



Uniwersytet  
Wrocławski

# EU Criminal Law

## Lecture

# EU Criminal Law after Treaty of Lisbon

**Dr hab. Wojciech Jasiński**

Department of Criminal Procedure

Faculty of Law, Administration and Economics

University of Wrocław



## **Treaty of Lisbon**

- 1. Signed on 13 December 2007**
- 2. Entered into force 1 December 2009**
- 3. EC Treaty renamed – Treaty on the Functioning of the EU**
- 4. Abolishment of pillar structure**
- 5. Cooperation in the field of criminal law moved from EU Treaty to Treaty on the Functioning of the EU**



## Treaty of Lisbon

### TUE – Preamble - aims:

...RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union



## Treaty of Lisbon

### TUE – Article 3(2)

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.



## Treaty of Lisbon

### TUE – Article 5 – Principle of conferral

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.



## Treaty of Lisbon

### TUE – Article 5 – Principle of subsidiarity

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level

Protocol no 2 ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY



## Treaty of Lisbon

### TUE – Article 5 – Principle of proportionality

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.



## Treaty of Lisbon

### TUE – Article 6 – Charter of Fundamental Rights

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.



## Treaty of Lisbon

### TFUE – exclusive and shared competences

### The area of freedom, security and justice

#### Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.
2. Shared competence between the Union and the Member States applies in the following principal areas:  
(...)  
(j) area of freedom, security and justice;



## Treaty of Lisbon

### TFUE – Part III, Title V Area of Freedom, Security and Justice

#### Article 67

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 67

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 68

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 72

This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

#### Article 73

It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 75

Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### CHAPTER 4

#### JUDICIAL COOPERATION IN CRIMINAL MATTERS

#### Article 82

Judicial cooperation in criminal matters in the Union shall be:

- 1) based on the principle of mutual recognition of judgments and judicial decisions
- 2) shall include the approximation of the laws and regulations of the Member States in the areas referred to in Article 82(2) and in Article 83.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 82

Approximation of the laws and regulations of the Member States:

- lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- prevent and settle conflicts of jurisdiction between Member States;
- support the training of the judiciary and judicial staff;
- facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.



## Treaty of Lisbon

### TFUE – Part III, Title V

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules.

Such rules shall take into account the differences between the legal traditions and systems of the Member States.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Minimum rules shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament (no necessity to amend Treaty)



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Emergency brake procedure

3. Where a member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 83 – Approximation of substantive criminal law

1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 83

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament (*no necessity to amend the Treaty*)

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 83

3. Where a member of the Council considers that a draft directive as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly.



## Treaty of Lisbon

### TFUE – Part III, Title V

#### Article 85 – Provisions concerning Eurojust

Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.



## Treaty of Lisbon

### TFUE – Part III, Title V

In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;



## Treaty of Lisbon

### TFUE – Part III, Title V

- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.



## Treaty of Lisbon

### TFUE – Part III, Title V

**Article 86** - In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences