instruments and case law
<p>Setting the scene: An overview on the PIF acquis</p>	<ul style="list-style-type: none"> • The Union’s financial interests as ‘supranational’ (‘federal’) interests • The protection of Union’s financial interests by means of criminal law: principle of assimilation, harmonization and the debate on unification (i.e. Article 325 TFEU as a legal basis for possible regulations of substantive criminal law) • The interplay between administrative and criminal law • <i>Cross references:</i> Introductory module (principle of sincere cooperation and legislature) 	<p>– Pre-Lisbon legislation and documents: 1976 Proposal; Article 209a TEC, Article 280 TEC, and proposed Article 280 <i>bis</i> TEC; PIF Convention & Protocols; Regulation No. 2988/95; <i>Corpus Juris</i>; 2001 Green Paper (and follow-up)</p> <p>– Post-Lisbon legislation: Articles 83 and 325 TFEU, PIF Directive and EPPO Regulation</p> <p>Pre-Lisbon ECJ case law: ECJ, C-50/76, <i>Amsterdam Bulb</i>; ECJ, C-68/88, <i>Greek Maize</i>, ECJ, <i>Zwartveld and Others</i>, C-2/88; post-Lisbon ECJ case-law: ECJ, C-617/10, <i>Åkerberg Fransson</i>, ECJ, C-24/97, <i>Commission v. Germany</i>, ECJ, <i>Taricco and others</i>, C-105/14</p>
<p>Offences affecting the Union’s financial interests</p>	<p>Fraud, money-laundering, corruption and misappropriation</p>	<p>- PIF Directive, in comparison with previous and current instruments and projects, such as <i>Corpus Juris</i>; PIF Convention and its Protocols; Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the EU; EU AML Directives; Council of Europe instruments (e.g. 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1999 Council of Europe Criminal Law Convention on Corruption, etc.); UN instruments (e.g. 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UNTOC, UNCAC, etc.); OECD instruments (1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions); Soft law instruments (e.g. FATF Recommendations); ECJ, C-617/10, <i>Åkerberg Fransson</i>, ECJ, C-24/97, <i>Commission v. Germany</i>, ECJ, <i>Taricco and others</i>, C-105/14</p>
<p>The general part of criminal law in the PIF Directive</p>	<p>Incitement, aiding and abetting and attempt; liability of legal persons; penalties; and prescription <i>Cross-reference:</i> introductory module (the principle of sincere cooperation and judiciary, <i>Taricco</i>), modules on Guilt (culpability of legal persons), legality (<i>Taricco</i>) and proportionality (penalties)</p>	<p>- PIF Directive, in comparison with previous and current instruments and projects, such as <i>Corpus Juris</i>; PIF Convention and its Protocols; Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the EU; EU AML Directives; Council of Europe instruments (e.g. 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1999 Council of Europe Criminal Law Convention on Corruption, etc.); UN instruments (e.g. 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UNTOC, UNCAC, etc.); OECD instruments (1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions); Soft law instruments (e.g. FATF Recommendations); ECJ, C-617/10, <i>Åkerberg Fransson</i>, ECJ, C-24/97, <i>Commission v. Germany</i>, ECJ, <i>Taricco and others</i>, C-105/14</p>

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Basic seminars	Minimum contents	Instruments and case law
EU offices and agencies against PIF offences and instruments of judicial cooperation	<ul style="list-style-type: none"> • Eurojust • Europol • OLAF • EPPO 	<p>Articles 85, 86 and 88 TFEU; Council Decisions on Eurojust (2002/187/JHA and 2009/426/JHA); Rules of Procedure of Eurojust; Annual Reports; Regulation (EU) 2016/794 on Europol; reports and annual reviews; Commission's Proposal on the establishment of the EPPO; EPPO Regulation; Commission Decision of 28 April 1999 establishing OLAF; Regulation No 883/2013 on OLAF investigations; Directives on procedural rights; ECJ <i>Spain v. Eurojust</i>, C-160/03; ECJ, <i>Violetti</i>, F-5/05 and F-7/05, ECJ, <i>Franchet and Byk v. Commission of the European Communities</i>, T-48/05; ECJ, <i>Tillack v. Commission</i>, Case T-193/04</p> <p>Instruments of judicial cooperation that can be used in the fight against PIF offences: mutual recognition instruments (e.g. EAW, EIO, etc.), FD 2009/948/JHA on conflicts of jurisdiction</p>
The role of the Charter in the PIF sector, especially in the light of the EPPO	<p>Principle of legality and proportionality, defence rights and <i>ne bis in idem</i></p> <p><i>Cross-reference</i>: introductory module (defence guarantees and mutual recognition and the principle of sincere cooperation and the judiciary) and modules on EUCFR principles</p>	<ul style="list-style-type: none"> • EUCFR • EPPO Regulation • PIF Directive • Directives on procedural rights • ECJ, C-489/10, <i>Bonda</i>; ECJ, C-617/10, <i>Åkerberg Fransson</i>, ECJ, <i>Orsi and Baldetti</i>, Joined Cases C-217/15 and C-350/15 • ECtHR <i>Grande Stevens v. Italy, A. and B. v. Norway</i>
Workshop	<p>The choice of legal basis, assimilation and direct effect: PIF offences as the litmus test of EU competences in criminal law</p> <p><i>Cross-reference</i>: introductory module (<i>Principle of sincere cooperation and legislature and the principle of sincere cooperation and the judiciary</i>)</p>	
	<p>Selected topics on the material competence of the EPPO: criteria to determine its competence, conflicts of competence, choice of forum and judicial review</p> <p><i>Cross-reference</i>: modules on <i>Ne bis in idem</i>, effective remedy, defence rights and presumption of innocence</p>	
Part II	Special and peculiar national issues	
Main learning goals	<ul style="list-style-type: none"> • Understand how national systems: <ul style="list-style-type: none"> – could be affected by the PIF Directive and whether they will need to amend domestic legislation and – are (or could be) affected by EU agencies and offices, especially by the EPPO. 	

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Basic seminars	Minimum contents	Instruments and case law
Overview of challenging issues: Substantive criminal law	Set the scene for the understanding of national issues under a substantive criminal law perspective, including a brief overview on possible constitutional/legal traditions constraints (e.g. principle of legality) and with a focus on commonalities. <i>Cross-reference:</i> Introductory module (the principle of sincere cooperation and legislature, the principle of sincere cooperation and the judiciary); modules on the EUCFR principles of substantive criminal law.	TFEU and TEU; PIF Convention and PIF Directive; EUCFR; National legislation and case-law
Overview of challenging issues: Procedural criminal law	Set the scene for the understanding of national issues under a procedural criminal law perspective, including a brief overview on possible constitutional/legal traditions constraints (e.g. principle of mandatory prosecution and independence of prosecutors) and with a focus on commonalities. <i>Cross-reference:</i> Introductory module (the principle of sincere cooperation and legislature, the principle of sincere cooperation and the judiciary); modules on the EUCFR principles of procedural criminal law.	TFEU and TEU; PIF Convention and PIF Directive; EUCFR; EPPD Regulation; Directives on defence rights; Europol Regulation; Eurojust Council Decision; OLAF Decision and Regulation; National legislation and case-law
Current developments	Analysis of the most recent developments in the field, for example, if/how the PIF Directive has been implemented at national level, European and domestic case-law on PIF offences, most sensitive issues come to light with regard to the activities of the EPPD and how they have been addressed and so on.	<i>Most recent legislation and case law</i>

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Basic seminars	Minimum contents
Workshops	<p>Analysis of national legislations and case law concerning fraud (including VAT), assessing how the PIF Directive could impact on the national systems and evaluating whether any incompatibility needs to be removed or overcome. Example of common trends: attention paid to public procurement, little room for offences committed with negligence/recklessness and little room for offences merely endangering the Union's/State's financial interests.</p> <p>Analysis of national legislations and case law concerning money laundering, assessing how the PIF Directive could impact on the national systems and evaluating whether any incompatibility needs to be removed or overcome. Example of common trends: criminalization of self-laundering, high penalties and high level of compliance with EU/international instruments.</p> <p>Analysis of national legislations and case law concerning corruption and misappropriation, as well as the notion of 'public official', assessing how the PIF Directive could impact on the national systems and evaluating whether any incompatibility needs to be removed or overcome. Example of common trends: broad definition of 'public official' and no need of a specific act or omission (debated issue)</p>
	<p>Analysis of national legislations and case law concerning the aspects of general part of criminal law dealt with in the Directive, assessing how the PIF Directive could impact on the national systems and evaluating whether any incompatibility needs to be removed or overcome. Example of common trends: liability of legal persons and regulation thereof; punishment of incitement, aiding and abetting, attempt and participation in a criminal organization even beyond the minimum contents of the Directive; increasing duration of limitation periods. Cross-reference: Introductory module (the principle of sincere cooperation and the judiciary) and module on Legality.</p> <p>Selected topics concerning the impact of the activities of EU bodies and agencies on the national systems. For example, the powers of national members of Eurojust pursuant to Articles 9a ff. Eurojust Council Decision; the use of OLAF reports in national proceedings; the compatibility of the EPPO Regulation with principles such as mandatory or discretionary prosecution/ 'right to the natural judge'; the admissibility of evidence in the frame of the EPPO proceedings. Cross-reference: Introductory module (the principle of mutual recognition in criminal matters, defence guarantees and mutual recognition) and modules on effective remedy, defence rights and presumption of innocence.</p>