UNIVERSITY OF LONDON

QUEEN MARY

Ph.D. thesis:

'***The Impact of EU Criminal Law on the Greek Criminal Justice System***'

By SPYRIDON KARANIKOLAS

Supervised by Professor Valsamis Mitsilegas

London, 2011

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This thesis is submitted for the degree of

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This Ph.D. thesis is dedicated to my family,

and especially to my mother Christina

Abstract

European Criminal Law has been one of the most rapid, remarkable, but at the same time controversial developments in the European Union having a significant impact on domestic criminal justice systems. Judicial and police cooperation in criminal matters soon became a fully-fledged policy of the European Union affecting the national sovereignty of Member States, the relationship between individuals and the States as well as the protection of fundamental rights.

My thesis examines the development of EU criminal law towards the creation of a European '*Area of Freedom, Security and Justice*' (via mutual recognition and the harmonization of substantive criminal law) and its impact on the Greek criminal justice system. In assessing the overall above mentioned question, I examine how EU criminal law has developed; what have been the main political and legal challenges for the implementation in Greece; to what extent, and how, the Greek Legislator has implemented EU law in the field of mutual recognition and harmonization, and, last, but not least, what has been the judges', practitioners' and academics' reaction to this development.

The thesis has two parts: one on mutual recognition and one on the harmonization of substantive criminal law. Chapter one explores the main issues regarding the scope, extent, and nature of the principle of mutual recognition at EU level. Chapter two explores the main issues related to the impact as well as the practical operation of the principle of mutual recognition in the Greek Jurisdiction. Chapter three, then, turns its interest on harmonization of substantive criminal laws from the EU point of view. Finally, Chapter four focuses on the impact of the implementation of the EU harmonization system on the Greek Jurisdiction with regard to the same areas of substantive criminal laws, as discussed in chapter three.

These chapters are then followed by a conclusion aiming to synthesize and highlight the main issues that have arisen during the analysis of this thesis and answer the main question: '*What has been the impact of EU Criminal Law on the Greek Criminal Justice System?*'

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Introduction

European Criminal Law has been one of the most rapid, remarkable, but at the same time controversial developments in the European Union. Judicial and police cooperation in criminal matters soon became a fully-fledged policy of the European Union affecting the national sovereignty of Member States, the relationship between individuals and the States as well as the protection of fundamental rights. The last few years, in particular, we have witnessed a major growth of legislative and judicial initiatives in this field with the European Court of Justice[1] playing a very significant role in a number of cases in this emerging presence of European Union in the sensitive, and often contested, field of criminal law.

My starting point is that EU criminal law has been developing rapidly and its adoption has had a significant impact on domestic criminal justice systems. My thesis will examine the development[2] of EU criminal law towards the creation of a '*European Area of Freedom, Security and Justice'* (via mutual recognition and the harmonization of substantive criminal law) and its impact of EU criminal law produced under these methods using Greece, in particular, as a case study. Greece has been chosen on the basis that it is a constitutional democracy with a civil system of law where the implementation of EU law could conflict with its domestic –even constitutional- law. Also, Greece could represent a number of similar legal systems where same conclusions by the thesis could be drawn and possibly apply.

In assessing the overall above mentioned question, I will examine how EU criminal law has developed; what have been the main political and legal challenges for the implementation in Greece; to what extent, and how, has the Greek Legislator implemented EU law in the field of mutual recognition and harmonization, and, last, but not least, what has been the judges', practitioners' and academics' reaction to this development. In order to address these questions, my methodology will be to use as main sources the relevant legislation, the case law and secondary literature. Also, I will use some information taken through interviews[3] with judges, policy makers and practitioners, having though exclusively a supporting role in my thesis.

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[1] Officially now called 'Court of Justice of the European Union'.

[2] This thesis takes into account the developments at EU and Greek level up to the 31/12/2010.

[3] All the interviews used in this thesis have been carried out with a digital voice recorder, with a specific questionnaire and after having taken the approval of the Queen's Mary Ethics Committee as well as the consent of the interviewees. Also, the confidentiality of the research data has been fully ensured.

The thesis has two parts: one on mutual recognition and one on the harmonization of substantive criminal law. These have been chosen on the basis that they constitute the most representative examples of EU integration in a very much contested field of law, reflecting the debate on the preservation of national sovereignty and on strengthening EU co-operation in criminal matters. I will, thus, examine the development of both of these forms of integration through specific legal instruments from the EU perspective and then the impact of EU criminal law on the Greek criminal justice system.

In this framework, the purpose of the first chapter is to explore the main issues regarding the scope, extent, and nature of the principle of mutual recognition at EU level. In particular, the analysis will begin by looking at the relation of the principle of mutual recognition in the context of the judicial cooperation in criminal matters. The analysis will, then, focus on the first measure implementing the principle of mutual recognition, namely the European Arrest Warrant. The EAW has been chosen on the basis that is the first concrete and most emblematic measure implementing the principle of mutual recognition and that it has raised serious reactions during its operation. Issues like the definition and the scope of the European Arrest Warrant, the removal of the double criminality principle, the grounds for the mandatory and the optional non-execution of an European Arrest Warrant, the competent authorities and the time limits, the surrender procedure, the rights of the requested person, the role of consent, human rights concerns as well as the rule of speciality, are of particular interest in this chapter. It will also examine whether the European Arrest Warrant can constitute evidence of the existence of mutual trust between Member States. At the end of the chapter issues raised during the implementation of the Framework Decision on the EAW, with particular focus on the various constitutional challenges by the various national Courts, will be analyzed.

The purpose of the second chapter is to explore the main issues related to the impact as well as the practical operation of the principle of mutual recognition in the Greek Jurisdiction, drawing upon interviews with judges, policy makers and practitioners. In particular, the chapter will begin by looking at the 'big picture' of the principle of mutual recognition in the Greek legal order. It will then examine the negotiations of the Greek Government in Brussels towards the adoption of the Framework Decision on the European Arrest Warrant. The analysis will then focus on the controversial parliamentary debate on the implementation of the Framework

Decision and the criticism expressed such as that: (a) the Bill was 'express'; (b) the surrender of Greek citizens is unconstitutional; (c) the abolition of double criminality is also unconstitutional; and (d) the protection of human rights is insufficient. It will then go to examine the implementation of the Council Framework Decision in Greece and its systematic article by article analysis, as well as its interpretation by the national Courts accompanied by the views of the Greek academics and the views of the Greek practitioners.

Chapter three will then focus on harmonization. Whereas the term '*harmonization*' is a commonly used term regarding many areas of the Community policies, in the criminal law system the terms, as it has been argued, '*harmonization*' and '*approximation*' are in effect synonymous, even if the differences between these concepts are unclear[4]. Also, whereas 'harmonization' and 'approximation' are different concepts from '*uniformity*', harmonization can be seen as a method ensuring 'harmony' in the Community/Union criminal law system[5]. It is in this light that the term '*harmonization*' will be used in this thesis. In this context, the chapter will begin with an overview of the evolution of harmonization throughout the periods: (a) before the Treaty of Maastricht; (b) from the Maastricht Treaty to the Treaty of Amsterdam; (c) from the Treaty of Amsterdam to the Tampere European Council, the Hague Programme and the Stockholm Programme. Then, it will examine the competence of the EC to adopt criminal law with particular interest in the cases that have been dealt by the European Court of Justice regarding competence issues between the first and the third pillars. It will then look at the very significant changes that have emerged due to the Treaty of Lisbon. The analysis will be completed by examining the area of the substantive EU criminal law which has been harmonized, and in particular, three areas of law will be used as examples: (a) the fight against terrorism; (b) the fight against organized crime; and (c) the fight against money laundering. These areas have been chosen on the basis that they are very serious offences with prominent threats on security, they have largely a transnational element and national relevance and they constitute the most representative cases of the substantive EU criminal law which have significant importance and effect on the domestic national law and for which the obstacle of double criminality has been

[4] See Valsamis Mitsilegas, '*EU Criminal Law'*, Oxford and Portland, 2009, p.59.
[5] Ibid.

overcome. Like the first chapter, this chapter will focus its interest only to the EU point of view.

In the last chapter (four), the focus is on the impact of the implementation of the EU harmonization system on the Greek Jurisdiction with regard to the same areas of substantive criminal laws, as discussed in chapter three. These three areas of criminality have been chosen on the basis that they are serious, have transnational and national relevance, and they have also had a very high security priority in the past two decades, not only in the European Community, but the Greek legal order too. In particular, the chapter will begin by looking at the fight against terrorism. In this section the analysis will start from the 'big picture' of the Greek Legislation in combating terrorism and then will focus on the Greek Implementing Law (Statute 3251/2004) and its article by article analysis. Then, it will go to examine the academic point of view and the relevant raised arguments (such as vagueness and lack of certainty in the definitions; violations of the principle of proportionality; criminalization of beliefs; inconsistencies with the Criminal Code system and the Constitution) and then some final remarks will follow. The chapter will, secondly, examine the fight against organized crime in the Greek Jurisdiction. The analysis will start by examining the 'big picture' of the Greek Legislation in the fight against organized crime and will mainly focus on the main instrument, namely, the provisions of Statute 2928/2001. It will then focus on the academic point of view and the raised objections (such as definitional issues; the principles of proportionality and equality; threats to constitutional rights and freedoms and the rule of law; the rights of the defendant; introduction of expediency concerns; inconsistencies within the criminal law system). It will then examine the relevant case law by focusing in two main areas: (a) the characteristics of a criminal organisation and (b) the differentiation between criminal organisation and criminal group. Then, some final remarks will follow. The chapter will, finally, examine the fight against money laundering in the Greek Jurisdiction. The analysis will start by looking at the 'big picture' in the Greek legislation in combating money laundering. It will, then focus, on the main instrument, namely, Statute 3691/2008. The academic point of view on money laundering will be then presented by focusing on issues as the legal right that is protected by the provisions, the connection between money laundering and organised crime, the failings of the regulatory techniques of the Statutes and their compliance with the Greek Constitution and the doctrines of the criminal law system which have

been much debated and commented upon. Finally, the focus will move on to five main issues of the Greek case law: (a) Which actions constitute money laundering activities; (b) What the relation between money laundering and the predicate offences is; (c) What the relation between money laundering and organised crime is; (d) The punishment of the perpetrator of the predicate offence for the crime of money laundering; and (e) The constitutionality of procedural provisions. This chapter will be accompanied with some final remarks.

These chapters are then followed by a conclusion aiming to synthesize and highlight the main issues that have arisen during the analysis of this thesis and trying to answer its main question, namely: '*What has been the impact of EU Criminal Law on the Greek Criminal Justice System?*'

Chapter 1 *'The Principle of Mutual Recognition in an Area of Freedom, Security and Justice'*

I. Introduction

Frustrated by the slow and often ineffective judicial cooperation, especially in the field of criminal matters, the Treaty of Amsterdam in 1997 opened the window and introduced the aim of transforming the European Union into an '*Area of Freedom, Security, and Justice*'. The principle of mutual recognition, applicable to both civil and criminal judgments, is seen as a new mechanism, binding judiciary and process across the EU in order to achieve this aim.

The purpose of this chapter is to explore the main issues regarding the scope, extent, and nature of the principle of mutual recognition. In particular, it will be starting the analysis by looking at the principle of mutual recognition in the context of the judicial cooperation in criminal matters. The analysis will then focus on the first measure implementing the principle of mutual recognition, namely the European Arrest Warrant and the serious concerns that it raised. It will then examine whether the European Arrest Warrant can constitute evidence of the existence of mutual trust between Member States. It will, finally, focus on issues raised during the implementation of the Framework Decision on the EAW.

II. The Principle of Mutual Recognition

In 1997 the Treaty of Amsterdam introduced the ambitious aim to maintain and to further develop the European Union as an '*Area of Freedom, Security and Justice*'[6]. Shortly afterwards, in 1998, the European Council in Cardiff called upon the EU Council to 'identify the scope for greater mutual recognition of decisions of each others Courts[7]', in this way giving a new dynamic to the cooperation between the Member States in civil and criminal matters. In the first Action Plan on the creation of a European Area of Freedom, Security, and Justice, the Council was asked to 'initiate a process with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters'[8].

In 1999 at the special European Council on Justice and Home Affairs matters held at Tampere, the principle of mutual recognition was endorsed which - according to their view - should become the *cornerstone* of judicial cooperation in both civil and criminal matters within the European Union. At the same time, the deadline of December 2000 was set for the adoption of a Programme of measures to implement the (so-called by the European Commission) '*ambitious goal*'[9] of the principle of mutual recognition[10].

However, one should note that the principle of mutual recognition is not an unfamiliar or new concept of EU Law. It is well known that its origins stem from the famous case *Cassis de Dijon*[11], but also from across the freedoms of the Single

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[6] See the Preamble and article 5 of the Treaty of Amsterdam. OJ C- 340 of 10 November 1997. Also, As the Commission has pointed out 'the three notions of Freedom, Security, and Justice are closely interlinked'. See '*Communication from the Commission, Towards an Area of Freedom, Security and Justice'*, Brussels, 14/07/1998, COM 1998, 459 Final.

[7] See Paragraph 39 of the Presidency Conclusions, European Council, 15-16 June 1998.

[8] See Paragraph 42 (f) of the '*Action Plan of the Council, and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of Freedom, Security, and Justice'*. OJ C-19, 23/01/1999.

[9] See '*Programme of measures to implement the principle of mutual recognition of decisions in criminal matters'*, 2001/C 12/02, page: 2. See also the '*Hague Programme'* where the principle of Mutual Recognition is placed in a central position. According to the Council mutual recognition should remain the *main priority* of the EU policy to improve judicial cooperation in civil and criminal matters. (par. 3.4.2) OJ C- 053, 03/03/2005.

[10] Following suggestions by the UK, at the special European Council on Justice and Home affairs matters at Tampere in 1999 it was held that: '[…] The European Council therefore endorses the principle of mutual recognition which, in its view, should become the *cornerstone* of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgments and to other decisions of judicial authorities'. See para.33 and 35-37 of the '*Tampere European Council Presidency Conclusions*', 15 and 16 October 1999.

[11] See '*Cassis de Dijon*', Case 120/78, [1979] ECR 649; [1979] CMLR 494.

Market and the application to external trade[12]. It has also been applied in the internal market and in the civil and commercial judgments[13]. Yet, the application of the principle in criminal law has, indisputably, significant differences compared to its application in the internal market or civil law. One could draw these differences mainly in that mutual recognition, in the context of internal market works within a framework which is absolutely connected with the recognition of national regulatory standards and controls and in the context of the civil law with the recognition of civil judicial decisions; whereas mutual recognition in the field of criminal law works within a framework which is more connected with the rights of the individuals and fundamental rights.

[12] For the notion of the principle of mutual recognition in the internal market see inter alia: Horng, '*The Principle of Mutual Recognition – The European Union's Practice and Development'*, (1999), World Competition, Kluwer Law International, p. 135, Armstrong, K., '*Mutual Recognition*' in C. Barnard and J. Scott (eds.), '*The Law of the Single Market European Market: Unpacking the Premises'* (Hart, 2002), ch. 9, N. Bernard, '*Flexibility in the European Single Market*' in C. Barnard and J. Scott (eds.), '*The Law of the Single Market European Market: Unpacking the Premises'*, Hart, 2002 and Paul Craig & Grainne De Burca, '*EU Law – Text, Cases and Materials'*, 2007, Oxford University Press, p.706-714.

[13] See Jannet A. Pontier and Edwige Burg, '*EU Principles on Jurisdiction and Recognition and Enforcement of Judgements in civil and Commercial Matters*', TMC Asser Press, 2004, p. 27-44, also Eva Storskrubb, '*Civil Procedure and EU Law – A Policy Area Uncovered*', Oxford University Press, 2008, p. 277 and the Case C-7 /98 '*Krombach'* [2000] ECR I-1935.

III. Mutual recognition in the context of judicial cooperation in criminal matters

The principle of mutual recognition in the context of judicial cooperation in criminal matters is a recent development[14]. In 1998 the UK Government during its EU Presidency[15] pressed hardest for mutual recognition in the field of criminal law suggesting that this approach is based on '*tolerance of diversity on the basis of mutual confidence and trust in each others' legal systems, as opposed to insistence of uniformity for its own sake[16]'*. At the same time, namely the 3rd of December 1998, the Council, in cooperation with the Commission, presented an Action Plan[17] on how to best implement the provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice. Point 45 (f) of the so-called '*Vienna*' Action Plan provided that within two years of the Treaty's entry into force[18] a process should 'initiate with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters'.

A few months later, in March 1999, the UK presented a discussion paper[19] which formed the basis for the political agreement on mutual recognition. The UK was ready at that time to go a step further stating *inter alia* that:

'[…] however, experience has shown that approximation is time consuming and sometimes difficult to negotiate. Full harmonisation of all criminal offences is not a realistic prospect; moreover, differences in criminal procedures will continue to impede judicial co-operation. Member States will continue to have different systems of criminal law for the foreseeable future. Even if laws were fully aligned, lack of mutual recognition would still imply the need to check facts and satisfy legal conditions before co-operation could be provided. In order to remove unnecessary

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[14] For an overview of the development of the principle of mutual recognition see Peers Steve, '*Mutual Recognition and Criminal Law in the European Union: Has the Council got it wrong?'*, Common Market Law Review, (2004), 2004, p.p. 5-11.

[15] For a valuation of the UK Presidency in 1998 see Peter Ludlow, '*The 1998 UK Presidency: A view from Brussels',* Journal of Common Market Studies, (1998), Vol. 36, p.p.573-583.

[16] See '*The mutual recognition of criminal judgments in the EU: will the free movement of prosecutions create barriers to genuine criminal justice?'*,
Available at: www.statewatch.org/news/jun00/05mutual.htm.

[17] See '*Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of Freedom, Security and Justice'*, Text adopted by the Justice and Home Affairs Council of 3 December 1998. OJ C19/1, 23/01/1999.

[18] Treaty of Amsterdam entered into force on 1 May 1999.

[19] See '*Mutual Recognition of judicial decisions and judgments in criminal matters'*, NOTE from the UK Delegation to the (then) K.4 Committee, Council doc. 7090/99, Brussels, 29 March 1999, especially par. 9.

procedural hurdles and formalities, work on approximation must be accompanied by progress towards mutual recognition. Mutual recognition can sometimes provide a shorter route to improving co-operation, without fully aligning legislation'.

As stated at the beginning of this chapter, the principle of mutual recognition was first introduced in the European Council of Cardiff in 1998 where they were asked 'to identify the scope for greater mutual recognition of decisions of each other's Courts'[20] and concluded that it was 'necessary to enhance the ability of national legal systems to work together'. It was then developed as the cornerstone of judicial cooperation in the European Council of Tampere in 1999. The main logic behind the principle of mutual recognition was that judicial cooperation regarding criminal matters should be improved and also that criminals should not benefit from the abolition of borders in the EU[21]. For that reason, the Council and the Commission were asked to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In July 2000, the European Commission presented a Communication[22] on mutual recognition where *inter alia* it expressed the view that: 'This traditional system is not only slow, but also cumbersome, and sometimes it is quite uncertain what results a judge or prosecutor who makes a request will get. Thus, borrowing from concepts that have worked very well in the creation of the Single Market, the idea was born that judicial cooperation might also benefit from the concept of mutual recognition, which, simply stated, means that once a certain measure, such as a decision taken by a judge in exercising his or her official powers in one Member State, has been taken, that measure – in so far as it has extra-national implications - would automatically be accepted in all other Member States, and have the same or at least similar effects there'.

This Communication resulted in the adoption, by the Council in 2001, of a Programme containing 24 measures – ranked by priority - to implement the principle of mutual recognition[23]. According to the introduction of this Programme, the principle of mutual recognition is very much dependent on a number of parameters which determine its effectiveness such as whether fulfilment of the double criminality requirement as a condition for recognition should be maintained or dropped;

[20] See Cardiff European Council, 15 and 16 June 1998, Presidency Conclusions, par.38.
[21] See Valsamis Mitsilegas, id. 2009, p. 118.
[22] See '*Communication from the Commission to the Council and the European Parliament, Mutual Recognition of Final Decisions in Criminal Matters'*, p.2, COM (2000) 495 Final, 26/07/2000.
[23] See '*Programme of Measures to implement the principle of Mutual Recognition of decisions in criminal Matters*', OJ C 012, 15/01/2001.

mechanisms for safeguarding the rights of third parties, victims and suspects; the definition of minimum common standards necessary to facilitate application of the principle of mutual recognition; determination and extent of grounds for refusing recognition etc.

Since then, a number of instruments have been adopted which are based on the principle of mutual recognition and which try to achieve and accommodate the goals of the mutual recognition programme. Undoubtedly, in the core of the 'first round' of these instruments is the European Arrest Warrant, an instrument which, however, will be discussed in detail further on this chapter.

Three more instruments have been adopted on the basis of the principle of mutual recognition and also belong to the first round of the adopted measures. The first one is the **Council Framework Decision 2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[24]; the second one is the **Council Framework Decision 2005/212/JHA** of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property[25]; and the third one is the **Council Framework Decision 2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to financial penalties[26].

The first two instruments deal with confiscation orders. In particular, the first one (F.D 783/2006) aims to facilitate co-operation between Member States as regards the mutual recognition and execution of orders to confiscate property. It achieves the measure no. 6 and 7 from the mutual recognition programme. The transposition date was the 24 November 2008. It provides for the direct execution of confiscation orders for the proceeds of crime by establishing simplified procedures for recognition among Member States and rules for dividing confiscated property between the Member State issuing the confiscation order and the one executing it. It has a very similar structure with that of the European Arrest Warrant. It aims to enable judicial decisions to be executed immediately, without any further formality, leading to a more automatic model of recognition. However, like the European Arrest Warrant, the confiscation order Framework Decision provides a very similar list of offences for which, if they give rise to a confiscation order and are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, execution of the confiscation order will

[24] OJ L 328 of 24/11/2006. Final date for the implementation in the Member States is the 24th/11/2008. This F.D was partly amended by the Council Framework Decision 2009/299 of 26 February 2009.
[25] OJ L 68, 15/03/2005.
[26] OJ L 76 of 22/03/2005. This F.D was partly amended by the Council Framework Decision 2009/299 of 26 February 2009.

take place without verification of the double criminality of the acts in the executing Member State. In addition, there are also a number of reasons for which the executing State may refuse to execute the order.

The second instrument (F.D 212/2005) was adopted at the Justice and Home Affairs Council on 24 February 2005. The transposition deadline was 15 March 2007. The purpose of this Framework Decision is to facilitate co-operation between Member States concerning the recognition and execution of orders to confiscate the proceeds of crime. Under the mutual recognition principle, a Member State has to recognise and execute in its territory confiscation orders issued by judicial authorities of another Member State. In particular, this Framework Decision aims to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, *inter alia*, in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

The third instrument Framework Decision (214/2005) extends the principle of mutual recognition to financial penalties of €70 or greater so that financial penalties imposed in one Member State by the judicial and administrative authorities may be enforced in another Member State. It completes measure no. 18 of the programme of measures to implement the principle of mutual recognition. The deadline for implementation by Member States was 22 March 2007. It also imposes a duty on the competent authorities of a Member State to recognise, without any further formality, decisions relating to financial penalties transmitted by another Member State. Nevertheless, like all the above mentioned instruments, grounds of refusal for non recognition and non execution are provided in this Framework Decision as well.

Since then, we have seen over the last few years a 'second round' of mutual recognition very important instruments being adopted. In particular, the Council on the 18 December 2008 adopted the **Framework Decision 2008/978/JHA** on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. This Framework Decision completes measures 5 and 6 of the programme of measures to implement the mutual recognition principle which deal with the mutual recognition of orders to obtain evidence. The Framework Decision does not directly address the issue of mutual admissibility of evidence[27]. However, it intends to facilitate the admissibility of evidence obtained

[27] See IJzerman A., '*From the CATS portfolio: The European Evidence Warrant'*, (2005), European Evidence Warrant – Transnational Judicial Inquiries in the EU, J.A.E. Vervaele (ed.), Intersentia.

from the territory of another Member State leading to the 'free movement of evidence across the EU[28]. Its structure is very similar to the European Arrest Warrant. The negotiation of this Framework Decision was extremely lengthy and political agreement was hard to achieve[29]. However, one should note that currently negotiations between Member States are taking place in order to achieve consensus on the adoption of a Directive on European Investigation Order aiming to replace the European Evidence Warrant[30].

Furthermore, another instrument which is connected to the principle of mutual recognition and which achieves measure 22 of the mutual recognition programme[31] is the **Council Framework Decision 2008/947/JHA** of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions[32]. This instrument aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction[33].

In addition, another recent instrument which achieves the goal of measure 14 of the programme of measures to implement the principle of mutual recognition, is the **Council Framework Decision 2008/909/JHA** of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union[34]. This new instrument applies mutual recognition to the transfer of sentenced persons to another Member State than the State of conviction. One of its main innovations is the extension, compared to the existing Council of Europe instruments, of the possibilities to impose the transfer without the consent of the person concerned[35]. This Framework Decision will also

[28] See Valsamis Mitsilegas, id. 2009, p. 126.
[29] For instance, the Netherlands pushed for a partial application of the territoriality principle, to allow it to refuse to comply with an EEW relating to offences committed wholly or partly in its territory.
[30] See '*Initiative for a Directive regarding the European Investigation Order in criminal matters*', COPEN 115, 29 April 2010.
[31] In the programme of measures of 29 November 2000, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole. See measure no. 22.
[32] This F.D was partly amended by the Council Framework Decision 2009/299 of 26 February 2009.
[33] See art. 1 of the F.D.
[34] OJ L 327/27 of 05/12/2008. This F.D was partly amended by the Council Framework Decision 2009/299 of 26 February 2009.
[35] See art. 6 of the F.D.

apply to some cases referred to in the European Arrest Warrant Framework Decision[36].

Moreover, the **Council Framework Decision 2008/675/JHA** of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings is one more instrument based on the principle of mutual recognition which achieves element no. 2 of the mutual recognition programme. As stated in article 1 of the Framework Decision its purpose is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

The last, but not least, adopted measure is the **Council Framework Decision 2009/299/JHA** of 26 February 2009 which enhances the procedural rights of persons and fosters the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial[37]. In summary, this Framework Decision modifies the existing Framework Decisions with regard to the ground for non recognition related to cases where the decision to be executed was rendered in the absence of the person concerned at the trial[38] and establishes common rules for the recognition and/or execution of judicial decisions where the person concerned was not present[39].

In summary, all these measures can be seen as a significant step reflecting the 2001 programme on mutual recognition. Also, all these measures intend to create a coherent system of mutual recognition covering all stages of the criminal justice process (both pre and post trial). However, as Valsamis Mitsilegas notes, this has led to the adoption of instruments which are both limited in scope and ambition and complex[40] and may be seen as making judicial cooperation more complicated. Despite this, the most important instrument indisputably is the European Arrest Warrant. In the following section the operation of the European Arrest Warrant will be

[36] See art. 25 of the F.D.
[37] See *Council Framework Decision 2009/299/JHA* of 26 February 2009, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.
[38] In particular, the Framework Decisions 2002/584 JHA, 2005/214 JHA, 2006/783 JHA, 2008/909 JHA and 2008/947 JHA.
[39] See article 1 of the F.D.
[40] Valsamis Mitsilegas, '*The third wave of third pillar law. Which direction for EU criminal justice?*', European Law Review, 2009, p.548.

discussed as it is the 'first, and most symbolic[41]', to date, measure which has been fully implemented in all Member States and has been merely the first instrument - from the full legislative mutual recognition programme- to implement this new core principle of criminal justice cooperation and to be seen as evidence of the existence (or non existence) of mutual trust between Member States.

Although, for reasons of completeness, one should not ignore two very recent developments: First, the Treaty of Lisbon[42], recently signed by the EU Member States on 13th December 2007 and entered into force in December 2009, which clearly and formally provides that mutual recognition will be the core element of judicial cooperation in criminal matters[43]. In that context, mutual recognition seems to be the 'winner'[44] compared with the harmonisation system[45]. As the President of ECJ Mr. Skouris stated from the Treaty of Lisbon it is evident that '*mutual recognition is the foundation of the European Union'* and that *'the Union should be based on the principle of mutual recognition'*[46].The Treaty of Lisbon, reinforces and consolidates progress in the area of Freedom, Security and Justice to date as well as underlines the principle of mutual recognition, allowing a Court in one EU country to recognise and enforce a criminal conviction from another. The Treaty also allows for minimum rules to be adopted in relation to the mutual admissibility of evidence, rights of individuals, and victims of crime in criminal proceedings, prevention and settlement of conflicts of jurisdiction, training of the judiciary and judicial staff[47], leading to a hybrid European criminal justice system[48]. Second, the adoption by the Council of the so-called *Stockholm Programme,* being the successor to the Hague Programme and

[41] See *Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, COM (2005) 63 Final Brussels, 23.02.2005, p.2, par.1.

[42] For an overview of the Treaty of Lisbon see The Law Society, '*Guide to Lisbon Treaty – European Union insight',* January 2008. See also Steve Peers, '*EU Criminal Law and the Treaty of Lisbon*', 2008, European Law Review.
available online at: http://www.lawsociety.org.uk/documents/downloads/guide_to_treaty_of_lisbon.pdf

[43] Art.69 (A) Treaty of Lisbon.

[44] See Valsamis Mitsilegas, id. 2009, p.156.

[45] See articles 64 (3) and 67 (1) TFEU.

[46] Interview with the President of the European Court of Justice Mr. Vasilios Skouris in 09/01/2010.

[47] See ECLAN study, *'Analysis of the future of mutual recognition in criminal matters in the European Union'*, Final Report, 20/11/2008. The Institute for European Studies Université Libre de Bruxelles, together with the European Criminal Law Academic Network (ECLAN) were selected by the European Commission to carry out in 2008 a project on "analysis of the future of mutual recognition in criminal matters in the European Union". The final report is written by Gisèle Vernimmen-Van Tiggelen and Laura Surano. Available online at:
http://ec.europa.eu/justice/doc_centre/criminal/recognition/doc_criminal_recognition_en.htm

[48] See Ilias Bantekas, '*The principle of Mutual Recognition in EU Criminal Law'*, European Law Review, (2007), p.376.

setting out the new priorities for 2010-2014, where the principle of mutual recognition is fully promoted, whereas harmonization is used only to 'facilitate mutual recognition'[49].

[49] See the '*Stockholm Programme – An open and secure Europe serving and protecting the citizens*', Brussels, 02/12/2009, 17024/09.

IV. The general overview of the European Arrest Warrant (EAW)

The **Council Framework Decision 2002/584/JHA** of the 13 June of 2002 on the European Arrest Warrant (hereafter called EAW) and the surrender procedures between Member States[50] is the first challenging step which significantly and successfully[51] changes the institutional status of the extradition procedure between Member States[52]. In addition, it constitutes the first example of the attempted effort for judicial cooperation in criminal matters. In fact, the purpose to be achieved is determined in the preamble of the Framework Decision: […] '(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition[53] between Member States and replacing it by a system of surrender between judicial authorities. [….] Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions[54], within an area of freedom, security and justice'.

In order for this purpose to be achieved, the traditional ways of cooperation between Member States are changing and, instead, a new system of rules emerge and a new mechanism materializes which is not included in the European Union Treaty: The *European Arrest Warrant* as being the first concrete measure in the field of criminal law implementing the principle of mutual recognition[55].

It is interesting to note that the European Arrest Warrant was supposed to be drafted after the Framework Decision on the execution of orders freezing property. However, the events of the 11 September 2001 not only caused a considerable increase in legislation at national and European level with the objective of assisting

[50] OJ L 190 18/07/2002, pp 1-18. Available from: www.europa.eu.int.
[51] See ECLAN study, id, 2008.
[52] The Framework Decision replaced the existing at the time texts. See '*Proposal for a Framework Decision on the EAW and the surrender procedures*', COM (2001) 522 Final/2 of 25/09/2001.
[53] See the recent judgement of the ECJ '*Case C-296/08 PPU, Ignacio Pedro Santesteban Goicoechea'*, where the Court found that the purpose of making conventions in the field of extradition applicable after 1 January 2004 'can only be to improve the extradition system in circumstances in which the European arrest warrant system does not apply'.
[54] It is notable that the ECLAN study suggests that that the majority of those interviewed found it is easier to apply the principle of mutual recognition to final decisions because those decisions are surrounded by greater safeguards and are taken by largely equivalent judicial authorities in all the MS, whereas the competent authorities for taking pre-trial decisions do not have the same characteristics everywhere. See ECLAN study, id. 2008.
[55] For the birth of the EAW and a broad analysis of the Council Framework Decision see Niko Keijzer, '*The European Arrest Warrant Framework Decision between Past and Future*', in E. Guild (ed.), Constitutional Challenges to the European Arrest Warrant, 2006, Wolf Legal Publishes, p. 13-73.

the fight against terrorism[56], but also created a 'window of opportunity' for reaching a rapid agreement on the complex and controversial issue of the proposal for the EAW[57] whose adoption was prioritised. The Commission submitted a proposal on the 19th of September in 2001, a few days after the terrorist attacks[58]. The negotiations[59] lasted only two months and six days leading to the adoption of, even till now, an extremely debated and criticized instrument whose main characteristics are the abolition of dual criminality for thirty-two categories of offences, the abolition of the political offence exception, the adoption of several mandatory and optional grounds for refusal to execute a warrant, the introduction of strict time limits, the introduction of a common form of the warrant[60] and last, but not least, the ability to surrender nationals in other jurisdictions in a faster and simpler procedure than the former extradition procedure.

1. Definition and scope of the European Arrest Warrant

The EAW is defined as 'a *judicial decision* issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order'[61]. Regarding this definition, it must be said, that the meaning of the word '*European*' is more symbolic than realistic given that the judicial decision in question is issued not by a 'European' legal body, but by a Member State's legal authority. Consequently, it is a *national judicial* decision, rather than a European one which must be, however, recognized and executed by the issuing State.

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[56] See Bill Gilmore, '*The Twin Towers and the Third Pillar: Some Security Agenda Developments*', EUI Working Paper LAW No. 2003/7, European University Institute Florence, available online. See also Mar Jimeno-Bulnes, '*After September 11th: the Fight Against Terrorism in National and European Law. Substantive and Procedural Rules: Some Examples'*, European Law Journal, Vol. 10, No. 2, March 2004, pp. 235–253.

[57] See Peers, CMLR, id. 2004, p. 12.

[58] COM (2001)522, OJ. 2001. For a critical discussion of the proposal, see Peers, '*Statewatch analyses No. 3, Proposed Framework Decision on European arrest warrants'*. Available at: www.statewatch.org/news/2001/oct/ewarrant.pdf.

[59] For further discussion at negotiations see Nilsson, '*Mutual Trust or Mutual Mistrust?, Mutual Trust in the European Criminal Area'*, Editions De L' Universite De Bruxelles, 2005, pp.29-33. See also M Plachta and W van Ballegooij, '*The Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States of the European Union*', in Blextoon, Handbook on the European Arrest Warrant, TMC Asser Press, 2005, p.32-26.

[60] See art. 8 of the Framework Decision.

[61] Art. 1 (1) of the F.D.

One should note yet that contrary to the previously existing extradition treaties, it is no longer required that the original or authentic copy of the decision suitable for the issue and execution of an EAW be submitted. On the contrary, judicial cooperation under the framework of the EAW takes a new formalised essence as the EAW has the form of a Certificate[62]. What is then required is clearly depending on the nature of the offence. In other words if the offence is one of the 32 described offences in the EAW for which the double criminality principle is abolished, then the issuing authority needs only to tick the respective box in the EAW and to give information about the applicable provision, irrespectively of the special characteristics of the alleged offence as such are provided in the national law. However, this raises serious questions and doubts - as will be seen further below. Alternatively, if the offence is not in the list, then the issuing authority needs to provide a 'full description' of the alleged committed offence(s). Nevertheless, this is a very broad approach which does not give clear answers to what is meant by the term full description and seems to raise serious questions with respect to the principle to speciality.

The issue of an EAW requires that pending against the requested person is a custodial sentence or a detention order for a maximum period of at least one year or, where a sentence has been passed or a detention order has been made, for sentences of at least four months[63]. This indicates that a wide range of criminal behaviour can fall within the scope of the EAW. However, the important innovation of the Framework Decision on the EAW is the partial abolition of the double criminality principle with regard specific offences.

2. The removal of the double criminality principle

Article 2 par. 2 of the Framework Decision provides that the judicial authority of the executing State should not examine the so-called '*double criminality*' of the act. By that term is meant that no one should be extradited for conduct that would not be criminal in both the issuing the EAW State and the executing State[64]. The removal of the principle of double criminality[65] in relation to the wide range of 32 types of

[62] See Valsamis Mitsilegas, id. 2009, p. 121.
[63] Art. 2 (1).
[64] See Susie Alegre and Marisa Leaf, March (2004), p.208.
[65] See Tampere European Council Presidency Conclusions, par. 35.

offence was one of the most controversial debated elements of the EAW[66], as this principle is very closely connected to the meaning of national sovereignty. This occurs, because it permits States to refuse extradition for acts that they have not criminalized and yet has several implications for fundamental human rights as the criminalization of an act reflects the social, cultural, and ethical considerations of a society at a certain time. Human rights, on the contrary, are in many legal orders important instruments for continuous adaptation to changing social needs, fears and convictions[67].The principle of double criminality, therefore, provides the individual with a standard of certainty of his legal rights and obligations which may be affected because of the different approaches of Member States with regard to the apprehension of substantive criminal law.

However, the EAW in article 2 provides for the abolition of double criminality in respect of 32 types of serious offences[68] which are punishable in the issuing State by a maximum custodial sentence or a detention order for at least three years or more[69]. In essence this means that by the removal of the principle of double criminality, and the recognition of the foreign decision thereof, the judicial authority of the executing State recognizes the evaluation of the foreign Legislator with regard to the criminalization of a certain act or behavior.

It is not a coincidence that the abolition of the principle of double criminality takes place in a number of offences - namely in the 32 types of offences provided in article 2 of the EAW[70]. The Framework Decision does not provide for the legal definition of the offences in question, but rather it leaves upon Member States to implement the list contained in Article 2(2) of the Framework Decision in light of the existing offences in their domestic criminal law[71]. This, yet, means that Member States have common political views and solidarity for combating the offences in question. Some

[66] See for example the proposal of the Commission which initially suggested complete abolition of the principle of double criminality with some limited exceptions. '*Explanatory memorandum to the Commission proposal for a framework decision on the European Arrest Warrant*' COM (2001) 522 final/2, note 4.5 (6).

[67] See Armin Von Bogdandy, '*The European Union as a Human Rights Organization? Human Rights and the core of the European Union'*, Common Market Law Review, (2000) Vol.37, p.p. 1307–1338.

[68] A list which cannot be considered as *numerus clauses*, but *apertus* because of the possibility to be extended or amended under the conditions required by Article 2.3.

[69] These include for example participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, corruption, fraud, money laundering, etc.

[70] As Valsamis Mitsilegas notes the list includes offences which are '*both very common and diverse, both national and transnational*'. See Valsamis Mitsilegas, id. 2006, CMLR,p. 1284.

[71] For the importance of labeling in Criminal Law see James Chalmers and Fiona Leverick, '*Fair Labeling in Criminal Law*', The Modern Law Review, Vol. 71, No. 2, 2008, p. 217-246.

of the offences in fact have been harmonized at EU level (characteristic examples are human trafficking, organized crime, and drug trafficking); whereas, some others (like murder or rape) are left to the existing definition at national level, bringing us to the main question of mutual trust. Yet, the removal of the principle of double criminality results in the exportation of national laws to all other Member States for the purpose of executing the EAW. The latter, consequently, means that Member States need to accept the criminal laws of the other Member States without having the essential knowledge and a clear picture about what those laws, in fact, might be[72]. This, nevertheless, seems at this stage unrealistic and difficult to work in practice[73].

In fact, the implementation of this provision has proved to be more complex than initially expected. The lack of precise definition of the crimes, together with legal translation difficulties, led some Member States to make a declaration in their implementing law in order to exclude specific offences as they were not punishable under their domestic law[74]. Greece, for example -as will be discussed further- omitted to implement specific categories of offences and Belgium expressly excluded abortion and euthanasia even though they could conceivably be caught by the category 'murder, grievous bodily injury`, in respect of which double criminality is abolished.

Another question that arises is what happens with offences that are not included in the catalogue of the Framework Decision and/or for which there is a different legal, culture, historical or even philosophical approach across the EU Member States. Characteristic example is euthanasia[75]. It is notable that, in this catalogue, offences such as stealing and theft or sexual offences are not included. Are these left in the general and indefinable term of mutual trust? And, if that is the case, are we talking about a general trust without conditions and prerequisites or about a trust which is

[72] As Susie Alegre and Marisa Leaf make the point that raises the prospect of a 'two-tier' system of criminal justice depending on whether judicial authorities are required to give effect to domestic law in cases that there is not issued any arrest warrant, or the law of the issuing State, in cases that an arrest warrant is issued. See EAW, (2003), p. 40.

[73] See '*Communication from the Commission to the Council and the European Parliament on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States'* where in paragraph 19 the Commission recognizes that with respect the EAW '*a series of difficulties have revealed which could to some extent be resolved if the Union were to adopt harmonisation legislature'*. COM (2005) 195 Final, 19/05/2005. See also Massimo Fichera, *'The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?'* European Law Journal, Vol. 15, No.1, 2009, p. 80 who suggests 'that the list should be reduced to a few core offences, i.e those for which common criteria for definition and punishment can be more easily found'.

[74] See '*Annex to the Report from the Commission on the European Arrest Warrant*', COM (2006) 8 Final, 24/01/2006.

[75] In Netherlands, for example, euthanasia since 2001 under certain conditions is a lawful act.

purely based on minimum common acceptable rules for which all Member States share common views?

Article 2 par. 4 tries to give an answer by providing that: 'for offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the EAW has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described'. Therefore, it seems that for offences not listed in Article 2(2) the executing State *may* still require dual criminality. It may also do so for the listed offences to the extent that they are not punishable in the issuing Member State by a deprivation of liberty for three years or more. The practice has shown that nearly all Member States require dual criminality for non-listed offences and most do so for listed offences not punishable by three years or more of deprivation of liberty[76]. However, the general approach in the text of the Framework Decision (namely [...] *whatever the constituent elements or however it is described*) is not satisfactory because, as will be shown further on, it seems to contradict the very basic general principle of *nullum crimen, nulla poena sine lege*.

3. Grounds for the mandatory non-execution of an European Arrest Warrant

In paragraph 2 of article 1 it is clearly defined that 'Member States shall execute any EAW on the basis of the principle of mutual recognition'. However, the judicial authority of the executing State, under the limited grounds provided in articles 3 and 4 of the Framework Decision, has the right to refuse to execute the EAW. In particular, three mandatory and seven non-mandatory grounds for the non-recognition of the judicial decision are provided. These, notably, do not include the political, fiscal, or military character of the offence.

With regard to the mandatory grounds for refusal, article 3 of the Framework Decision provides three reason of mandatory refusal of the execution of the EAW. Specifically, these reasons refer to the existence of amnesty in the executing State of the offence on which the arrest warrant is based[77], the principle of *ne bis in idem* (*res*

[76] See Jan Wouters and Frederik Naert, *'Of Arrest Warrants, Terrorist Offences and Extradition Deals: An Appraisal Of The EU's Main Criminal Law Measures Against Terrorism After "11 September"'*, Common Market Law Review, Vol. 41, 2004, p.913.

[77] See article 3 (1) of the F.D. The same ground for refusal was similarly expressed in article 9 of the Agreement of the 27th September 1996 concerning extradition between EU Member States.

judicata) in relation to a final judgment by a Member State[78], and the lack of criminal responsibility due to age limit as provided in the executing State[79]. Thus, if the judicial authority of the executing Member State ascertains the presence of any of these reasons, it is obliged to issue a formal rejection denying the execution of the EAW, and, consequently, the surrender of the requested person.

4. Grounds for the optional non-execution of an European Arrest Warrant

Article 4 of the Framework Decision initially provided seven optional reasons for refusal of execution of the EAW. However, the Council Framework Decision **2009/299/JHA** which amended the Framework Decision on the EAW, added one more ground for the optional non-execution of an EAW. All these reasons give the ability to the judicial authority of the executing State to refuse the execution of the EAW, and consequently, the surrender of the requested. In this case, the executing judicial authority exercises its discretionary power, which the Framework Decision itself provides for it.

In particular, these reasons are: (a) if, in one of the cases referred to in art. 2 (4), the EAW is based on a criminal act which is, however, not covered by the principle of double criminality; (b) if the suspect is prosecuted in the executing Member State for the same act; (c) if the judicial authorities of the executing Member State have decided not to conduct or to halt criminal prosecution for the criminal act which is the object of the EAW as well as in the case where the accused has been tried finally for the same criminal act in a Member State; (d) where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the

[78] See article 3 (2) of the F.D. The respect of the principle of *ne bis in idem* is imposed among Member States of the European Union, a principle that is similarly expressed in art. 54 of the Schengen Treaty. According to this principle, if the executing judicial authority ascertains that the requested person has been tried irrevocably for the same acts in any Member State, it should deny the execution of the EAW. See Maria Fletcher '*Some developments to the ne bis in idem principle in the European Union: Criminal Proceedings against Hüseyin Gözütok and Klaus Brügge',* The Modern Law Review, Vol.66, 2003, p.769-780. See also the very recent ECJ case of ***Gaetano Mantello***, **Case C-261/09**, of 16/11/2010, where the ECJ ruled that the concept of '*same acts*' in Article 3(2) of the Framework Decision constitutes an autonomous concept of European Union law. Also, whether a person has been 'finally' judged for the purposes of Article 3(2) of the Framework Decision is determined by the law of the Member State in which judgment was delivered. Thus, a decision which, under the law of the Member State which instituted criminal proceedings against a person, does not definitively bar further prosecution at national level in respect of certain acts cannot, in principle, constitute a procedural obstacle to the possible opening or continuation of criminal proceedings in respect of the same acts against that person in one of the Member States of the European Union.

[79] See article 3 (3) of the F.D.

executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law.

Furthermore, the executing State may refuse to execute the EAW according to the ground (e) if the requested person has been finally judged by a third State in respect of the same acts; (f) if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law[80]; (g) the next optional ground for refusal centralizes its interest on the principle of territoriality. In particular, it refers to criminal acts which, according to the legislation of the executing Member State, are considered to have been committed wholly or partly in its territory - or in a place treated as such - or have been committed outside the territory of the issuing Member State and the legislation of the executing Member State does not permit the prosecution for the same criminal acts taking place in areas outside its territory[81]. However, according to the ECLAN study, this provision has been transposed, and is applied in practice, in *an astonishing multitude of different ways*[82]. In any event, this provision aims to alleviate concerns regarding the abolition of double criminality as if there is any sort of connection with the territory of the executing the EAW authority then the latter still can refuse to execute the EAW[83].

As noted above, the last optional ground for refusal (h) was inserted in the Framework Decision on the European Arrest Warrant as article 4a with the Council Framework Decision **2009/299/JHA** of 26 February 2009. According to this new provision the executing judicial may also refuse to execute the European Arrest Warrant based on a decision rendered following a trial at which the requested person

[80] See the recent **Case C-66/08 *Kozłowski*** of 18/02/08, where the ECJ stated that the terms 'staying' and 'resident', determining the scope of Article 4(6), must be defined uniformly, since they concern autonomous concepts of Union law. According to the Court, when evaluating whether the person requested is 'staying' in the executing State, it is for the executing judicial authority 'to make an overall assessment of various objective factors characterizing the situation of that person, which include, in particular, the length, nature and conditions of his presence and the family and economic connections which he has with the executing Member State'. See also the ***Case C-123/08 Wolzenburg*** where the Court found that the executing Member State cannot in addition to a condition as to the duration of residence in that State, subject the application of the ground for non-execution of a EAW to supplementary administrative requirements.

[81] As the ECLAN study suggests all mutual recognition instruments, whether formally adopted or only politically agreed, except the FD 577 of 22 July 2003 on the freezing of property or evidence, admit a territoriality clause as an optional ground for refusal. See ECLAN study, id. 2008.

[82] See ECLAN study, id. 2008,

[83] See Valsamis Mitsilegas, id. 2009, p.127.

did not appear in person (the so-called judgments in absentia). Yet, it is notable that before the amendment of the Framework Decision, in cases of judgments in absentia, surrender could be subject to the condition that the issuing judicial authority would give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she would have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment[84]. Nevertheless, under the new provision 4a, this is not any more the case, as judgments in absentia may become a ground for the non-execution of an EAW, which proves the significance that the EU Legislator attaches to the protection of fundamental rights, especially to the procedural rights of persons and the right to fair trial provided in article 6 of the ECHR[85], and its determination to improve and facilitate the judicial cooperation in criminal matters.

Further, it is noteworthy that the ECJ in a recent judgement went a step forward by supporting that the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1) of the Framework Decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State[86]. This decision, yet, is of critical importance as the Court clarified that the EAW may be issued not for the purposes of conducting a criminal prosecution, but also for the purposes of executing of a custodial sentence or a detention order.

The Commission's report[87] on the implementation of the EAW illustrates that several Member States have either added in their national laws grounds for non–recognition that are not contained in the Framework Decision or they have converted optional grounds for refusal into mandatory ones. This suggests, not only that Member States wanted to preserve an increased safety valve to the introduced automated system of mutual recognition, but at the same time that lack of trust

[84] See article 5 (1) of the Framework Decision before the amendment.
[85] See par. 1 of the Preamble of the Council Framework Decision 2009/299/JHA.
[86] See Case C-306/09 '*I.B. v Conseil des ministres*' of 21 October 2010.
[87] See the '*Report from the Commission'*, id. COM (2005) 63 final, where the Commission characterises the introduction of grounds not provided in the Framework decision as '*disturbing*'.

between them was the main reason for the introduction of additional grounds for refusal of recognition and execution of a request by the requested authorities[88].

However, this seems to be contrary to both the nature and the scope of the Framework Decisions in general. As it is known, Framework Decisions are binding as to the result to be achieved, leaving the choice of form and methods up to the national authorities[89], and do not have a direct effect. To that extent, when Framework Decisions are implemented they have many similarities with the Directives of the first pillar[90]. In order to be able to evaluate, on an objective basis, whether a Framework Decision has been fully implemented by a Member State, some general criteria have been developed with respect to Directives which, according to the European Commission, should be applied *mutatis mutandis* to Framework Decisions[91]:

'[..1] The form and methods of implementation of the result to be achieved must be chosen in a manner which ensures that the Directive (and thus and the Framework Decision) functions effectively with account being taken of its aims'. Yet, the European Court has made a very illustrative point in that respect. In the case *Commission v. Italy* [92]the Court *inter alia* stated that:

'[…] *the transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner* […]'.

In addition, it is interesting to note a recent Judgment of the House of Lords[93] where, with regard to the implementation of Framework Decisions was of the opinion that: *'[…] In its choice of form and methods a national authority may not seek to frustrate or impede achievement of the purpose of the decision, for that would impede*

[88] See Valsamis Mitsilegas, '*Trust-Building Measures in the European Judicial Area in Criminal Matters: Issues of Competence, Legitimacy and Inter-institutional Balance*' in S. Carrera and T. Balzacq, Security versus Freedom? A Challenge for Europe's Future (Ashgate, Aldershot, 2006), pp. 280.

[89] Art. 34 (2) (b) TEU.

[90] For further discussion see Matthias J. Borgers, '*Implementing Framework Decisions'*, Common Market Law Review, Vol. 44, 2007, p.1361. See also Art. 249 (3) TEC.

[91] See '*Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings'*. COM (2006) 187 Final, 02.05.2006.

[92] See Case C-363/85, *Commission* v. *Italy*, [1987] ECR 1733, par. 7.

[93] Judgments '*Dabas (Appellant) v. High Court of Justice Madrid (Respondent)'*, House of Lords, Session 2006-07, [2007] UKHL 6, 28/02/07.

the general duty of cooperation binding on member states under article 10 of the EC Treaty'.

What is clear from the above mentioned two judgments is even if Member States, while implementing a Directive and similarly a Framework Decision into their domestic law, use different verbatim terminology from the one in the Directive or in the Framework Decision, this should not, in any event, mean that Member States can change the content of the Directive or the Framework Decision (i.e. by adding new grounds for refusal) as this leads to a breach of their obligation under article 10 TEC and 34 (2) (b) TEU respectively. This further suggests that Member States, while implementing the Framework Decisions into their national law, should not go beyond the very essence of the Framework Decisions (for example by creating new grounds for refusal) because, if this is done, Framework Decisions become binding not as to the result to be achieved (a result which has been primarily set up by the original Framework Decision of the Council), but to the result to be achieved as implemented by each Member State in a different way into their national law. This, however, is contrary to the spirit of the EU Legislator, who wanted to give Framework Decisions a binding effect in the context of the result to be achieved as is provided in the primary adopted Framework Decision and not in the implemented national legal instrument[94].

Furthermore, the conversion of some of the optional grounds of refusal into mandatory ones is contrary to the spirit and the purposes of the Framework Decision for one more reason: it eliminates the executing judicial authority from the possibility of exercising his discretionary power. As is noted above, the Framework Decision gives to the *judicial authorities* the ability to refuse its execution on the optional grounds of refusal. This discretionary power is directly provided to the national judicial authority of execution of the EAW and not to the national Legislator[95]. Accordingly, when the national Legislator converts the optional grounds for refusal into mandatory, this results in the limitation, if not deprivation, of the discretionary power of the judge which, however, is contrary to the Framework Decision.

[94] See Commission Staff Working document, '*Annex to the report from the Commission'*, where the Commission is of the opinion that the approach by some Member States to add more grounds for refusal of a arrest warrant goes beyond the Framework decision. SEC (2005) 267, Brussels, 23.02.2005, p.5.

[95] See article 4 of the Framework Decision.

Having taken all these into account, one could rightly argue that if a Member State refuses to execute an EAW on grounds which are not permitted/provided under the originally adopted by the Council Framework Decision then other Member States might do likewise. Nevertheless, if such practice becomes widespread then the whole effort of mutual recognition could break down and its benefits would be lost, as mutual recognition will gradually depend on reciprocity[96], a principle which, according to the European Commission, is contrary to the European Arrest Warrant Framework Decision[97] and the principle of mutual recognition thereof. In fact, in response to the German Constitutional Court's ruling that annulled the EAW Framework Decision in 2005, the Spanish authorities, since then, rejected several EAW requests from Germany because under Spanish Constitutional law extradition is permitted only on the basis of reciprocity. However, as expected, this caused several reactions. Indicative is the statement of Andy Burnham, Member of the House of Commons and Parliamentary under Secretary of State, who while examined in the Sub-Committee E of the EU Committee of the House of Lords on 18th January 2006, expressed his fear that such approach by Member States would be '*a breakdown of the system* (of mutual recognition) *if it was tit-for-tat*', meaning of course the rules of reciprocity[98].

5. Competent authorities and time limits

Article 6 of the Framework Decision provides that the competent judicial authority for the issue and the execution of an EAW is determined by virtue of the law of the issuing and the executing, respectively, State. The EAW must contain the information set out in article 8 of the Framework Decision. Furthermore, the final decision on the execution must be taken within a period of 60 days – in some exceptions 90 days – from the arrest of the requested person[99], whereas the surrender must take place within 10 days after the final decision on the execution of the

[96] For an overview of the relation between the principle of reciprocity and the EAW, see Harmen van der Wilt, '*The principle of Reciprocity'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p.71.
[97] See Commission Staff Working document, id. 2005, p.12, where the Commission points out that, contrary to the Framework Decision, Czech Republic applies reciprocity towards other Member States in order to surrender its nationals.
[98] See House of Lords, European Union Committee, '*30th Report of Session 2005–06, on European Arrest Warrant—Recent Developments, Report with Evidence'*, p.11.
[99] See article 17 of the F.D.

EAW[100], introducing in such a way a simplified procedure marked by *automatization* and *speed*[101].

6. Surrender procedure – Rights of the requested person – Consent

Another question that arises for consideration while analyzing the general overview of the EAW is whether or not the executing State, *after the arrest* of the requested person, has to surrender the person in question recognizing thus the judicial decision of the issuing State[102]. The answer to this question is not given directly by any of the articles of the Arrest Warrant separately, but by the context of the Arrest Warrant as a whole. Indeed, the execution of the EAW takes place in two stages: The first being the arrest of the requested person and the second the surrender of that person to the issuing State.

To clarify this according to the Framework Decision, towards the combination of article 1 paragraph 2 and articles 9, 10, 11, 12, and 17, it is clear that as soon as the judicial decision of the issuing State is transmitted to the executing judicial authority, the latter is obliged to arrest the person in question without any delay. At this stage the arrested person has the rights provided in article 11 (i.e. to be informed, legal counsel, and interpretation). Up to this phase, the judicial decision is enforceable without the executing State having any prima facie ground to refuse to arrest the requested person. However, at the second stage - namely at the detention and the surrender procedure of that person - the executing judicial authority has the right to take a decision on whether or not the requested person should remain in detention, in accordance with the law of the executing Member State[103], yet also to decide whether the person is to be surrendered[104].

At this point it must be mentioned that if the arrested person indicates that he or she consents to surrender, this consent leads to his or her surrender without the executing authority having any ground to decide otherwise from the will of the arrested person.

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[100] See article 23 of the F.D.
[101] See Valsamis Mitsilegas, CMLR, id. 2006, p. 1284.
[102] At this point it is worth standing to mention the Explanatory Memorandum presented by the Commission for a Council Framework Decision on the EAW, where it is mentioned, inter alia, that: 'The system of the EAW can function only when there is *perfect trust* between the Member States as to the quality and reliability of their political and legal systems'. See explanatory note to art 49 of the '*Proposal for a Council Framework decision on the EAW and the surrender procedures between the Member States*, COM/2001/0522/final/2-CNS 2001/0215. Available from: www.europa.eu.int.
[103] Art. 12.
[104] Art. 15.

His or her consent may not, in principle, be revoked[105]; and it must be given voluntarily and in full knowledge of the consequences. However, if the person in question does not consent to his or her surrender, then he or she is entitled to be heard by the executing judicial authority[106]. The final decision about the surrender is taken within a short period of time following the arrest and after the consideration of some legal issues with regard to the rules that determine the surrender procedure of the requested person as referred to in articles 2 to 5 and 16. The executing judicial authority notifies the issuing judicial authority immediately of the decision on the action to be taken on the EAW[107] and the requested person is surrendered within the time limits set out in article 23. Yet, any period of detention arising from execution of the European arrest warrant is deducted from the total period of deprivation of liberty imposed[108].

6.1 Human Rights Concerns[109]

a. General overview

Mutual recognition, and the enforcement of judicial decisions in criminal matters thereof, is based on the presumption that the judicial proceedings in the issuing State have taken or will take place in accordance with due process and other human rights requirements. This is one of the main aspects founding the trust between the judicial

[105] Art. 13 (4).
[106] Art. 14.
[107] Art. 22.
[108] Art. 26.
[109] For the purposes of this thesis the examination of the jurisprudence of the European Court of Human Rights is not of particular focus. However, for reasons of completeness of this thesis, as to the compatibility of surrender through a EAW with articles 5&7 of ECHR see, for example, Case '*Ocalan v. Turkey*', No. 46221/99, Judgment of 12 March 2003, par. 85, where the Court was of the opinion that: 'Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognizes in the Convention'. Also, as to the compatibility of surrender and extradition with article 3 of ECHR see, for example, four cases which could result to an infringement of this article, if the conditions referred into were not met: (a) case '*Peers v Greece*' in 2001 (No. 28524) regarding the standards of keeping the arrested person in prison; (b) case '*Price v UK*' in 2001 (No. 33394) regarding the treatment of the arrested by the law-enforcement officers; (c) case '*Einhorn v France*' in 2001 (No.71555) regarding the imposition of an irreducible life sentence; (d) case '*B.B v France*' in 1998 where the surrender of the requested person could lead to the deterioration of his physical health condition. However, regarding the relationship of the surrender with the article 6 of ECHR, see case '*Mamatkulov and Abdurasulovic v Turkey*' in 2003 (No. 46827/99 and 46951/99), where the Court reiterated that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention.

authorities of Member States. This trust is, thus, very much connected with the crucial question of whether the human rights protection in Member States is up to an adequate level[110] and whether the essential aforementioned 'common values' for the creation of mutual trust exist. Nevertheless, it is sufficient to take a look at Amnesty's International latest reports in 2006, where serious concerns are expressed about the situation of human rights in Europe[111], or at the recent judgments of the European Court of Human Rights to be persuaded that not only the values in question do not in fact exist, but that the vast majority of the current EU Member States have had adverse judgments relating to their criminal justice systems. In addition, in the case of *Pupino*[112], the European Court of Justice expressly stated that third pillar measures had to be interpreted in light of human rights principles, including the jurisprudence of the European Court of Human Rights, as well as in the very recent case of *Advocaten voor de Wereld*[113], the ECJ confirmed that within the third pillar the human rights principles are also applicable when considering the validity of EU law and the national application of EU law.

While the Union 'is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'[114], grave failings are observed in the respect of the protection of fundamental rights in the Member States[115]. Nevertheless, these failings, even if raising serious questions with regard to very fundamental rights of the defendant, do not seem to affect the very basis of the principle of mutual recognition[116]. To that end, in the last few years the European Commission has expressed its strong interest to establish in a number of key areas, minimum procedural safeguards in criminal matters in an attempt to overcome the problems having arisen under the aforementioned failings. This, in essence, suggests that

[110] See Guy Stessens, '*The Principle of Mutual Confidence between Judicial Authorities in the Area of Freedom, Justice and Security'*, L'espace penal europeen: enjeux et perspectives, Editions De L' Universite De Bruxelles, 2002, p.102.
[111] See Amnesty International, Report of 2006 about the state of Human Rights in Europe. Available from: http://www.amnesty.org
[112] Case C-105/03, '*Pupino',* [2005] ECR I-5285, 16/06/2005. For commentary see Maria Fletcher, '*Extending 'indirect effect' to the third pillar: the significance of Pupino',* European Law Review, 2005, p. 862.
[113] Case C-303/05, '*Advocaten voor de Wereld'*, judgment of 3 May 2007. The importance of this case will be discussed further on within this chapter.
[114] See TEU art.6 par.1.
[115] See Amnesty International, Report of 2006 about the state of Human Rights in Europe.
[116] See the annual reports on the situation of fundamental rights in the European Union in 2002, 2003 and 2004 made by the Network of fundamental rights independent experts. Available from: http://europa.eu.int/comm/justice_home.

Member States jumped at the opportunity to adopt a measure (namely the EAW), without having previously safeguarded its execution under the adequate respect of fundamental rights. Thus, later adopted instruments, such as the Framework Decision on judgments *in absentia* in 2009[117] or the Resolution of the Council on the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings of 2009[118], as well as the very recent Directive 2010/64 on the right to interpretation and translation in criminal proceedings[119], reveal that the EU Member States under pressure and in a indirect confession regarding the inadequate level of protection of fundamental rights between Member States and in order to counterbalance this lack of sufficient protection, now 'ex post' shifts its interest in the minimum standards on defense rights and in the enhancement of the protection of fundamental rights through the proposal of such measures.

With regard in particular to the operation of the EAW, Member States should meet the standards of human rights protection set out in the different international human rights instruments such as the European Convention on Human Rights (ECHR)[120]. The EAW, thus, cannot be successfully and efficiently operated in a climate of disregard of human rights[121]. It also seems that the possibility of checking whether fundamental rights have been respected is expressly envisaged in the implementing legislation of a number of Member States[122]. Human Rights concerns have been primarily focused on whether the rights of arrested person, in particular the right to a fair trial and the protection from torture, will not be breached in the issuing the EAW State.

Nevertheless, even the arrest of the requested person itself according to the EAW raises the question of the legality of this very important intervention in the personal freedom of that person. As a first general comment, it should be mentioned that the procedural aim of the arrest and surrender of the requested person in the EU level is different from the one which justifies the arrest and detention of a person within the

[117] See Council Framework Decision 2009/299/JHA of 26 February 2009.
[118] Resolution Council, 2009/C 295/01 of 30 November 2009.
[119] OJ L280/1 of 26/10/10.
[120] Member States are bound by different national and international instruments for the protection of Human Rights. However, in this thesis the EAW will be approached under the ECHR provisions, as on the one hand that is provided in art. 1 par. 3 in combination with art. 6 par. 2 of TEU and on the other as it is the most accessible regional instrument with legal force, and thus more likely to apply to cases related to the EAW.
[121] See Caroline Morgan, *'The European Arrest Warrant and the Defendants' Rights: An Overview'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p.195.
[122] See ECLAN study, id. 2008.

framework of a national criminal trial. The executing State carries out the EAW not for the satisfaction of its own criminal claim, but for the facilitation of the exercise of a foreign jurisdictional power according to the framework of the intergovernmental co-operation in criminal matters. However, this distinction does not - and in fact it should not - affect the legal position of the requested person as in any case the arrest and surrender of that person should be carried out under the provisions of the ECHR as it constitutes a serious intervention in the individual right of personal freedom as well as the application of the provided rights under the ECHR to surrender under the EAW is both logical and plainly necessary for the effective operation of mutual recognition[123].

Indeed, apart from a number of applications of the *ne bis in idem* principle (Arts. 3(2), 4(2)-(3) and 4(5)), as well as provisions on trials by default (Art. 5(1)) and on life sentences (Art. 5(2)), the main provisions in EAW dealing with human rights are Article 1(3) and the 10th, 12th and 13th recitals of the preamble[124]. In particular, Art. 1 par. 3 explicitly defines the obligation of respect of individual rights by providing that: '*This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union*'[125]. In addition, in the preamble of the Framework Decision and in particular in par.12 and 13 there is a reference to respect the fundamental rights. However, it is notable that art. 3 and 4 of the EAW related to the grounds for non execution are 'silent' on fundamental rights[126].

Nevertheless, the arising question is whether human rights constitute, in fact, a fourth, but not directly provided, ground for the mandatory non-execution of the European Arrest Warrant in the light of art. 1 par. 3 of the Council Framework Decision according to which fundamental rights and fundamental legal principles are explicitly respected. From the whole spirit of the Framework Decision it seems that the necessity for respect of fundamental rights is addressed to the judicial authorities of the Member State which issued the EAW as well as the judicial authority of the

[123] See Paul Garlick, *'The European Arrest Warrant and the ECHR'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p. 168.
[124] One should not, however, ignore that the exact effect of the preambular clauses is not clear.
[125] See Article 6 of the Treaty on European Union.
[126] As Susie Alegre and Marisa Leaf comment 'this absence gives rise to the suspicion that Member States have not given serious consideration to the possibility of grave human rights abuses occurring in other Member States that would give rise to an obligation to refuse surrender. See Susie Alegre and Marisa Leaf, '*Mutual Recognition in European Judicial Cooperation: A step too far too soon? Case Study - The European Arrest Warrant'*, European Law Journal, Vol.10, March (2004), p.202.

executing State. The judicial authority, thus, is designated to check whether the EAW violates article 6 of the TEU. In this framework, one can argue that the judicial authority while examining human rights issues, it does so in the light of the *legality* itself of the European Arrest Warrant, and not of its execution. If, thus, a requested person claims that his surrender will probably result in a violation of his fundamental rights, then the judicial authority which ascertains that the EAW may violate fundamental rights, refuses its execution not because it infringes some ground for refusal, but rather because it has not been *legally* issued[127].

7. Rule of Speciality

Article 27 of the Framework Decision, having as a title '*Possible prosecution for other offences*', provides for the cases concerning exceptions to the rule of speciality, a rule which is closely connected to sovereignty. As a general rule, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered[128], except in the case referred to in Article 27(1), under which consent for such surrender can be presumed to have been given, and in the cases provided for in Article 27(3).

The Court of Justice, interpreting this provision, stated in its judgment concerning the recent case ***C-388/08***[129] that while a person surrendered under a European arrest warrant for the purpose of prosecution for a criminal offence may be prosecuted for that offence only, it is possible, under specific criteria, to make certain changes to the description of facts during the procedure and describe the offence more precisely without offending against the rule of speciality. The Court was also of the opinion that while it is always possible to prosecute a person for a different offence from the one specified in the arrest warrant with the consent of the Member State executing the warrant; such consent is not required for changes and amendments which do not result in a different characterization of the offence.

[127] However, it has been argued that article 1 (3) of the Framework Decision as well as par. 12 of its Preamble compel a ground for refusal of the surrender of the requested person. See Nico Keijzer, '*The European Arrest Warrant and Human Rights*', in Current Issues in European Criminal Law and the Protection of EU Financial Interests, Austrian Association of European Criminal Law, 2006, p. 141.
[128] See art. 27 par. 2 of the F.D.
[129] See '*Case C-388/08 PPU 'Leymann and Pustovarov*', 1 December 2008.

However, it is notable that the Court notes in its judgement that the exception applies as long as no measure restricting personal liberty is taken against the person for the 'offence other' than that for which he has been surrendered. If, thus, that person is ultimately sentenced to imprisonment for the 'other offence', consent must be sought and obtained before the sentence is enforced. The Framework Decision does not, however, prevent the person surrendered from being subjected to a measure restricting personal liberty before consent is obtained, where that restriction is justified in law by other charges mentioned in the European Arrest Warrant.

All the above mentioned analysis shows that the European Arrest Warrant Framework Decision under certain conditions indisputably leads to the so-called '*free movement of criminal decisions*' and, in particular, constitutes the first step for the mutual recognition of judgments aiming at the arrest and surrender of suspects within the European Union, ensuring that the process takes place exclusively between the judicial rather than the political authorities of the Member States and under the safeguard of fundamental human rights and the umbrella of mutual trust.

Yet the latter justifies the main purpose of the EAW which is to ensure the inter-State's cooperation in the field of criminal law for combating the international crime as they do have common interests in order the Union to become an 'Area of Freedom, Security, and Justice'.

V. The EAW as evidence of the existence (or non existence) of mutual trust between Member States

As has already been discussed, the purpose of the EAW is to improve traditional judicial cooperation by limiting the grounds of refusal, bringing judicial authorities of Member States into a closer cooperation in order to achieve the effective enforcement of criminal decisions[130], and introducing mutual trust of the different and diverse criminal legal systems.

The semantic definition of the norm '*mutual trust*' is something vague and constitutes at least a very abstract concept. It has been linked, and has acquired particular relevance, with respect to the principle of mutual recognition of judicial decisions. The question that arises is if indeed there is mutual trust between Member States –especially after the last enlargement of the EU- or it is just a declamatory word used by the politicians in order to promote the cooperation between Member States in the field of judicial cooperation in criminal matters, but for which the judicial authorities of the Member States do not share the same point of view[131].

The concept of mutual trust is something very difficult to define. With respect to criminal matters, it appeared in the Programme of Measures to implement the principle of mutual recognition adopted by the Council of Ministers in 2000[132], where the Ministers gave the core elements of the meaning of mutual trust, stating that the implementation of the principle of mutual recognition of decisions in criminal matters 'presupposes that Member States have trust in each others' criminal justice systems'. That trust is grounded - as they said - in particular, on the States' shared commitment to the principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law, principles which are deemed to be common to the Member States and which constitute the basis upon which the principle of mutual recognition is founded. The same concept was also used in the recent *Stockholm Programme* where it was stressed that ensuring trust is 'one of the main challenges for the future'.

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[130] See article 31 par. 1 of the TEU.

[131] It is notable that the ECLAN study suggests that negotiations of the different instruments sometimes appear to take place more in a climate of suspicion than of mutual trust. See ECLAN study, id.2008. See also Massimo Fichera, id. 2009, p. 80, where he argues that 'trust, although presumed to exist, has not yet acquired a normative status. It appears to be more like a declaration of intent'.

[132] See '*Programme of Measures to implement the principle of Mutual Recognition of decisions in criminal Matters'*. OJ C 012, 15/01/2001.

However, it is clear that these broad terms cannot, in any event, justify the application of mutual trust in the field of judicial cooperation as even if Member States have common views with respect, for example, to the general idea of democracy, this is not enough for the judicial authorities to trust and ensure the prompt execution of a criminal judicial decision issued in a requesting State. Criminal law is strongly linked with the regulation of the relation between the individuals and the State on the one hand and on the other with the limitation of civil liberties and rights of the individuals (nationally and internationally guaranteed) in cases where the latter commit an unlawful act. As such, clear, predictable, and specific criminal law principles are essential in order to provide legal certainty in a society based on the rule of law[133].

Alternatively, the European Court of Justice in the joint cases of *Hüseyin Gözütok* and *Klaus Brügge*[134], went further by proclaiming the principle of mutual trust in respect to the *ne bis in idem* principle[135], but stating *inter alia* that: [...] there is a necessary implication that the *Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied*'[136].

Neither is this approach by the European Court of Justice satisfactory. The reasoning of the Court might have been fundamental – as, with it, the Court confirmed the legally binding nature of the principle of mutual recognition based on the mutual trust, - but it is utopian, if not also dangerous, to expect from the judicial authorities of the Member States to have 'blind' trust in the foreign judicial criminal systems of which, in fact, they have either no knowledge about or a very limited one. Besides, this is also apparent if one considers the number of grounds of refusal adopted by the Member States while implementing the Framework Decision where one could rightly argue that the more grounds for refusal the less one can presume that trust exists between Member States.[137]

[133] See Valsamis Mitsilegas, CMLR, id. 2006, p.1280.
[134] See the joint cases '*Hüseyin Gözütok* (C-187/01) and *Klaus Brügge'* (C-385/01), 2003, ECR. In addition see Maria Fletcher, id. (2003), p.769-780.
[135] For a detailed analysis of the *ne bis in idem* principle see Valsamis Mitsilegas, id. 2009, p. 142-153.
[136] For a detailed analysis of the judgement see Sasa Sever, '*The ne bis in idem principle in the case law of the European Court of Justice'*, in Current Issues in European Criminal Law and the protection of EU Financial Interests, Austrian Association of European Criminal Law, 2006, p. 147.
[137] See Massimo Fichera, id. 2009, p. 81.

This last point is of greater consideration and importance given the last two enlargements of the EU in 2004 and 2007 respectively. One could argue[138] that the new Members of the EU, in order to enter the EU, have to implement the Union *acquis* as a condition *sine qua non* for the joining the Union, with accession therefore being conditional[139] in these terms. Implementation of the Union's *acquis* means practically that Member States have to comply with and fulfil the Copenhagen criteria[140], namely the political, the economic, and the so-called *acquis* criterion, meaning, with respect to the mutual recognition issue in the judicial cooperation context, that the 'new' Member States have a judicial system which is ready to be recognized and accepted by the 'old' Member States' judicial authorities. However, that seems not to be the case. It is rather undoubted that the 'old' Member States showed some degree of mistrust in the new Member States.

Characteristic is the example of the acquisition by the new Member States of Schengen membership. Accession to the European Union did not mean automatic Schengen membership for the new Member States. On the contrary, the existing Schengen members required to agree unanimously on the readiness of candidate countries to be members[141]. It is not a coincidence that the old Member States wanted to create an extra safeguard valve to avoid any potential shortcomings or imminent risks in the transposition and implementation of the instruments related to mutual recognition in the area of criminal law under the Title VI of the TEU. In particular, according to the Act of Accession, the Commission upon motivated request of a Member State or on its own initiative and after consulting Member States could take appropriate measures which could include the form of even temporary suspension of the application of relevant provisions on judicial cooperation in criminal matters[142]. Even if this clause could be invoked within 3 years of the accession and even if in fact it was never invoked that does not change the reality

[138] See Emmanuel Pitto, '*Mutual Trust and Enlargement'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p. 47.
[139] On conditionality and enlargement, see K.E. Smith, '*The Evolution and Application of EU Membership Conditionality*' in M. Cremona (ed.), *The Enlargement of the European Union* (OUP, Oxford, 2003), pp. 105–140.
[140] Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union. However, relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.
[141] For an analytical review of the relation between trust and enlargement see Valsamis Mitsilegas, '*The External Dimension of EU Action in Criminal Matters'*, European Foreign Affairs Review, Vol. 12, (2007) p. 459 - 465.
[142] See article 39 of the Act of Accession.

which is that old Member States were suspicious of countries with very different social, cultural, political and economic backgrounds. Thus, an existing level of mistrust, involving the ability of these countries to implement the EU criminal law standards, is not only apparent, but in fact it has officially been declared with the introduction of the safety valve of art. 39 of the Act of Accession.

Taking all the above into account, it is hard to believe, for example, that a Greek judge[143] who comes from an indicative strong civil law jurisdiction will accept, without at least some hesitation, to recognise and execute a judicial decision from for instance a Romanian judicial authority where the European Commission, on the one hand, in its report in 2004 found, among others[144] strong political pressure on judges while exercising their official duties, significant shortage of judges, and serious phenomena of corruption; and on the other, in its report issued in 27 June 2007, found that 'progress in the judicial treatment of high-level corruption is insufficient'[145].

In addition, it is characteristic of the statement by the Finland Presidency in 2006, during the informal JHA Ministerial meeting[146], where it was admitted that the negotiations on new instruments on mutual recognition 'have slowed and become more difficult' due to the requirement of consensus that applies in the third pillar, and because during 2004, as a result of the enlargement of the EU, the number of negotiating partners grew from 15 to 25. In addition as the Presidency states, instruments on cooperation in criminal matters 'come up against the limits of mutual trust and confidence between Member States'.

Undoubtedly, the European Union genuinely hopes to develop the principle of mutual recognition as the cornerstone of judicial cooperation and, undeniably this aim cannot be achieved if the issue of mutual trust is not addressed urgently. As the European Commission has stressed[147] 'reinforcing mutual trust is the key to making mutual recognition to operate smoothly'. At the same time, as the ECLAN study suggests, in reality, this trust is still not spontaneously felt and is by no means

[143] This will also be supported in the next chapter by some interviewed Greek judges.
[144] See the 2004 Regular Report on Romania's progress towards accession.
[145] See '*Report from the Commission to the European Parliament and the Council on Romania's progress on accompanying measures following Accession*', COM (2007) 378 final, Brussels, 27.6.2007.
[146]See Finland's EU Presidency statement, Informal JHA Ministerial Meeting, Tampere 20-22 September 2006.
[147] See '*Communication from the Commission'*, id. COM (2005) 195.

always evident in practice, even if mutual confidence between Member States' judicial and prosecution authorities appears to be growing[148].

However, mutual trust, as a learning process, has as prerequisite no less than the mutual knowledge of the different legal systems, cultures, and socio-ethical values of the Member States. This should be a main priority for Member States. Yet, this purpose can primarily be achieved by making small steps, to begin with, that would eventually lead to the major one - namely the adoption of common values.

On the one hand, exchanging of judges, peer reviewing between judges and prosecutors[149], evaluation of the different legal systems, promoting networking among practitioners of justice and developing judicial training [150] are some of the small steps that could be done in order to improve knowledge of each other's systems, improve mutual trust and therefore give legal practitioners a stronger sense of belonging to a common judicial culture. Alternatively, and at a second stage, Member States should pursue in the direction of the adoption of common values upon which the European Union is based. These values nevertheless require common justiciable standards which are met equally throughout Member States and for which Member States share common views. This goal, however, will gradually lead to mutual trust not only between the relevant judicial authorities of the Member States, but also, and most importantly, to mutual trust between the citizens in their and each others, criminal justice systems[151].

Thus, if EU still wants to keep taking actions at a criminal level it must at least adopt common concepts about the very basic elements of the criminal offences and proceedings which would then be the basis on which the common values can rely on. In this framework, it would be a good start if the Member States would urgently address and take specific legislative initiatives regarding the minimum procedural standards, and in particular, the very much debated rights of the defendant[152]. In the light of the failure to reach agreement on the proposal for a Framework

[148] See ECLAN study, id. 2008.
[149] See Susie Alegre, '*Mutual trust – Lifting the mask'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p.45.
[150] See '*Communication from the Commission*', id. COM (2005) 195. See also See ECLAN study, id. 2008.
[151] See John A.E Vervaele, '*Mutual trust and Mercosur integration in South America'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p.305.
[152] See the '*Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (presented by the Commission)*', Brussels, 28.4.2004, COM(2004) 328 final.

Decision on procedural rights[153], the ECLAN study suggests that most experts maintain that work on this matter should now resume. Even in the Member States which were against the adoption of that FD in June 2007, the national reports of the study indicate that several practitioners favour resumption of the work for the approximation of the essential rights[154]. In any event these 'trust-building' measures[155] would eliminate the provoked reactions and fears and would increase the safety valve for both the sufficient protection of fundamental rights and the smooth operation of the EU criminal law now as in the long term.

[153] On 3 May 2004 the Commission submitted a proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union. The proposal, however, caused several reactions and controversy between Member State and it was frozen. At the end of 2006, the Austrian Presidency presented a proposal for the text of an instrument on procedural rights in criminal proceedings. Nevertheless, the Justice and Home Affairs Council on 12-13 June 2007 could not find any agreement and therefore is still pending.
[154] See ECLAN study, id. 2008.
[155] See Valsamis Mitsilegas, id. 2009, p. 132.

VI. The implementation of the EAW

The Framework Decision was formally adopted in June 2002. The deadline to introduce legislation to bring the EAW into force was 1 January 2004. The implementation of the Framework Decision has required the adoption of new legislation, or at least the amendment of the existing national provisions in all Member States[156]. For example, Portugal and Slovenia have had to amend their Constitutions in order to give effect to the EAW. Others have implemented the Framework Decision in a way which gives priority to their national constitutions or which appears to favour their own nationals. Italy, for example, has provided that execution of an EAW may be refused where the requested person is an Italian citizen who did not know that the conduct was prohibited. Yet, one should not ignore that the Commission has been critical stating that such approach by Member States goes further than the Framework Decision allows[157].

Article 34 (4) of the Framework Decision requires the Council to conduct a review of the application of the EAW. To that end, the Commission produced a report in February 2005 evaluating the operation of the EAW[158]. The Commission's report was primarily based on their analysis of national laws giving effect to the EAW and the response to questionnaires addressed to the Member States. In January 2006 the Commission published a revised report to take account of the Italian legislation adopted since the presentation of the original report. In this revised report the Commission concludes that despite some initial delays the Arrest Warrant is now operational in all the Member States[159]. In fact, the figures are very illustrative of the operation of the EAW: More than 6.000 arrest warrants have been issued only during the year 2006 and more than of 1.000 of these arrest warrants resulted in the effective surrender of the person sought[160]; whereas in 2009 these figures were double as more

[156] See ECLAN study, id. 2008.
[157] See Commission Staff Working document, id.2005, p.5.
[158] See '*Report from the Commission'* id., COM (2005) 63 Final.
[159] See the '*Report from the Commission on the EAW',* COM (2006) 8 Final, where it states *inter alia* that the EAW has now been implemented by all the Member States as Italy, as the last country, adopted its domestic implementing legislation on 14 May 2005.
[160] See Information note from General Secretariat to Working Party on Cooperation in Criminal Matters on the subject: '*Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant'* - Year 2006, Brussels, 30 January 2008, 11371/4/07 REV 4 COPEN 106.

than 14.000 arrest warrants have been issued and more than 2.700 resulted in the effective surrender of the person sought[161], proving its effective practical operation.

However, the European Commission is very critical on how Member States have implemented the Framework Decision. Indicative is the critique made by the European Commission to Belgium, for example, for its exclusion of euthanasia and abortion from the offence of 'murder or grievous bodily harm' as provided in the 32 listed offences[162]. This, nevertheless, brings us back to the aforementioned point that the different views between Member States regarding the meaning and essence of the listed offences is capable of causing notably problems concerning the smooth and effective operation of mutual recognition and mutual trust thereof.

The enactment of the European Arrest Warrant initially raised serious concerns regarding the rule of law; its compatibility with the national Constitutions; its relation with the effective protection of human rights, and its validity as a third pillar's instrument. In the third pillar context, the Framework Decision on the European Arrest Warrant is the only measure that has –despite the political unanimous approval- provoked serious creaks to the effective operation, if not even the existence, of the European Arrest Warrant, and is the first time that there has been such wide judicial criticism of the implementation of any measure adopted ever in the EU's area of Freedom, Security and Justice.

During the years of its existence, the status of the EAW appeared to be threatened and came under attack[163] by its successive annulments from the Supreme (some times even Constitutional) Courts of certain EU Member States. As a result, several Courts have either declared their national law - implementing the EAW - unconstitutional or upheld it as part of a 'speedy' process of the criminal cooperation between the EU Member States. In that climate, the European Court of Justice very recently dealt for the first time with the incredibly controversial question of the validity of the constitutionality of the EAW Framework Decision at the EU level.

The most representative cases will be discussed in the following section, having as criterion which Courts raised Constitutional and human rights concerns, after which the recent Judgment of the European Court of Justice will illustrate the question of the legality of the European Arrest Warrant Framework Decision.

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[161] See the '*Replies to questionnaire on quantitative information on the practical operation of the European Arrest Warrant*', Council Doc. 7551/6/10, REV 6, Brussels, 16 November 2010.
[162] See Commission Staff Working document, id. 2005, p.6.
[163] See House of Lords, 30th Report of Session 2005-06, *'European Arrest Warrant – Recent Developments, Report with evidence'*, available at: http://www.parliament.uk/lords/index.cfm

1. Issues regarding the constitutionality of the surrender of own nationals and the protection of fundamental rights as raised in the various national Courts.

The window to the 'conflict' between the national Constitutional Courts and the ECJ as to the development and impact of the law opened with the Judgment of 27th April 2005 of the Polish Constitutional Court.[164] In this case[165] the Constitutional Court was asked whether article 607 (t) of the Polish Code of Criminal Procedure (hereinafter CCP) was compatible with Article 55 section 1 of the Polish Constitution.

In particular, article 607 (t) of the CCP provided that: '*where a European Arrest Warrant has been issued for the purposes of prosecuting a person holding Polish citizenship or enjoying the right of asylum in the Republic of Poland, the surrender of such a person may only take place upon the condition that such a person will be returned to the territory of the Republic of Poland following the valid finalisation of proceedings in the State where the warrant was issued*'. At the same time, article 55 sections 1 of the Polish Constitution provided that: '*The extradition of a Polish citizen shall be prohibited*'. The Court had to therefore examine the relation between the terms 'surrender' and 'extradition'.

Having said that, the Polish Constitutional Court was of the opinion that the main question was, in essence, whether the surrender of a Polish citizen indicated on the grounds of a European Arrest Warrant to a Member State of the EU, is a form of extradition[166]. Interestingly, the Court went on to analyze the historical meaning of the term 'extradition' in the Polish law[167]. It looked at the meaning of the term 'extradition' in the constitutional context and in the context of the CCP as well as it compared this term with the term of 'surrender' in the EAW context.

As the two institutions — of 'extradition' and 'surrender' — are not different in substance, surrender was considered to be a specific category of extradition. Characteristically the Court stated that[168]: '*As the (core) sense of extradition consists of the surrender to a foreign state of an indicted or convicted person, in order to enable the conduct of criminal proceedings against this person, or the serving of*

[164] Judgment P1/05 available online at: htpp://www.trybunal.gov.pl
[165] For a detailed analysis of the facts of the case and the reasoning of the Court see Kazimierz Bem, *'The European Arrest Warrant and the Polish Constitutional Court Decision of 27 April 2005',* in Elspeth Guild, Constitutional challenges to the European Arrest Warrant, 2006, p.125-136.
[166] See par. 3 of the judgment, p. 12.
[167] See par. 3.1 of the judgment, p.12.
[168] See par. 3.6 of the judgment, p.17.

punishment established by a sentence concerning this person, therefore the surrender of a person indicted by the EAW for the purpose of conduct against that person on the territory of another EU member state of criminal proceedings or of serving of a delivered sentence of imprisonment or some other custodial measure, must be recognised as its modality. If surrender is only a category (type, particular form) of extradition as regulated in Article 55 Paragraph 1 of the Constitution, then its particular elements (differences in relation to the statutory institution of extradition) cannot result in the derogation of the constitutional impediment barring surrender, consisting of Polish citizenship of the indicted person'.

The Court even went a step further by saying that in the human rights protection context, surrender for those concerned is a more 'painful' institution than that of extradition, since it excludes the application of the principle of double criminality and is possible to affect within shorter time limits[169]. Therefore, the Court concluded that as the constitutional lawmaker prohibited extradition of a Polish citizen, '*the same prohibition applies even more to surrender based on the EAW, which is realised for the same purpose (i.e. is essentially identical) and is subject to a more painful regime*[170]'.

The result was that the provision of the CCP was declared unconstitutional and, consequently, lost its binding force eighteen months from the date of the ruling's publication. During this transitional period, however, the Constitutional Court obliged the Polish courts -oddly enough- to apply the unconstitutional provision. Since then, the amendment that was required to ensure the Constitution's coherent relationship to EU law entered into force on November 7 in 2006. According to the amended article 55 of the Polish Constitution the extradition of Polish citizens is still prohibited, although this rule is no longer absolute[171]. The precondition for extradition is 'a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a Member'.

[169] Ibid.
[170] Ibid.
[171] For an analysis of the Judgment and of the new amended article 55 of the Polish Constitution see Angelika Nußberger, '*Poland: The Constitutional Tribunal on the implementation of the European Arrest Warrant'*, International Journal of Constitutional Law, 1 January 2008.

Few months later, Germany was the second country to seriously challenge the operation of the EAW, which was implemented twice. The first implementation was with the Statute EuHbG in 21.07.2004, namely 6 months later than the expiration of the implementation date. The status of the EAW first appeared to be threatened by the Federal Constitutional Court which in its decision in 18th July 2005 declared the German law to implement the Framework Decision null and void[172]. In that case, Mamoun Darkazanli, a Syrian-born German, suspected of being an Al Qaeda operative, had been held in custody for extradition to Spain under the warrant procedure. On appeal, on 18 July 2005, the Federal Constitutional Court held that the law applying the warrant did not respect fundamental rights and procedural guarantees and so was contrary to the German Constitution[173].

The main argument in the Court's decision was that the German implementing law had not provided for an appeal mechanism and had failed to 'exhaust the margins afforded to it' in the Framework Decision in relation to the fundamental rights of suspects. In addition, the Court examined in detail the issue of extradition of German citizens, and in particular the relation between the German citizenship and the German legal order. The Court was of the view that citizens who remain in the German territory should be protected from the uncertainties of criminal procedure and criminal conviction in a foreign legal system, as their trust in the German legal order has a high Constitutional value[174], guaranteed as a fundamental right. The German Parliament, thus, the Court found, did not take into account this special relation between the citizen and the State, as it did not transpose in the national legislation grounds of refusal based on the 'territoriality'.

The result of the decision, which notably ruled unconstitutional the implementing law not in some particular provisions, but on the whole, was that the EAW could no longer apply in Germany and the suspect in question was released. It should, therefore, take a new law from the German Parliament to reinstate the arrest

[172] See the Judgment BVerG, 2 BvR 2236/2004 of 18.07.05, Available from: http://www.bundesverfassungsgericht.de

[173] See Geyer Florian, '*The European Arrest Warrant in Germany. Constitutional Mistrust towards the Concept of Mutual Trust'*, in Guild (Ed.), Constitutional Challenges to the European Arrest Warrant (Wolf Legal Publishers, 2006), pp. 101–124. See also Alicia Hinarejos Parga, '*Bundesverfassungsgericht (German Constitutional Court), Decision of 18 July 2005 (2 BvR 2236/04) on the German European Arrest Warrant Law'*, Common Market Law Review, (2006), Vol. 43, p.p. 583–595.

[174] See Valsamis Mitsilegas, CMLR, id. 2006, p.1295.

warrant[175]. What is notable however, is that this case, in essence, brought to the surface the existing scepticism between Member States as to the attempted EU integration in the field of judicial cooperation in criminal matters and to the main question of the existence (or not) of mutual trust. As correctly Valsamis Mitsilegas argues, this decision sent '*a strong, critical message in the debate over the existence of mutual trust and the direction and development of EU criminal law*[176]'. The Court, thus, rejected the introduced automaticity by the mutual recognition and it did not take mutual trust for granted[177].

Following a very intensive and controversial debate, the new Statute implementing the EAW[178] came into force on the 2nd August 2006, and Germany is currently fully applying the EAW, and the principle of mutual recognition thereof[179]. When drafting the second Bill, and in order to avoid unpleasant surprises from the Federal Constitutional Court, the government tried to fully comply with the Court's ruling by literally including whole passages of the judgment. The new implementing legislation has included more rights of appeal, new grounds for refusal, and more complicated procedures[180] which could ensure a more protective position of the accused, but seem to be contrary to the spirit of the Framework Decision which envisages a more simplified extradition procedure.

After Germany, the next 'attack' on the constitutional existence of the Framework Decision on the EAW came from the Supreme Court of Cyprus[181]. The facts of the case are summarised as follows[182]: The judicial authorities of the UK issued an EAW

[175] Following the general elections in Germany, the Bill has nevertheless been adopted by the Federal Government on 25.01.06. See the German Press release of 25.01.06.
[176] See Valsamis Mitsilegas, EFAR id. 2007, p. 463.
[177] See Valsamis Mitsilegas, id. 2009, p. 135.
[178] Europäisches Haftbefehlsgesetz – EuHbG 2006.
[179] It is noteworthy that the German Federal Constitutional Court on 30 June 2009 handed down its judgment on the compatibility of the Lisbon Treaty with the German Basic Law. As to criminal law, the Court was of the opinion that the competences that have been newly established or deepened by the Treaty of Lisbon in the areas of judicial cooperation in criminal matters […] can, within the meaning of an interpretation of the Treaty that does justice to its purpose, and must, in order to avoid imminent unconstitutionality, be exercised by the institutions of the European Union in such a way that on the level of the Member States, tasks of sufficient weight as to their extent as well as their substance remain which legally and practically are the precondition of a living democracy. Available online.
[180] In particular, it provides for a three step procedure including both judicial and administrative authorities. See par. 79 of the EuHbG. However, this is contrary to the scope of the Framework decision which provides for a more simplified procedure involving only judicial authorities and not political or administrative authorities.
[181] See Judgment Attorney General of the Rebublic v. Konstantinou of 7/11/2005, in [2007] 3 C.M.L.R. 42, p.1163. In addition, '*European Arrest Warrant – High Coust of Cyprus*' (Europaiko Entalma Sillipsis – Anotato Dikastirio Kiprou), Poiniki Dikaiosini, 2/2006, p.179.
[182] For a detailed analysis of the facts of the case and the Judgment see Elias A. Stefanou and Andreas Kapardis, *'The First Two Years of Fiddling around with the Implementation of the European Arrest*

to the Cypriot authorities to arrest and surrender a person who was charged with conspiring to defraud the British government, but who had both the UK and Cypriot nationality. The application for the issue of an EAW, filed by the Attorney General, was dismissed by the district Court of Lemesos on the ground that the national law transposing the Framework Decision on EAW was unconstitutional. The Attorney General appealed against the decision and the case was heard by the Full Bench of the Supreme Court of Cyprus.

The Attorney General limited his arguments to two grounds. Firstly, he supported the supremacy of the European Law over any national law. He claimed that since the House of Representatives had enacted a law which implemented the provisions of the Framework Decision, precedence should be given to European Law over the provisions of the Constitution. Secondly, he suggested that, alternatively, the provisions of the law must be construed to conform to Article 11 of the Constitution of Cyprus as the execution of a EAW did not amount to *extradition* under Article 11.2 (f) of the Constitution, but rather related to *surrender* of an arrested person to the competent authorities as contemplated by article 11.2 (c) of the Constitution of Cyprus. Article 11.2 (c) –at that time- stated that: '*No person shall be deprived of his liberty save in the following cases when and as provided by law: […] (c) […] the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so*'. On the other hand, Article 11.2 (f) –at that time- stated that: '*No person shall be deprived of his liberty save in the following cases when and as provided by law: […] (f) […] in the case of an alien against whom action is being taken with a view to deportation or extradition*'.

In its decision, however, the Court did not follow this reasoning. It was of the opinion that irrespective of whether it could be brought under Article 11.2 (c) or 11. 2 (f), the Constitution of Cyprus provides an *exhaustive* list of the reasons for which a person may be arrested. Yet, arresting a person in the context of the EAW is not one of the reasons permitted by the Constitution and article 11.2 (c) is aiming at specific purposes that did not correspond with those of the EAW; hence the law implementing

Warrant in Cyprus', in Elspeth Guild, Constitutional challenges to the European Arrest Warrant, 2006, p. 75-83.

the Framework Decision could not be construed in conformity with the Constitution[183].

As to the question of supremacy of the Cypriot implementing law to the Constitution the Court stated that Framework Decisions might be binding as to the result to be achieved, but they are not directly applicable. In consequence, given that the Cypriot EAW law did not conform to the domestic constitutional requirements, the Framework Decision was not properly transposed into the Cypriot legal order and therefore could not be accepted as a superior legislation to the Constitution. Interestingly, the Court came to these conclusions having referred to decisions that dealt with the conformity of EAW with constitutional provisions, issued by the Supreme Constitutional Courts of Germany and Poland, Areios Pagos of Greece and the French Council of State. In addition, it is notable that it made a full reference to the ECJ's *Pupino*[184] ruling by stressing that even if the effect of this case is important, it should be noted that the obligation arising from this case – namely the obligation of conforming interpretation in relation to Framework Decisions adopted in the context of Title VI of the Treaty on European Union[185] - is conditional upon the national judge deciding whether an interpretation of its national law is in accordance with the Framework Decision. Applying this theory to the case in question, the Court found that the Constitution was prohibitive to permit another interpretation than the one that the Court followed.

The result of this case was that it caused amendment of the Cypriot Constitution[186]. Article 11.2 (f) now expressly permits the issuance and execution of a EAW against Cypriot nationals as well as a new Article 1(A) has been inserted which, in conjunction with the revised Article 179, acknowledges the supremacy of EU law over the domestic -constitutional or derivative- provisions when an EU rule is already part of the national legal order.

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[183] See Alexandros Tsadiras, '*National Courts - Cyprus Supreme Court (Ανώτατο Δικαστήριο Κύπρου), Judgment of 7 November 2005 (Civil Appeal no. 294/2005) on the Cypriot European Arrest Warrant Law'*, Common Market Law Review, 2007, pp. 1515-1518.

[184] See Pupino case C-105/03 of 16/06/2005. OJ C 193, 06/08/2005, p.03.

[185] See Pupino case, par. 43.

[186] As Eftichis Fitrakis points this decision is significant because it shows that a common law country like Cyprus which applies the principle 'all crime is local', had -after this decision- to make constitutional changes in order to permit the surrender of its own nationals. See Eftichis Fitrakis, '*European Arrest Warrant'* (Europaiko Entalma Sillipsis), Poiniki Dikaiosini, 2006, p. 210-220.

A few months later it was the Czech's Constitutional Court[187] turn to challenge the Framework Decision. In this case, the petitioners claimed that certain provisions of the amendment provisions of the Criminal Code[188] and the Criminal Procedure Code[189] permitted the surrender of the citizens of the Czech Republic to a foreign country for the purpose of their criminal prosecution under the EAW, which, however, was contrary to provision 14 (4) of the Charter according to which: '*No citizen may be forced to leave his or her homeland*'. In addition, they claimed that Section 412 (2) of the Criminal Procedure Code which provided for the cancellation of the dual criminality principle for the listed offences in the Framework Decision was contrary to Art. 39 of the Charter of Fundamental Rights and Freedoms[190] as a Czech citizen could be surrendered for criminal prosecution a foreign country, but for an act which may not have been criminal under the Czech Law.

The Czech Constitutional Court rejected the allegation that the permanent relationship between a citizen and the state has been infringed by passing the national legislation on the EAW. The Court gave a broader interpretation to art. 14(4) of the Charter by saying that this article is not related to extradition or surrender, but it prevents from excluding a Czech citizen from the community of citizens of the Czech Republic[191], which, yet, is not the case with the EAW. On the contrary, the surrender of a citizen under the EAW and its characteristics –namely surrender for a limited time for criminal proceedings being held in another EU Member State and conditional upon his return to his homeland- did not and could not fall within the meaning of the scope of art.14 (4) of the Charter as it did not constitute 'force' to leave his homeland.

Regarding the second argument, namely that the abolition of the dual criminality principle for the listed criminal offences is in contradiction with the *nullum crimen sine lege* principle, the Constitutional Court rejected this argument too. It was of the opinion that since par. 412 (2) of the Criminal Procedure Code did not define the criminal offences not subject to the dual criminality principle, that provision was not in contradiction with art. 39 of the Charter. In addition the Court stated that par. 412

[187] Judgment no. Pl. ÚS 66/04 from May 3, 2006, '*Constitutionality of Framework Decision on the European Arrest Warrant'*, Re [2007] 3 C.M.L.R. 24.
[188] In particular, section 21(2) of the Criminal Code.
[189] In particular, sections 403(2), 411 (6) (e), 411 (7) of the Criminal Procedure Code.
[190] Article 39 provided that: 'Only a law may designate the acts which constitute a crime and the penalties or other detriments to rights or property that may be imposed for committing them'.
[191] See par. 3 of the Judgment no. Pl. ÚS 66/04 from May 3, 2006, '*Constitutionality of Framework Decision on the European Arrest Warrant'*, Re [2007] 3 C.M.L.R. 24.

(2) of the Criminal Procedure Code was rather a procedural law than a substantive law.

The list in Section 412(2) of the Criminal Procedure Code concerns the procedure on the surrender only and, therefore, the surrendered person will not be prosecuted in another Member State for a criminal conduct listed in Section 412 (2), but for a crime defined in the substantive criminal law of this Member State. In addition, the list of criminal offences in Section 412(2) of the Criminal Procedure Code does not mean the application of criminal substantive law of another Member State in the Czech legal order. Therefore, the Court stated that surrender pursuant to the EAW is not the imposition of punishment in the sense of art.39 of the Charter; hence it is not in contradiction with the *nullum crimen sine lege* principle.

Having examined the most important cases of the national constitutional Courts one could detect the difficulty that the judicial authorities in several Member States had to tackle in order to dispose of the raised constitutional concerns. These concerns, however, were mainly related with two main characteristics of the nature of criminal law and also with two very sensitive elements strongly connected to the national sovereignty: the question of surrender of nationals and the question of the abolition of the principle of double criminality.

They are also connected to the main debate over the supremacy of EU Law over national, even constitutional, law. However, one should note that from the analysis of the above mentioned judgments, it is apparent that there is an ambiguity and also different views in national legal orders as to the status of the third pillar. As Valsamis Mitsilegas puts it the approach taken by the national Constitutional Courts has been different, with the German Constitutional Court being the most reluctant to accept uncritically obligations imposed by the EU[192]. Yet, none of them explicitly ruled that EU law has primacy over national law[193] or questioned the validity of the Framework Decision on the EAW itself. This was the case that gave the ECJ the opportunity to make, for the first time, an authentic decision in a preliminary ruling procedure[194] that would settle the EAW question, a very much debated and controversial issue that involves foundational infrastructure issues of EU integration as well as national constitutional limits.

[192] See Valsamis Mitsilegas, id. 2006, CMLR, p. 1277-1311.
[193] See Valsamis Mitsilegas, 2009, p. 138.
[194] ECJ made use of article 35 TEU as well as of art. 234 TEC in order to answer queries posed by national courts regarding the interpretation or validity of European rules.

2. Issues regarding the legality of the Framework Decision confronted by the ECJ.

As stated above, the recent judgment of *Advocaten voor de Wereld* [195] of the ECJ constitutes the first challenging test of the validity of the Framework Decision on the EAW at the EU level. The facts of the case are in summary the following: The applicant, Advocaten voor de Wereld, a non-profit making association, brought an action before the Belgian Courts for the annulment, in whole or in part, of the Belgian law implementing the Framework Decision. The main objections put forward by the association were two.

As to the first raised argument, namely that the Framework Decision was itself invalid since under article 34 (2) (b) TEU, Framework Decisions might be adopted only for the 'purpose of approximation of the laws and regulations of the Member States', which, however, was not the case with the EAW Framework Decision; hence it should have be chosen to implement the EAW by way of convention and not by Framework Decision, the Court rejected this argument. In particular, Advocaten voor de Wereld submitted that since the EAW Framework Decision replaced convention law in the field of extradition among Member States, this was the legal instrument that should have been used. In addition, they questioned the power of Framework Decisions to harmonize national criminal law, claiming that this must be limited to conventions.

However, the Court was of the opinion that that mutual recognition of the arrest warrants required the approximation of the laws and regulations of the Member States with regard to judicial co-operation in criminal matters, and in particular, of the rules relating to the conditions, procedures and effects of surrender as between national authorities[196]. Therefore, there was nothing to justify the conclusion that the approximation of the laws and regulations of the Member States by adopting Framework Decisions under art. 34 (2) (b) TEU was directed only at the Member States' rules of criminal law mentioned in art. 31 (1) e TEU.

[195] Case 303/05, '*Advocaten voor de Wereld'*. Judgment of 3 May 2007, [2007], 3 C.M.L.R.1. See also Dorota Leczykiewicz, *'Constitutional Conflicts and the Third Pillar'*, European Law Review, (2008), 33, p. 230-242 and Steve Peers, '*Salvation outside the Church: Judicial Protection in the Third Pillar after the Pupino and Segi Judgments'*, Common Market Law Review, (2007), 44, p.883-929. See also Geyer, '*Case Note: European Arrest Warrant. Court of Justice of the European Communities*', European Constitutional Law Review, vol. 4, 2008, pp.149-161.

[196] See par. 29-30 of the judgment.

Having said that, the Court went a step further and clearly ruled that art. 34 (2) TEU -insofar as it lists and defines the different types of legal instruments which can be used in order to achieve the goals of the Union set out in Title VI of the TEU- cannot be construed as meaning that the approximation of the laws and regulations of the Member States by adopting Framework Decisions cannot relate to areas other than those mentioned in art. 31 (1) (e) TEU and, in particular, the matter of the EAW. In addition, the Court stated that art. 34 (2) TEU does not establish any order of priority between the different instruments listed in this provision. As well as that it does not make any distinction as to the type of measures which may be adopted on the basis of the subject matter to which the Council, exercising its discretion, may want to take measures and to promote cooperation. It was decided accordingly that the Framework Decision was not adopted in a manner contrary to art. 34(2) (b) TEU.

The Court also rejected the second argument - namely that the abolition of the principle of double criminality was incompatible with art. 6 (2) TEU. Its reasoning begins by recalling the importance of the European Convention of Human Rights (ECHR) and, in particular, article 7.1, stating that the principle of legality (*nullum crimen, nulla poena sine lege*) '*implies that legislation must define clearly offences and the penalties which they attract*'. This condition is met when the individual is in a position to know which acts or omissions will make him criminally liable[197]. However, the Framework Decision did not seek to harmonize the listed criminal offences in respect of their constituent elements or of the penalties which they attracted. Therefore, the Court very interestingly ruled that, while art. 2 (2) of the Framework Decision abolished the verification of the double criminality principle, the definition of those offences and of the penalties applicable continued to be in the authoritative sphere of the *issuing* State[198]. The Court, having said that, recalled that all Member States -according to art. 1 (3) of the Framework Decision- respect fundamental legal principles and fundamental rights[199] as enshrined in art. 6 TEU, and thus, respect the principle of legality of criminal offences and penalties[200].

[197] See par. 50 of the judgment.
[198] See Valsamis Mitsilegas, id. 2009, p. 141-142.
[199] As Steve Peers makes the point the Court in this case confirmed that within the Third Pillar the human rights principles are also applicable when considering the validity of EU law and the national application of EU law. See Steve Peers, CMLR, id. 2007, p. 926.
[200] See par.51-54 of the judgment.

Furthermore, the Court found the opportunity to clarify that the categories of the listed offences in art. 2 (2) of the Framework Decision featured among those the seriousness of which in terms of adversely affecting public order and public safety justified the abolition of the principle of double criminality. With regard to the fact that the lack of definition of the categories of offences in question could lead to different implementation within the various legal systems of the Member States, the Court reminded us that it would '*suffice'* to point out that it was not the objective of the Framework Decision to harmonize the substantive criminal law of the Member States and that nothing in the TEU made the application of the EAW conditional on harmonisation of the criminal laws of the Member States. It followed that the abolition of double criminality is not incompatible with art. 6 (2) TEU; hence neither is it inconsistent with the principle of legality and the principle of equality and non-discrimination, principles which are both guaranteed by art. 6 (2) TEU and both are applicable to the third pillar[201].

It is undoubted that the recent judgment of the ECJ in *Advocaten voor de Wereld* confirmed the legality of the European Arrest Warrant Framework Decision and indeed that it paved the way for the further development of the EAW as a judicial cooperation tool. It is also undoubted that it recognized the wide margin of discretion of Member States, as was expressed in particular with regard to the definition of the 32 listed offences, and thereby confirmed that Member States have a strong say to the implementation of the Framework Decision. However, this discretion of Member States is not absolute or unlimited. The Court recognized at the same time the Council's discretion as to the choice of the legal instrument which, in fact, is not an insignificant issue, since there are key questions and consequences concerning procedure and competence involved. In addition, it is undoubted that the Court made clear that it is the task, if not obligation, of each Member State to ensure that the fundamental rights are protected sufficiently when establishing for example the legal

[201] See the recent ***Case C-123/08 Wolzenburg*** (Judgment of 6 October 2009), which concerned the principle of equal treatment as regards national implementation of the European Arrest Warrant. In this case the ECJ, applying the principle of equal treatment in the third pillar, ruled that art.12 EC (the principle of non-discrimination) does not preclude the legislation of a Member State of execution which allows for the refusal to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst requiring, for a refusal in the case of a national of another Member State having a right of residence as an EU citizen, that it be subject to the condition that the person has lawfully resided for a continuous period of five years in the Member State of execution.

content of criminal offences and penalties[202]. Yet this approach taken by the ECJ confirmed the importance of fundamental rights as a means of limiting Member State's actions under the third pillar. The wording used by the Court (i.e. '*must* respect fundamental rights') implies that national authorities when applying the EAW are subjected to a human rights review by the ECJ[203]. Consequently, one can rightly argue that the role of the national parliaments as well as of the national Courts is conditioned -ultimately- by EU law[204].

It is apparent that the Court strongly supported the principle of mutual recognition as a form of judicial cooperation in criminal matters which appears to be as an alternative to harmonization. With its highly political judgment[205], the Court tried to establish some basic interpretative principles, for the attention of national Courts applying or controlling the legality of national legislation which implements the European arrest warrant. The ECJ now seems to be the 'depositary' of the application of the principle of mutual recognition. Member States might have been entrusted with the power to define criminal offences, but at the same time Member States are strongly recommended by the ECJ to respect their obligation to recognize the decisions of other Member States in conformity with their national law.

However, if someone considers the nature and the essence of the conflict between the different Constitutional Courts and the EAW he would –at least- expect a more decisive approach by the European Court of Justice. Issues very much debated and contested like the surrender of nationals and the question raised by several Constitutional Courts as to whether the EAW is rather an extradition procedure than a new mechanism of judicial cooperation which, however, lacks sufficient protection of human rights, remained unanswered. The ECJ had a unique opportunity to make clear most of the raised controversial issues, but it preferred to remain silent. It is, therefore, left to be seen whether Member States' Courts will be willing to set aside national rules, sometimes even Constitutional ones, conflicting with third pillar instruments.

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[202] See Daniel Sarmiento, '*European Union: The European Arrest Warrant and the quest for constitutional coherence'*, International Journal of Constitutional Law, 1 January 2008, who argues *inter alia* that the ECJ created an obligation under EU law on national authorities, the ultimate control of which is entrusted to the Luxembourg Court.

[203] See Valsamis Mitsilegas, id. 2009, p. 142.

[204] See Dorota Leczykiewicz who argues that the importance of this case is that it impliedly recognized the supremacy of third pillar law over national law. ELR, id. 2008, p. 230-243.

[205] See Vassilis Hatzopoulos, '*With or without you ... judging politically in the field of Area of Freedom, Security and Justice*', 2008, European Law Review, p. 1-16.

In any event, it is certain that the window of conflict between national Constitutional Courts and the ECJ is still open.

From the above analysis one can draw the following conclusions: The implementation of the EAW was not an easy going case. On the contrary, it demanded serious amendments of the national legislation (even Constitutional) in order to comply with the scope and aim of the Framework Decision[206]. Indeed, the application of the EAW in the various jurisdictions revealed the lack of certainty of law. At the same time, as the ECLAN study concludes, Supreme Courts in all Member States *have shown themselves anxious to respect the letter and the spirit of the EU instrument as faithfully as possible*[207]. Furthermore, all jurisdictions were seriously aware of the differences between national legal systems across Europe, and the need for additional safeguards to protect their own citizens' from allegedly inferior criminal law. However, this constitutes an unchallengeable argument that trust between Member States is not that much promoted and established, so that judicial cooperation in criminal matters can work effectively now and in the long term. It is now evident that some degree of ambiguity exists in the relationship between state sovereignty and mutual trust[208].

Besides, this point is strengthened by the European Commission, which, in a very frank statement, noted that the Member States are still reluctant to recognise criminal decisions taken in another Member State of the Union[209]. It, therefore, seems to be a confession made by the Commission that mutual recognition in practice does not work effectively in the existing framework. This is the reason why the Commission, in this Communication, concludes by calling for a strengthening of mutual trust as this is an '*absolute necessity*', if the European judicial area is to be achieved.

[206] See ECLAN study, id. 2008, where it is argued that the current situation certainly indicates that there are numerous differences of treatment, including some significant ones, between nationals and residents, either in law or in practice.
[207] Ibid.
[208] See Massimo Fichera, id. 2009, p. 82.
[209] See '*Communication from the Commission'*, id. COM (2005), 195 final.

VII. Conclusion

The principle of mutual recognition in the extent of its operation in the third pillar constitutes, undoubtedly, a legal and political revolution. Having its origin in the field of cooperation between Member States in the internal market as well as to the abolition of borders within the European Union, it was transplanted to the criminal law sphere as a successful tool which had shown satisfactory results in its operation in the internal market. However, if one tries to compare the operation of the principle in the two systems (single market – criminal law), and then he will unavoidably lead to two different, but main, conclusions:

Firstly, the main objection is that the area of Criminal Justice is qualitatively different from the Internal Market. The first one is very much connected with the limitation of the citizens rights, whereas the latter aims mainly at profit maximization and a degree of flexibility exists thereof, which has a very minor significance in the exercise of the citizens' rights; and,

Secondly, mutual recognition in the context of criminal law requires significant changes in order to work effectively, changes which in some cases need to be even Constitutional, whereas mutual recognition in the context of Internal Market needs only slight changes which, yet, can not be equally applied in criminal justice.

Therefore, questioning if there is any relevance between the original concept of the principle of mutual recognition in the context of Internal Market and the 'copied' concept in the judicial cooperation in criminal matters, the answer is clear and logical: Mutual recognition itself cannot serve effectively the aims of criminal justice as it does in the context of internal market.

Mutual recognition in criminal matters needs additional prerequisites and safeguards which could make it operational in the context of judicial cooperation in criminal matters. As Valsamis Mitsilegas puts it '*EU intervention in criminal matters must not be equated with intervention regarding the internal market*'[210]. In particular, from all the above analysis, it is obvious that mutual recognition requires 'armoured' mutual trust. The new model of mutual recognition and enforcement of criminal judicial decisions requires a sufficient level of mutual

[210] See Valsamis Mitsilegas, id. 2009, p. 118. Also see Valsamis Mitsilegas, '*The Constitutional Implications of Mutual Recognition in Criminal Matters in the EU'*, Common Market Law Review, vol. 43, 2006, p. 1282, where he argues that 'mutual recognition represents a "*journey into the unknown*", where national authorities are in principle obliged to recognize standards emanating from the national system of any EU Member State on the basis of mutual trust, with a minimum of formality'.

confidence between the Member States in each other's criminal justice systems. Besides, as the ECLAN study suggests '*it has not yet been possible to establish the desired Area of Justice in the EU based on mutual recognition of decisions and on the mutual trust which underpins it; attempts to do so appear increasingly chaotic, certainly not smooth'*[211].

The European Arrest Warrant is a good example from which to argue that this trust is not sufficiently established between Member States, in order to become a paradigm to be copied in the near future in all the fields of judicial cooperation in criminal matters. Doubts and reservations, undoubtedly, remain in practice and must be overcome if mutual distrust is to be avoided. Then, the question which arises is how to achieve this goal.

An essential prerequisite is the political willingness of Member States to create common values upon which the principle of mutual recognition can effectively rely. Minimum harmonization of the law is essential in order to avoid 'discordant views' from Member States while implementing the criminal law instruments, which can seriously challenge – if not damage – the smooth operation of the principle of mutual recognition. The adoption of the European Arrest Warrant and of the European Evidence Warrant without having harmonized all of the listed offences is certainly evidence that the Commission did not view full harmonization as an absolute requirement for the functioning of mutual recognition. This, at the same time, implies that the Commission was aware of the difficulty of achieving agreement for the harmonization of the listed offences. This, however, weakens the principle of mutual recognition and its application, which should be seen through minimum harmonisation and not *vice versa*. To that end, the adoption of common definitions with regard to the 32 listed offences in both the EAW and the EEW seems to be a first, but very essential, condition in order for these instruments to work effectively now as in the long term and to avoid unpleasant constitutional challenges by the Constitutional Courts of Member States.

Nevertheless, given that EU has started taking actions in the very sensitive field of criminal law; this should mean that the individual rights in the criminal proceedings must equally become an issue that concerns the Union within its borders at the same level. The EU must ensure that the aim of mutual recognition does not undermine the very rights it seeks to safeguard.

[211] See ECLAN study, id. 2008.

Yet, at the moment, there is not any sufficient and effective EU monitoring mechanism of any breach of Member State's obligation under international human rights law. There are sufficient international instruments for protecting human rights across Member States, but there is not an adequately monitored and regularly evaluated way of protecting them.

Thus, Member States must ensure that the protection of human rights is not just a typical prerequisite of EU membership, but that it constitutes a primary target of the EU not just in theory, but in practice as well. One way to prove and secure this target is the development of a more systematic, effective, and perhaps enforceable mechanism of monitoring the human rights between the Member States. The European Court of Justice should have a stronger say in the monitoring of human rights in Member States, in parallel with the European Court of Human Rights.

At the same time, an independent body of experts with the cooperation of the Commission which, however, will have substantive power of monitoring and imposing sanctions on the Member States that violate their international obligations under international human rights law, might be a first attempt to ensure two very important aspects of EU Law. Firstly, that the criminal justice systems of Member States meet the standards set out in the international instruments, which standards, however, must always govern how states treat people under their jurisdiction. Secondly, that Member States comply in practice with the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles on which the Union is founded.

In the following chapter, Greece will be used as a particular case study in order to explicitly examine the impact and the operation of the principle of mutual recognition in a traditionally civil law jurisdiction. Greece has been chosen on the basis that is a country where the operation of the European Arrest Warrant has proved to be significantly controversial due to the serious and very controversial issues of compatibility of the EAW with the Greek Constitution. The surrender of Greek nationals, the abolition of double criminality as well as the level of protection of human rights, are some of the main issues raised during the years of its existence in the Greek legal order. To that end, the implementation and operation of the European Arrest Warrant will be examined in detail in the following chapter in order to reveal all this debate as well as the difficulties that arose, and finally, some possible changes will be suggested.

Chapter 2

'The Impact of the Principle of Mutual Recognition on the Greek Criminal Legal Order'

I. Introduction

The principle of mutual recognition regarding the judicial cooperation between the EU Member States in the sensitive field of criminal law has proved to be one of the most controversial and significantly debated issues in the Greek Jurisdiction. The only measure based on the principle of mutual recognition which has been implemented in the Greek legal order, due to several reasons, is the Framework Decision on the European Arrest Warrant in 2004.

The purpose of this chapter is to explore the main issues related to the operation of the principle of mutual recognition in the Greek Jurisdiction, drawing upon interviews with judges, policy makers and practitioners. In particular, the chapter will begin by looking at the 'big picture' of the principle of mutual recognition in the Greek legal order. The analysis will then focus on the parliamentary debate on the implementation of the Framework Decision on the European Arrest Warrant. It will then go to examine the implementation of the Council Framework Decision in Greece and its systematic article by article analysis, as well as its interpretation by the national Courts accompanied by the views of Greek academics and Greek practitioners.

II. The 'Big Picture' of the Principle of Mutual Recognition in the Greek Jurisdiction

The principle of mutual recognition, as has been primarily envisaged and developed in the various European legal instruments, has been seen, in the Greek Jurisdiction, as a system which –in general terms- significantly helps the cooperation between the judicial authorities of Member States, but which cannot, and should not, lead to an 'automatic' or 'direct enforceability' of judicial decisions.

Of all the instruments which have been adopted in the European Union and are based on the principle of mutual recognition, until now only the European Arrest Warrant has been implemented in the Greek Jurisdiction. Neither the Framework Decision on the application of the principle of mutual recognition to confiscation orders or freezing orders nor the Framework Decision on the application of the principle of mutual recognition to financial penalties have been transposed in the Greek Jurisdiction[212]. According to the official answer of the Greek Ministry of Justice[213] this significant delay is due to the following political and practical reasons[214]:

a. great number of international (not European necessarily) legal instruments to be implemented;
b. Political priority to the domestic national legislation: It is notable that even if the previous political leadership of the Ministry of Justice was informed by the relevant department of the Ministry about the urgent pending bills (among which the aforementioned in chapter one European legislation), the political leadership did not show the corresponding political will, as a result of which the pending bills are still in the standing committees of the Ministry. However, after the elections of October 2009, the new Minister of Justice, Transparency and Human Rights has significantly pushed to implement the pending bills as soon as possible.
c. Availability of the Greek Parliament: In order for European Legislation to become part of the Greek law it needs to go through a very complex and time consuming procedure depending *inter alia* on the availability of the Greek

[212] Two special committees have recently (November 2009) been set up in the Ministry of Justice in order to propose the draft implementing law.
[213] Now called 'Ministry of Justice, Transparency and Human Rights'.
[214] Interview with X official of the Greek Ministry of Justice in 28/03/2008.

Parliament to bring into discussion and vote on the relevant Bill. This slow procedure also affects the European instruments to be implemented;

d. Lack of specialized staff in the Greek Ministry of Justice: The Greek Ministry of Justice consists of only one section on European Union issues (for both civil and criminal matters), in which there are only 3 officers to deal with all the relevant issues and problems.

III. *The negotiations of the Greek Government in Brussels towards the adoption of the Framework Decision on the EAW*

As has already been noted, the only instrument that has been implemented in the Greek legal order and operates since 2004, is the European Arrest Warrant. As regards negotiations at EU level, in general terms, in the Greek Ministry of Justice there is no formalized procedure of informing or consulting with practitioners. However, it is represented in the negotiations by judges, public prosecutors, lawyers, and academics. The experience of the above mentioned categories of practitioners and their specialization in the field of mutual recognition creates the base for the formulation of the policy of the Ministry of Justice[215].

In that framework, the Greek Ministry of Justice participated in the negotiations on the proposal for a Council Framework Decision on the European Arrest Warrant having its focus mainly in human rights concerns. Unlike with other delegations which raised even constitutional concerns (in particular with the surrender of their own nationals), Greece tried to assure as many as possible guarantees for the sufficient protection of human rights. In particular, the Greek delegation[216] gave all of its efforts to achieve the consent of the Member States in order to include as a general rule that the Framework Decision respects fundamental rights and observes the principles recognized by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, which was, eventually, included in par. 12 of the Preamble[217].

In addition, the Greek delegation focused its effort in order secure that the EAW will not be executed in cases where it has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons[218], which, as seen above, was finally included in par. 12 of the Preamble of the Council Framework Decision.

[215] Interview with X official of the Greek Ministry of Justice in 28/03/2008.
[216] Two of its main members were Mr. Chamilothoris and Mr. Vgontzas.
[217] See the relevant statement made by the –at the time of negotiations- Greek Minister of Justice Mr. Filippos Petsalnikos. Parliamentary Minutes of 22nd June 2004, session 35th, p.1286, available online at: http://www.parliament.gr.
[218] Ibid.

Finally, the Greek authorities towards the negotiation of the Council Framework Decision pressured and succeeded in order to include in the Preamble in par. 13 that: 'No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment[219]'. It is apparent that the Greek negotiating strategy was based on a number of issues all related to human rights concerns. This proves that the Greek government tried, on the one hand, to comply with its obligation under EU law to reach to an agreement at a political level at the Council with the rest of its EU partners; while, at the same time, it tried to convince the already concerned Greek public opinion that it will ensure the sufficient protection of human rights and that their personal liberties will not be jeopardized.

Nevertheless, in order to appraise the operation of the EAW in the Greek jurisdiction and the problems that were caused, one should start the analysis from the parliamentary discussions as being the very first and absolutely necessary step before the analysis of the operation of the EAW itself.

[219] Ibid.

IV. Parliamentary Debate on the European Arrest Warrant

The discussion in the Greek Parliament on the implementation of the Framework Decision of the European Arrest Warrant was held in the 35th Session of the Parliament on the 22nd of June 2004, on the 36th Session on the 23rd and the 37th Session on the 24th June 2004[220] respectively. It was one of most controversial issues discussed in the Parliament. However, in order to appraise the points that were stressed during the parliamentary debate, one should keep in mind what was the political situation in Greece at that time.

Three months before the discussion in the Parliament, Greece had national elections. In particular, the elections to elect the 300 MPs of the Greek Parliament, the so-called Vouli (Greek: Βουλή), were held on Sunday the 7th March 2004. The conservative party of *Nea Democratia* won the elections, ending eleven years of rule by the *Panhellenic Socialist Movement* (PASOK)[221]. Two smaller parties belonging to the left wing entered in the Greek Parliament: the Communist Party of Greece (*KKE*), and the Coalition of the Radical Left (*SY.RI.ZA*).

Shortly afterwards -and just almost a month before the opening ceremony of the Olympic Games hosted and organized by Greece- the Greek Minister of Justice brought the Bill in the Parliament. However, he had to face the strong objections of the Opposition. The main arguments put forward by the Opposition can be categorized in four main groups: (a) the Bill was 'express'; (b) the extradition (surrender) of Greek citizens is unconstitutional; (c) the abolition of double criminality is also unconstitutional; and (d) the protection of human rights is insufficient.

a. The Bill was 'Express'

With regard to the first argument, the Opposition stressed that the Government brought the Bill into discussion in the Parliament without it having been discussed thoroughly in the relevant scientific Committees of the Parliament and without having asked in advance and ahead of time the opinion of either the Hellenic Criminal

[220] See the Parliamentary Minutes, available online at: http://www.parliament.gr.
[221] See the official results by the Hellenic Ministry of the Interior, Decentralisation and E-Government, available online at: http://www.ypes.gr/ekloges.

Barrister's Association[222] or the Association of the Greek Judges and Public Prosecutors[223] or even giving the sufficient time to the academics to discuss it and express their views. Characteristic are on the one hand the statement of the President of the Athens Bar Association at that time who said that he would prefer a more '*fertile*' debate about this Bill, since it encloses provisions which '*seriously affect, if not and damage, the Fundamental Rights and Freedoms of the citizens*'[224] and on the other the statement by Professor Kaifa-Gbanti who argued that this quick procedure is not only unjustified, but also '*offensive for the very notion of democracy*'[225].

The Minister of Justice, following the alleged pressure[226] by the international community due to the holding of the Olympic Games of 2004 in Athens, decided as quickly as possible to implement not only the Framework Decision on the European Arrest Warrant, but at the same time, in the same Bill, to implement the Framework Decision on combating terrorism, as a counterterrorism package. However, one should not ignore the fact that, despite the pressures, Greece had already failed to implement the EAW Framework Decision within the prescribed implementing deadline[227] and was one of the very few 'old' Member States which had not done so. This, however, does not diminish the importance of the fact that the Bill was brought very quickly into discussion in the Parliament and that caused, as will be shown, confusion between the MPs.

Characteristic of this confusion is the statement made during the discussions in the Parliament by the MP Panagiotis Kammenos belonging to the governing party. He tried to connect the tragic events of the 11th September of 2001 in the USA and the events of the 11th March of 2004 in Madrid with the holding of the Olympic Games. As he characteristically stated: '*We have in front of us organizations which threaten the peace and the public security. We have in front of us the Olympic Games of 2004. It is not the most pleasant situation to deprive the citizens from their rights, but we*

[222] See the Press Releases of 2004, available at: http://www.hcba.gr.
[223] See Eleytherotypia article of Vana Fotopoulou, 23/06/2004, available online at: http://www.enet.gr/online.
[224] See the Press Releases of 2004, available at: http://www.dsa.gr. Also interview with Mr. Anagnostopoulos in 02/05/2008.
[225] See Kaifa-Gbandi, *The law on the EAW and terrorism and the statements of faith in the Constitution'*, Poiniki Dikaiosini, 2004, p.836, (in Greek).
[226] See the statement made by the MP Fotis Kouvelis during the discussion on the implementation who argued that this Bill is a result of the pressure made by the international community to the Greek Government. Parliamentary Minutes of 22nd June 2004, session 35th, p. 1284. In addition, see the statement made by the MP Antonis Skillakos who argues the Bill is the result of the pressure that the USA pushed to the Greek Government. Ibid. p.1281.
[227] The deadline was the 31st of December of 2003. See article 34 par.1 of the Council Framework Decision.

must take measures in order not to have in Greece same events as the 09/11 or the 03/11 [228]*'*. Also, MP Verginis, belonging to the governing party too, stated that there is an '*absolute relevance*' between the two tools as they both intend to create a '*common powerful European answer to the international terrorism*'[229]. This however, provoked the parliamentary reaction of the Opposition. MP Filippos Petsalnikos, belonging in the PASOK party and being the Minister of Justice at the time of negotiations of the EAW, accused the Government that it was clearly trying to *confuse* the Parliament as in the Bill in question included two issues (EAW and terrorism) different in between them[230].

b. The Extradition (surrender) of Greek Citizens is Unconstitutional

The next point raised by the Opposition was that the operation of the EAW in the Greek Jurisdiction was contrary to the Greek Constitution. In fact, this argument provoked a very controversial and much debated discussion in the Parliament. The proponents of this argument[231] were of the opinion that the arrest and surrender of a Greek national under the framework of the European Arrest Warrant was incompatible with the Greek Constitution. In particular, the question that they raised was whether or not Greek citizens can be extradited provided that article 5 paragraph 4 of the Greek Constitution provides that every Greek citizen has the right of free movement and freedom of residence in the country and the right to leave or enter Greece.

Yet, one should not ignore the fact that this article does not provide directly for the prohibition of extradition of Greek citizens. However, the supporters of this claim argued that this is presumed by the fact that the Constitution grants Greek citizens the right to enter, stay and leave from the country - with some exceptions to this right in which extradition is not included. They, therefore, argued that due to the very close relation between the citizen and the State (which is under the obligation to protect its citizens), the extradition of a Greek national would violate article 5 of the Constitution.

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[228] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1286.
[229] Ibid. p. 1309.
[230] Ibid. p. 1286.
[231] This was supported by the Opposition in total and by some academics, as it will be shown further of this chapter.

MP Fotis Kouvelis, belonging to the radical left party, accused the Government that through this Bill it assigns the rights of the Greek State to arrest and bring a Greek accused national in front of the Greek Justice, which was –according to his view- both *unconstitutional* and *unacceptable*[232]. MP Charalabos Kastanidis, belonging to the PASOK party, underlined the 'direct' –as he characterized it- unconstitutionality of the surrender of the Greek nationals to a foreign judicial authority creating in such a way a '*status of absolute insecurity*[233]' for the Greek nationals. MP Theodora Tzakri, also a member of the PASOK party, went a step further by stating that this unconstitutionality introduces a '*clear danger of abolishing the attained democratic guarantees*'[234].

Having all these reactions by the Opposition, the Minister of Justice was admittedly in a very tight spot. Speaking in Parliament and due to the potential political cost, he decided to make a clear, explicit and indisputable statement: '*No Greek citizen will be extradited* [235]'. In addition, the Minister of Justice went a step further by assuring the Parliament that the Ministry has secured in an '*inviolable'* way that in practice all Greek nationals will be judged in Greece and that Greeks will remain in a very '*strict'* way under the jurisdiction of the Greek justice[236]. Furthermore, MP Viron Polidoras, belonging in the governing party and trying to support the efforts of the Minister of Justice, clearly stated that all Greek citizens will remain in the Greek jurisdiction[237]. Yet, all these statements seemed to be more a political 'firework' in order to diminish the reactions by the Opposition, rather than reflecting the reality. In fact, as will be seen below, the Supreme Court of Appeal in Greece in all of its cases[238] found no violation of article 5 of the Constitution and thereof the surrender of Greek nationals due to the operation of the EAW was and still is absolutely compatible with the Greek Constitution.

[232] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1284.
[233] Ibid, p. 1294.
[234] Ibid, p. 1303.
[235] See the Parliamentary Minutes of 23rd June 2004, session 36th, p.1326.
[236] See the Parliamentary Minutes of 22nd June 2004, session 35th, p. 1292.
[237] Ibid, p.1297.
[238] In all of its cases the Supreme Court permitted finally the extradition of Greek citizens overcoming in that way the issue of unconstitutionality. A detailed analysis is given further of this chapter.

c. The Abolition of Double Criminality is Unconstitutional

The next main point raised by the Opposition was the abolition of the principle of double criminality. MP Evangelos Venizelos, belonging to the PASOK party and being also a Professor of Law, strongly criticized the Greek Government because –according to his view- by abolishing the double criminality principle, this, in a democratic society, violates the rule of law as there is no rule of law without respecting the fundamental principle of '*Nullum crimen, nulla poena sine lege'.* As he stated, the Greek Parliament is not obliged to simply '*copy'* the catalogue of the 32 offences listed in the Framework Decision as this would create an absolute '*vagueness*' in the Greek legal order. On the contrary, the Parliament should examine if –instead of copying the catalogue- there is a need to make any modifications to the criminal code and to the criminal procure code in order to include offences of the catalogue which are not punishable in the Greek legal order. In such a way, the Greek courts would avoid cases where they would be obliged to surrender a requested person for an offence which was not punishable in the Greek jurisdiction[239].

The next 'attack' came from the socialist MP Konstantinos Rovlias who accused the Government that this Bill creates to the Greek citizens a '*feeling of insecurity*'[240]. This happens so, not only because the Greek Justice may surrender a Greek to a foreign State, but mainly because it may surrender a Greek to be judged, if not and jailed, for a crime whose elements he may not know, or -even worse- for a crime that in fact does not constitute punishable criminal behaviour according to the Greek criminal code. He also criticized the abolition of the double criminality rule by stating that the '*epigrammatic and vague*' reference of the Bill to a list of 32 offences constitutes a breach of article 7 of the Constitution, namely of the fundamental principle of '*No punishment without law*'.

The response of the Minister of Justice to all this criticism by the Opposition was immediate, but not persuasive enough. He argued that the Council Framework Decision itself '*does not permit for essential changes*' and that Member States while implementing a Framework Decision '*do not have the chance to implement the European legislative tool in a different way from the one originally adopted*'[241].

[239] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1288.
[240] Ibid, p. 1301. See also the Parliamentary Minutes of 23rd June 2004, session 36th, p.1323.
[241] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1291. It is notable that MP Antonios Fousas, belonging to the governing party, stated that it is significant that the abolition of the

Yet, even if somebody would agree with this statement in principle[242], this does not mean that Member States do not have the possibility –if not the obligation- to make all the essential modification to their internal national law in order to make the operation of the Framework Decision both effective and functional or to implement the Framework Decisions taking into account the other fields of national criminal law which, however, may interact with the handling of the EAW[243]. Nevertheless, this did not happen in the case of Greece.

The Minister argued that all the offences included in the list of the 32 crimes for which the double criminality principle is abolished, are already included as conducts criminally punishable according to the Greek Criminal Code. However, he seemed to ignore the report made by the scientific Committee of the Parliament, where it was clearly and explicitly pointed out that some of the offences from the list do not constitute criminal offence in the Greek legal order. The examples given by the Committee were: (a) xenophobia; (b) illicit trafficking in hormonal substances and other growth promoters; (c) sabotage; and (d) some computer related crimes[244].

d. The Protection of Human Rights is 'Insufficient'

The last objection raised by the Opposition was that the Bill did not guarantee sufficiently the protection of human rights. They accused the governing party that through this Bill they were in essence questioning the supremacy between Security and Fundamental Freedoms whereas such comparison should not be the matter of the discussion. Characteristic is the statement of MP Charalambos Kastanidis, belonging to the PASOK party, who expressed his fear that the purpose of the Bill was to '*over-strengthen the Security against the individual Rights and Freedoms*'[245]. MP Fotis

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double criminality is restricted '*only*' to a very '*limited number*' of 32 offences. See the Parliamentary Minutes of 23rd June 2004, session 36th, p.1324.

[242] Even if one should keep in mind that the Framework Decision are different in nature from the Directives.

[243] See the '*Evaluation Report n the fourth round of mutual evaluations - 'the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States – Report on Greece*', Council, COPEN 167, 13416/1/08, Brussels, 20 October 2008, where the Council recommends to the Greek Ministry of Justice 'to review the conformity of the implementing law with the Framework Decision, as well as the correlation between the former and domestic criminal procedural law, and fill the gaps where appropriate'.

[244] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1283. See also Eleytherotypia article of Alikis Matsi and Antonis Galanopoulos, 23/06/2004, available online at: http://www.enet.gr/online. See also the Parliamentary Minutes of 22nd June 2004, session 35th, p. 1301.

[244] See also the Parliamentary Minutes of 23rd June 2004, session 36th, p.1323.

[245] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1293.

Kouvelis went a step forward by stating that the Bill not only did not guarantee the rights of the individual, but also that it was beyond the principle of proportionality. As he characteristically stated '*any adopted measure should serve the principle of proportionality and in the case of the EAW this did not happen*'[246] while he concluded that the Bill '*undermines the Rights of the individual*'[247].

The MPs of the governing party rejected all these arguments and clearly supported the view that it sufficiently guarantees human rights requirements. In particular, MP Kiriakos Mitsotakis stated that the Bill keeps effectively the '*difficult balance between the Security and the protection of Human Rights*' and, thus, there is no room for anyone to express his doubts[248]. Also, the Minister of Justice made clear that the expressed concerns or fears by the Opposition are '*meaningless'* since the Framework Decision explicitly provides that it fully respects fundamental rights and freedoms[249] as well as, at the same time, he tried to connect the Security and the protection of Human Rights by saying that '*in order [for] one to be free citizen he must also feel secure*'. And this, he concluded, is absolutely secured in the Framework Decision on the European Arrest Warrant.

[246] Ibid, p.1284.
[247] Ibid, p.1285.
[248] See the Parliamentary Minutes of 22nd June 2004, session 35th, p.1290.
[249] Ibid, p.1292. See also the Council Framework Decision on the EAW in par. 12 of the Preamble.

V. The Greek Implementing Law on the EAW

Following a very controversial debate, whose main characteristic was the exchange of accusations between the governing party and the Opposition, the time for voting came. In order for a Bill (Νομοσχέδιο, *Nomoskhedio*) to become Law (Νόμος, *Nomos*) the Greek Parliament has to vote for it in three voting sessions[250]: firstly in principle, then per article (when amendments may be proposed and either approved or rejected) and then as a whole. A 'simple' (50% plus one) majority is sufficient for any such vote to pass. The Bill in question, finally, passed in all three voting sessions by majority voting by the governing party. Once the Bill was passed, it was sent to the President of the Republic to promulgate and publish in the Government Gazette. The European Arrest Warrant was implemented, eventually, as part of the Greek Law with the Statute 3251 of 2004 which came into force on 09 July of 2004.

The Greek implementing Law is divided into 6 chapters and is constituted of 39 articles in total. It is notable that the Greek Law does not follow the same structure as the Council Framework Decision. In particular, chapter one includes the general provisions of Law 3251/2004; chapter two regulates the matters pertaining to the issuing and transmitting of the European Arrest Warrant; chapter three deals with the execution of the EAW; chapter four provides for the terms of transit of the requested person; chapter five determines the effects of the surrender; and last, chapter six comprises the final and transitory provisions of the Law.

a. Chapter One

Chapter one of the implementing law consists of the first three general provisions. Article 1 provides for the notion of the European Arrest Warrant which is meant to be a *decision* or a *ruling* issued by the judicial authority of a Member State in order to arrest and surrender of a person who is in the territory of another Member State, for the purposes of conducting a criminal prosecution or executing a custodial sentence or a detention order. However, one should note that the fact that the Greek Legislator went a step forward from the originally adopted Framework Decision by adding in the implementing law that the EAW can be either a *decision* or a *ruling*,

[250] For the detailed official results of the voting see: http://www.parliament.gr

is truly problematic[251]. The arising question is what is, in fact, a ruling issued by the judicial authorities of a Member State? It is, however, left to the national Courts to give the meaning and the essence of the vague term 'judicial ruling' and to clarify if an EAW based on such ruling can be executed in the Greek legal order.

Article 1 par. 2 also includes a general provision on fundamental rights, as a fundamental principle, which refers to Article 6 TEU and states that: 'the implementation of the provisions hereof may not result in the violation of the fundamental rights and principles which are laid down in the Constitution in force and in article 6 of the Treaty on the European Union. In any event, the person requested will not be removed, expelled or extradited to a State where is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'. It is interesting to note that this provision of the Greek implementing law is using different wording from the one used in par. 1 (3) of the Council Framework Decision. It is apparent that the Greek Legislator chose to use a stronger and more prohibitive wording (i.e. *may not result in the violation*) than the one used in the Council Framework Decision as it wanted to make clear that it will absolutely secure the protection of human rights and that there will not be any risk for the violation of human rights. This proves the significance that the Greek Legislator attaches on the protection of fundamental rights and principles and sends the message that nothing can result to the violation of these rights and principles.

The Greek Ministry of Justice is, also, of the opinion that the reference to fundamental rights –to the extent that these have not been explicitly determined- in the mutual recognition instruments (including the EAW) implies that a control should be exercised by the executing judicial authority on the procedural safeguards and the respect of the rights of the defense in the issuing Member State[252].

Nevertheless, this control should merely refer to the legality of the European Arrest Warrant and not to its execution. If, therefore, the judicial authority of the executing State ascertains that the EAW violates the fundamental rights of article 6 of the Treaty and article 1 par. 2 of the Framework Decision, and issues a decision rejecting the complaint, it does that not because of the fact that the execution of the

[251] See article 1of the Council Framework Decision on the European Arrest Warrant of 13 June 2002 where it is provided that the EAW is meant to be only a *judicial decision* issued by a Member State.
[252] Interview with X official of the Greek Ministry of Justice in 28/03/2008.

warrant runs up against some reason for refusal, but because it has not been legally issued[253].

Furthermore, article 2 provides the details that a European Arrest Warrant should contain. Among these, the EAW should include: … [g] The penalty imposed, if there is an *irrevocable* decision or the prescribed scale of penalties for the offence under the law of the issuing Member State. Yet, this requirement undoubtedly constitutes a breach of the originally adopted Framework Decision, as the latter provides that the decision needs to be *final*, and not irrevocable[254]. This, according to Mr. Chamilothoris, is a mistake in the transposition of the Framework Decision to the Greek legal order[255]. In fact, the Greek Courts following Mr. Chamilothoris suggestions, in several cases[256] have preferred to use the term 'final' decision, rather the term provided in the Greek implementing law 'irrevocable'. As the Courts have ruled, the condemnatory decision must have passed from the all the stages of the essential trial (namely to be final) and must be enforceable according to the law of the issuing State, without being necessary to be an irrevocable decision.

The last article of the first chapter, namely article 3, provides that the central authority empowered to assist the competent authorities responsible for the administrative transmission and reception of an EAW is the Ministry of Justice[257]. Nevertheless, one should not ignore that during the implementation of the Framework Decision it was preferred to have a partly decentralized procedure for executing a decision issuing in another Member State. In particular, the competence to gather, transmit, and execute the EAW was given to the Public Prosecutors by the 15 Courts of Appeal in Greece[258].

In that way using a complete decentralized system was avoided, as that would mean that the competence to gather, transmit and execute an EAW would be given to the Public Prosecutors of the 63 Courts of First Instance. Yet, one could rightly argue

[253] In fact, with the essence of this argument agrees Mr Chamilothoris who argues that article 1 par.3 of the Framework Decision does not create a new mandatory reason for refusal of execution of the EAW, but rather it reaffirms the necessity for respect of the fundamental rights, addressed to the judicial authorities of the Member State which issued the warrant and the country of execution as well.
[254] See article 4 (3) of the Framework Decision of the 13 June 2002.
[255] The same approach is taken by Mr. Anagnostopoulos. Interview in 02/05/2008.
[256] See for example the recent cases **No. 33/2007** of the Court of Appeal of Athens (in Council) in 7th June 2007 and the Case No.**25/2007** of the Court of Appeal of Athens (in Council) in 10th May 2007.
[257] Even if in the Law is provided in article 3 par.2 that the central authority may be entitled to keep statistical data, however, unfortunately, neither a mechanism for the evaluation of the results that arise in practice, nor a forum of discussion for problems that appear nor proposed ways of solution, exist.
[258] See articles 4, 6 and 9 of the Greek implementing law. For further details on the general structure and the role of the judicial authorities in Greece with regard the EAW, see the '*Evaluation Report – Report on Greece*', id. 2008.

that the main objection to this system is the lack of a direct system of information of the relevant departments of the Ministry of Justice regarding the distribution of the EAW within the Greek territory. According to the Ministry of Justice, however, surely the centralised procedure for executing decisions issued in another Member States on the basis of a mutual recognition instrument has more advantages than a decentralised one, as in this way the delay in the decision-making and the 'danger' of formulation of different opinions can both be avoided[259].

b. Chapter Two – GREECE as the Issuing the EAW State

Chapter two of the implementing law consists of the following five provisions which deal with the matters of the issuing and transmitting of the European Arrest Warrant. Article 4 provides that the competent authority for issuing an EAW in Greece is the Public Prosecutor to the Court of Appeal who has territorial jurisdiction: (a) for the trial concerning the offence for which the arrest and surrender of the extraditee is requested; (b) for the execution of the custodial sentence or the detention order.

At the same time, an EAW can be issued, according to article 5, for acts punishable by Greek penal laws by a custodial sentence or a detention order for a maximum period of at least twelve months or, where sentence has been passed or a detention order has been made for sentences of at least four months. Furthermore, article 6 provides for the details about the transmission of an EAW giving practically two options: (a) if the location of domicile or residence of the requested person is known, then the competent public prosecutor to the Court of Appeal transmits the European arrest warrant directly to the competent executing judicial authority or (b) if the location of domicile or residence of the requested person is not known, then the competent public prosecutor to the Court of Appeal makes the requisite enquiries through the Schengen Information System (SIS) and the contact points of the European Judicial Network in order to obtain that information from the executing Member State.

However, the Council in its evaluation report on the implementation of the Framework Decision found that only those SIS/INTERPOL alerts with an indication

[259] Interview with X official of the Greek Ministry of Justice in 28/03/2008.

that the requested person is in Greece or is a Greek national are checked[260]. The reason given by the officials of the Greek Ministry of Justice to the expert team of the Council was the lack of capacity for checking all alerts entered in the system irrespective of whether there is any indication of a link with Greece, since the available national databases are not connected and have to be checked one by one.

In addition, it is notable that the Council found that from the Greek Law is not clear which Court or authority would be competent and which procedure should be followed under Greek law to hear an action to correct, delete or obtain information, or to obtain compensation in connection with an SIS alert in cases where the EAW which gave rise to the SIS alert was not issued by Greece[261]. This, yet, has been seen by the Council to be contrary to article 111 par.1 of the Convention implementing the Schengen Agreement.

Finally, article 7 of chapter two of the Greek implementing law gives the possibility to the Public Prosecutor to ask the executing judicial authority to order the seizure and handing over of the property which may be used as evidence; whereas article 8 entitles the judicial authority of the executing State to ask the waiver of any privilege or immunity regarding jurisdiction or execution given in the requested person by the executing State.

c. Chapter Three – GREECE as the Executing EAW State

Chapter three of the implementing law introduces the main provisions of the Law. It consists of twenty one articles (articles 09-29). In general terms, these provisions deal with issues of execution of the European Arrest Warrant, but at the same time regulate the most controversially debated issues such as the abolition of double criminality principle and the imposition of the mandatory and optional grounds of refusal of the execution of an EAW.

In particular, article 9 determines that the competent judicial authority for the receipt of the EAW, the arrest and detention of the requested person, as well as the submission of the case to the competent judicial authority and the execution of the decision on the surrender or not of the requested, is the Public Prosecutor to the Court of Appeal.

[260] See the '*Evaluation Report – Report on Greece*', id. 2008.
[261] Ibid.

c. (1) The Double Criminality Principle

The subsequent article 10 provides for the cases in which the execution of the European Arrest Warrant is allowed. In particular, the EAW is executed in the Greek legal order if the punishable act, for which it has been issued, also constitutes an offence according to Greek criminal law, independently of the legal description, which (offence) is punishable in the issuing Member State by a custodial sentence or a detention order, for a maximum period of at least twelve months[262]. In addition, the execution of the EAW is permitted if the courts of the issuing State sentenced the requested person to a custodial sentence or a detention order of at least four months in regard to a punishable act which is also described by the Greek criminal laws as a misdemeanour or as a felony[263].

Article 10 in par. 2 regulates the sensitive issue of the abolition of the principle of double criminality. The Greek implementing law provides that the execution of the EAW is allowed, without verification of the double criminality of the act, for the following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State:

. participation in a criminal organisation,
. acts of terrorism,
. trafficking in human beings and procurement to prostitution,
. violation of sexual liberty, sexual exploitation of children and child pornography,
. illicit trafficking in narcotic drugs and psychotropic substances,
. illicit trafficking in weapons, munitions and explosives,
. offences pertaining to corruption and bribery,
. offences against the financial interests of the European Communities
. laundering of the proceeds of crime,
. counterfeiting currency, including of the euro,
. computer-related crime,
. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
. facilitation of unauthorised entry and residence,

[262] See article 10 par.1 (a) of the Law 3251/2004.
[263] See article 10 par.1 (b) of the Law 3251/2004.

. intentional homicide, grievous bodily injury,

. illicit trade in human organs and tissue,

. kidnapping, illegal restraint and hostage-taking,

. racism and xenophobia,

. organised or armed robbery,

. illicit trafficking in cultural goods, including antiques and works of art,

. fraud,

. extortion,

. counterfeiting and piracy of products,

. forgery of public documents and trafficking therein,

. forgery of means of payment,

. illicit trafficking in hormonal substances and other growth promoters,

. illicit trafficking in nuclear or radioactive materials,

. trafficking in stolen vehicles,

. rape,

. arson,

. crimes within the jurisdiction of the International Criminal Court,

. unlawful seizure of aircraft/ships,

. sabotage.

Yet, if someone tried to carefully compare the list provided in the originally adopted Framework Decision with the list provided in the Greek implementing law, then he would be lead to the conclusion that in the Greek implementing law there have been added a few offences which are not included in the Council's Framework Decision[264]. In particular, this has happened with the crimes of: a. procurement to prostitution; b. violation of sexual liberty; and c. bribery.

However, the European Commission has been critical of the implementation of the double criminality list. In particular, the Commission has pointed out that the Greek implementing law is not 'in line' with the Framework Decision insofar as there is no reference to the crime of 'racketeering'[265]. However, the Greek Ministry is of the opinion that the Greek Legislator considered that the meaning resulting from the

[264] See also the '*Evaluation Report – Report on Greece*', id. 2008.

[265] See *Annex to the report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Staff working document'* Doc 6815/05 COPEN 42+ADD 1 of 1 March 2005.

translation of 'racketeering' is covered by the crime of extortion and, therefore, need not be included in the list[266].

Another point that has been raised by the Commission is that some categories of offences are, in fact, wider than in the Framework Decision. Given examples are the illicit trading and trafficking in drugs, corruption and bribery[267]. Nevertheless, the point of view of the Greek authorities[268] is that, according to the Greek law, trading of drugs and trafficking in drugs are two different crimes, so the Legislator decided that both should be included in the list. Regarding the crime of bribery, this is included in the wider meaning of the term 'corruption'. In this latter term, other crimes are also included, so the Legislator considered as appropriate to put also the crime of corruption in the list, so as to cover with its wideness other crimes relevant to bribery[269].

c. (2) Grounds for mandatory non-execution of the European Arrest Warrant[270]

The next article of the implementing law is article 11. It is one of the most criticized articles of the law as it provides for the cases in which the execution of the European Arrest Warrant is prohibited. The first three (out of eight) mandatory grounds for refusal of the execution of the EAW correspond to article 3 of the Council Framework Decision. The judicial authority refuses to execute the EAW if: (a) the offence, on which the European Arrest Warrant has been issued, is covered by amnesty according to the Greek criminal laws, as a long as Greece had jurisdiction to prosecute such offence[271]; (b) the executing judicial authority is informed that the requested person has been irrevocably judged by a Member State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State[272]. In essence, this ground for refusal guarantees respect for the principle of *res judicata* (ne bis in idem), a principle which is imposed

[266] Interview with X official of the Greek Ministry of Justice in 28/03/2008.
[267] See Annex to the report, id. 2005.
[268] Interview with X official of the Greek Ministry of Justice in 28/03/2008.
[269] It is worth mentioning that in the Greek version of the Framework Decision is used the word 'δωροδοκία' (dorodokia) which means bribery, while in the English version is used the word 'corruption'.
[270] See Annex (2).
[271] This ground corresponds to article 3 par. 1 of the Council Framework Decision.
[272] A principle similarly expressed in the Schengen Treaty (article 54). This ground corresponds to article 3 par. 2 of the Council Framework Decision.

on all the EU Member States. The assessment of the existence of this condition on behalf of the executing judicial authority, evidently presupposes, as a rule, its penetration in another Member State's legal system which is the Member State of conviction which has to interpret and apply it.

The next ground for refusal (c) provides that the judicial authority refuses to execute the EAW if the person against whom the European Arrest Warrant has been issued may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant has been issued according to the Greek criminal laws[273].

The following five mandatory grounds for refusal (d-h) correspond to the optional grounds of refusal of the Council's Framework Decision which –in the Greek implementing law- have been implemented as mandatory. In particular, article 11 provides that the judicial authority deciding on the execution of a EAW refuses to execute it in the case: (d) where the criminal prosecution or punishment of the requested person is statute-barred according to the Greek criminal laws and the punishable acts fall within the jurisdiction of the Greek judicial authorities according to the Greek criminal laws[274].

It is apparent that this reason presupposes the existence of the principle of double criminality. To put it in other words, the act, that is the object of the EAW, should be covered as well as punished by the legislation of the Greek legal order. It covers all the 32 listed offences of article 2 par.2 of the Framework Decision, if, of course, they constitute criminal acts according to the Greek criminal laws. In order for this ground to be applicable not only has the criminal act or the penalty of the warrant to be subject to a period of limitation according to the Greek law, but, additionally, it has to be ascertained by the Greek executing judicial authorities that these same criminal acts belong to the Greek jurisdiction according to the Greek Criminal Procedure Law[275]. This was in fact questioned, as will be seen further on this chapter, in the very recent case **No. 1024/2008** of the Supreme Court of Greece[276].

In the mandatory ground for refusal in subsection (e) the judicial authority has to refuse the execution in the case where the EAW has been issued for the purpose of prosecuting or punishing a person on the grounds of his sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation or his activities for

[273] This ground corresponds to article 3 par. 3 of the Council Framework Decision.
[274] This ground corresponds to article 4 par. 4 of the Council Framework Decision.
[275] Interview with Mr. Chamilothoris (24/03/2008).
[276] For further see the relevant section on the case law of this chapter.

freedom. It is important to note that this ground for refusal, in fact, corresponds to par. 12 of the Preamble of the Framework Decision on the EAW which the Greek Legislator preferred to convert into a mandatory reason for refusal of the execution of an EAW. This, however, reflects and stresses the importance and remarkable sensitivity that the Greek Legislator attaches to the protection of human rights and the respect of human dignity as being fundamental principles which are to be found not only in the implementing the EAW Law, but also in the whole text of the Greek Constitution[277].

The next case where the execution of the EAW is prohibited is (f) where the person for whom the EAW has been issued for the purposes of execution of a custodial sentence or a detention order is a Greek national and Greece undertakes to execute the sentence or the detention order in accordance with its criminal law[278].

Furthermore, article 11 (g) centralizes its interest on the principle of territoriality which has been transposed in the Greek implementing law as a mandatory ground for refusal. In particular, the judicial authority must refuse to execute the EAW in the case where the EAW has been issued in regard to offences which (i) are regarded according to the Greek criminal law as having been committed in whole or in part in the territory of Greece or in a place treated as such, or (ii) have been committed outside the territory of the issuing Member State and the Greek criminal laws do not allow prosecution for the same offences when committed outside the Greek territory[279]. However, this may lead to a serious limitation of judicial discretion. A very recent case, a characteristic example of this point, will be discussed thoroughly in the following section on the case law[280].

The last ground for refusal is provided in article 11 (h) which states that the judicial authority deciding on the execution of a EAW shall refuse to execute the EAW in the case where the person against whom the EAW has been issued for the purpose of prosecution is *a Greek national* and is *being prosecuted in Greece for the same act*[281]. If such a person is not being prosecuted, the European Arrest Warrant shall be executed if it is ensured that, after being heard, he is returned to the Greek

[277] See for example articles 4-25 of the Greek Constitution.
[278] This ground corresponds to article 4 par. 6 of the Council Framework Decision, but with the difference that it additionally requires that the requested is a Greek national.
[279] This ground corresponds to article 4 par. 7 of the Council Framework Decision.
[280] See Decision **No. 6/2007** of the Court of Appeal of Athens (in Council).
[281] This ground corresponds to article 4 par. 2 of the Council Framework Decision, but with the difference that it additionally requires that the requested is a Greek national.

State, in order to serve there the custodial sentence or the detention order passed against him in the issuing State.

In fact, this provision leads to the over-protection of Greek nationals, as they are more protected than other EU nationals and third country nationals. This over-protection of the Greek citizens is, deemed to be, '*problematic*'[282]. Indeed, there is no substantial reason why Greek nationals should be more protected than other foreign nationals who are not equally treated as the Greek nationals only because they are not Greek nationals. The Greek implementing law on the EAW as well as the Greek criminal law have all the necessary safeguards to protect sufficiently Greek nationals. It seems that the Greek Legislator chose to include protective provisions for the Greek nationals only for political reasons as the surrender of Greek nationals has always been a very sensitive issue for Greek public opinion. It was, therefore, expected that any Greek Government would try to secure as much as possible the status of the Greek citizens in order to avoid 'unpleasant' criticism from an already negatively disposed view of the EAW in public opinion.

However, one can argue that this over-protection could be overcome, and avoided, through the existing safeguards for the protection of the Greeks citizens, namely: (a) the mandatory ground for refusal according to which the surrender is refused if the crime has been committed partly or in whole in Greece (art.11 par. g), and (b) the optional reason according to which when an individual for which an EAW is issued, is prosecuted in the Member State of execution for the same act as the one on which the EAW is based (art.12 par. a).

These two reasons are enough to guarantee that if a Greek citizen has committed a crime abroad, the Greek prosecuting authority has the discretion under the Greek penal code to prosecute him for the same crime and bring him in front of Greek Justice. Consequently, if the Greek justice wishes to keep a Greek citizen and hold a trial against him, it may do so, without being necessary to have the additional provision of article 11 (h). To put it in other words, the purpose of art.11 (h) could also be achieved with the application of article 11 (g) and 12 (a), but avoiding in such a way the creation of a more favourable status only for the Greek nationals. As has been pointed out, there should not be any obstacles in delivering Greek citizens to be tried abroad only because they are Greek citizens[283].

[282] Interview with Mr. Chamilothoris in 24/03/2008.
[283] See also Mr. Chamilothoris. Interview in 24/03/2008.

Nevertheless, one should not ignore that in general terms the fact that the Greek implementing law has converted some of the optional grounds for refusal to mandatory has been criticized both by the European Commission[284] and the Greek Judges. The statement of the Chairman of the Greek Court of Appeal, Mr. Chamilothoris, who said that this constitutes '*a breach'* on behalf of the implementing Member State of its obligations arising from the spirit and the effects of the Framework Decisions, is characteristic[285]. Indeed, the Framework Decision gives the discretion to decide whether or not to execute an EAW to the judicial authority. It is, therefore, placed upon the judge to decide.

When Member States, while implementing the Framework Decisions, convert some of the optional grounds for refusal to mandatory, this in fact deprives the judge of the right that has been awarded to him by the Framework Decision itself, namely the right of discretion. The Framework Decision, indeed, gives the power to decide whether to execute an EAW to the judicial authority which further suggests that it does not leave to the national Legislator the discretion to decide whether a ground for refusal should be mandatory or optional. This should be left to the competent authority to decide on the execution, namely to the national judge. Thus, in converting the optional grounds of refusal into mandatory ones, the national Legislator acts contrary with the essence and the spirit of the Framework Decision on the EAW. This approach is of one the main reasons rendering the operation of the EAW, in practice, inflexible[286].

c. (3) Grounds for optional non-execution of the European Arrest Warrant[287]

The subsequent article 12 provides the cases where the execution of the EAW can be prohibited. In particular, the executing judicial authority may refuse to execute the EAW in five cases: (a) if the person against whom the European Arrest Warrant has been issued is being prosecuted in Greece for the same act as that on which the arrest warrant is based[288]. This ground for refusal establishes, in other words, pendency as

[284] See Report from the Commission, based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, SEC(2005) 267. See also Annex to the report, id. 2005.
[285] Interview with Mr. Chamilothoris in 24/03/2008.
[286] Ibid. It is left to be seen if such attitude will matter the ECJ.
[287] See Annex (3).
[288] This ground corresponds to article 4 par. 2 of the Council Framework Decision.

a reason of optional non-execution of the warrant of arrest. It has been argued that, in order to apply this reason, the criminal prosecution in the Member State of execution does not necessarily have to precede chronologically the ones commenced for the same criminal act in the country of issue of the warrant[289].

Ground (b) refers to the case where the Greek authorities have decided either not to prosecute for the offence, on which the EAW is based, or to stop the prosecution[290]. Ground (c) provides the possibility of refusal of the execution if the requested person has been irrevocably convicted in respect of the acts, for which the EAW has been issued, in a Member State of the European Union, so that further proceedings are prevented. Once again one should note the aforementioned argument about the mistaken use in the Greek implementing law of the term '*irrevocably*' instead of the term '*final*' used in the Council's Framework Decision.

Ground (d) gives the opportunity to the judicial authority of the executing judicial authority to refuse execution if it is informed that the requested person has been irrevocably judged by a *third* State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country[291]. This ground for refusal, in fact, provides for the protection of the principle of *ne bis in idem*, which, as has already been seen, is also included in article 11 (b) as a reason for mandatory refusal of execution of the EAW. This time it is expressed as an optional ground for refusal of the warrant. Nevertheless, a closer look will show that there is one significant difference: in the previous case of mandatory reason for refusal the judgment, which constitutes an insurmountable obstacle for the execution of the warrant, originates from another Member State's judicial authority of the European Union. On the contrary, this ground for refusal, which is an optional impediment, originates from a third country's judicial authority.

This differentiation is justified since the confidence which the Member States have developed among them concerning their judicial systems in their effort to create a unified territory of Freedom, Security, and Justice is, of course, on a 'higher level' in comparison with the one demonstrated by third countries' judicial systems. Nevertheless, one should note that this does not mean that even between the EU

[289] Interview with Mr. Chamilothoris in 24/03/2008.
[290] This ground corresponds to article 4 par. 3 of the Council Framework Decision.
[291] This was criticized by Mr. Anagnostopoulos who is of the opinion that the Greek Legislator should have converted this ground of refusal into a compulsory and not optional ground for refusal.

Member State's judicial authorities there are not obstacles in their cooperation. This, yet, bring us back to a question which arose in the first chapter, namely the question of trust between the diverse and foreign judicial authorities, not only between the EU Member States, but also between the EU Member States and third countries. This question regarding the level of trust in the Greek Jurisdiction will be examined in the following subsection.

The last ground for the optional refusal of execution of the EAW (e) focuses on the case where the European Arrest Warrant has been issued for the purpose of execution of a custodial sentence or a detention order, where the requested person is domiciled or resides in Greece and Greece undertakes the obligation to execute the custodial sentence or the detention order according to its criminal laws. As is apparent, this ground for refusal cannot be invoked for all the persons to be surrendered, but only to those who are closely connected to Greece, and in particular, to those who are native inhabitants or have their permanent or temporary residence in Greece. However, at the same time, this provision compared to the provision of the afore-mentioned article 11 regarding the grounds for refusal for Greek nationals suggests once again that, in fact, the Greek implementing law treats differently Greek and foreign nationals as for the former article 11 prohibits the execution of the EAW, whereas for the latter, article 12 permits the execution of the EAW for the foreign nationals unless Greece undertakes the obligation to execute the sentence or the detention order. This, yet, proves, once again, the protective status for the Greek nationals, but not for foreign citizens.

c. (4) The question of trust in the Greek Jurisdiction

The 'big picture' of trust in the Greek legal order is satisfactory. The Greek judicial authorities, in general, have trust in foreign legal systems. However, in some cases, the Greek judges do have some reservations about the given guarantees of the fair trial principle in foreign judicial systems. This happens mainly in the cases of the new Member States of the EU and the third (non EU) countries. As Mr. Chamilothoris, Mr. Bgontzas and Mr. Anagnostopoulos have pointed out[292] the Greek judges, but also the Greek lawyers, would have 'second thoughts' about

[292] Interview in 24/03/2008 and in 02/05/2008 and in 02/05/2008 respectively. As Mr. Vgontzas characteristically stated he would feel 'fear' for EAW's issued for example in Bulgaria or Rumania or Lithuania or even by the UK judicial authorities.

arrest warrants which were issued by the judicial authorities for example of Romania or Bulgaria where it has been found by the European Commission that a high level of corruption exists[293], but also about EAW's issued by other EU countries which, however, have been held responsible by the European Court of Human Rights for serious infringements of the right to fair trial. As they characteristically conclude, in order to overcome these problems and in order to increase the trust between the foreign European judicial authorities, the European Commission should bring into focus the periodical exchange of judges, the peer reviewing between judges and prosecutors as well as the promotion of networking between practitioners.

A very interesting point was raised by Mr. Anagnostopoulos who argued that as a defense lawyer would have second thoughts not only for warrants issued in the afore-mentioned cases, but also for European Arrest Warrants issued by the Greek judicial authorities too. As he characteristically stated, Greece abuses its authority to issue an EAW. This happens so, because according to his experience, in several times which concerned foreign citizens, the EAW was issued in order to shorten the procedures without satisfying the legal conditions, and in particular, the condition of the plea of the accused[294].

Nevertheless, such attitude by the Greek judicial authorities raises serious concerns with regard to the question of proportionality. Indeed, it seems that, in several cases, the Greek judicial authorities have issued EAWs without that being really necessary[295]. This has happened in cases, for example, where the EAW might be used for the sole purpose of attendance at a hearing before a Court, even if the offence is a misdemeanor[296]. However, this suggests that, in fact, the Greek authorities do not apply a sufficient proportionality check while issuing an EAW which, in turn, is not in conformity with the Council Framework Decision[297].

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[293] See the 2004 '*Regular Report on Romania's progress towards accession*'. See also the '*Report from the Commission to the European Parliament and the Council on Romania's progress on accompanying measures following Accession*', COM (2007) 378 final, Brussels, 27.6.2007.

[294] This was, in fact, the case in a Greek EAW to the English judicial authorities concerning an English and a Greek national in order to be prosecuted for the crime of illicit trafficking of ancient object. The Greek national gave an apology, however, the English was never asked to give his apology even if the Greek judicial authorities knew his permanent address in the UK and instead they issued a EAW against him which was finally rejected by the English judicial authorities on the basis that the rights of the requested were violated because he did not have the opportunity to give his apology in front of the Greek judicial authorities before the issuance of the EAW. Interview with Mr. Anagnostopoulos in 02/05/2008.

[295] See also the statistics provided in annex of this thesis.

[296] See the '*Evaluation Report – Report on Greece*', id. 2008.

[297] See par. 7 of the Preamble of the Council Framework Decision on the EAW.

c. (5) Guarantees to be given for the execution

The next article of chapter three of the Greek law is article 13[298]. It provides for the guarantees to be given for the execution of the EAW in cases where the warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia*[299]. In particular, if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, the execution of the EAW by the competent judicial authority may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee that the requested person will have an opportunity to apply for a retrial of the case in the issuing member state and to be present at the judgment. Once the competent public prosecutor to the Court of Appeal receives the EAW he is obliged, according to article 14, to arrange the arrest of the requested person.

c. (6) Rights of the requested person

The following articles 15-18 deal with the rights of the requested person under the Greek implementing law. These rights are associated, on the one hand, with the legal nature of the procedures of issuance and execution of the EAW *per se* and, on the other, with the need to provide to the requested person effective protection against any potential significant infringements of his/her rights.

In particular, according to article 15 of the Greek implementing law, once the requested person is (immediately) arrested, he must be brought without delay to the Public Prosecutor by the Court of Appeal[300]. At this stage, the Public Prosecutor, after verifying the requested person's identity[301], is obliged to inform that person of the EAW and its contents, of his/her right to be assisted by a legal counsel and an interpreter as well as of the possibility granted to him/her to consent to his/her surrender to the issuing State[302]. In addition, the arrested person is entitled either himself/herself or through his/her lawyer to ask for and receive copies of all of the

[298] This article corresponds to article 5 of the Council Framework Decision.
[299] This article has been amended by the latest adopted Framework Decision 2009/299 JHA of 26/02/09.
[300] See Annex (1).
[301] For this issue see the recent case **No. 216/2008**, in Poinika Chronika, 2009, p. 42.
[302] This article corresponds to article 11 of the Council Framework Decision.

documents, but at his/her own expense[303]. In any event, it should be stressed that according to the Greek legislation the arrested person has the right to appeal within 24 hours of his/her arrest to the Judicial Council of the Court of Appeal when he/she disputes his/her identity[304].

The arrest of the requested person and his/her transfer to the Prosecutor to the Court of Appeal does not automatically mean his/her detention. In case where the requested person's detention is deemed disproportionate, the Public Prosecutor, under specific circumstances, can order the provisional release of the requested person and the imposition of restraining measures[305]. The restraining measures imposed on the requested person can be replaced by detention, if a risk of absconding appears. Nevertheless, if it has been imposed to the requested person an order of detention or any means of restraining measures, he/she is entitled, within a period of two days following the issue of the relevant order, to have recourse to the Judicial Council of the Court of Appeal[306]. The Court of Appeal has to appoint a court date within a period of five days and after hearing the opinion of the Public Prosecutor has to immediately decide irrevocably.

At this point it is worth mentioning the particular importance attached to the consent of the requested person. The implementing law has dedicated two articles to regulate the issues of consent. The Public Prosecutor to the Court of Appeal must clearly inform the requested person of the consequences of the consent to surrender, of the renunciation of the entitlement to the speciality rule, as well as of his/her right to appear with a legal counsel and with an interpreter[307]. Further, the public prosecutor has to emphasize to him/her the irrevocability of his/her above-mentioned statements. One clear thing is that any potential consent must reflect the fact that the person concerned has expressed them voluntarily and in full awareness of the consequences[308], which ensures the balance between the obligation of the State to prosecute the person and the right of the person to defend him.

[303] See article 15 par. 2 of the Greek 3251/2004 law.
[304] See article 15 par. 4 of the Greek 3251/2004 law.
[305] See article 16 par. 1 of the Greek 3251/2004 law.
[306] See article 16 par. 2 of the Greek 3251/2004 law.
[307] See article 17 par. 1 of the Greek 3251/2004 law.
[308] See article 13 par. 2 of the Council Framework Decision, a provision which would seem to represent a strengthening of the rights of the requested person.

Depending on whether the arrested person consents to his/her surrender, the Law makes the distinction of the procedure to be followed: if he/she consents, then the Public Prosecutor to the Court of Appeal forwards the European Arrest Warrant and all the relevant documents to the Presiding Judge of the Court of Appeal. The requested person then is entitled to a hearing before the Presiding Judge of the Court of Appeal[309]. The latter is obliged to take a final decision within a period of 10 days after consent has been given[310].

On the other hand, if he/she does not consent, the Public Prosecutor to the Court of Appeal is obliged to forward the warrant and all the relevant documents to the competent Judicial Council of the Court of Appeal, where the arrested individual has the right to appear and be heard in person[311]. In that case, the final decision by the Judicial Council must be taken within a period of 60 days after the arrest of the requested person[312]. Conversely, in specific cases where the European Arrest Warrant cannot be executed within the aforementioned time limits, the competent Public Prosecutor to the Court of Appeal has to immediately inform the issuing judicial authority, giving the reasons for the delay[313]. In such a case, the time limits can be extended further by 30 days[314]. However, having taken into account that both the Council Framework Decision and the Greek implementing law entail that the procedure of the requested person's surrender must be completed within specific deadlines, it follows that if, on account of any reason whatsoever, the timely surrender of the requested person is impossible, then, in case he/she is detained, he/she must be released, and, in case he/she is not detained, any restrictions imposed on him/her must automatically be removed.

Nevertheless, the rights of the arrested person do not end at this point. In particular, in the event that the arrested person does not consent, then an appeal with specific reasons[315] may be lodged to the Supreme Court by the requested person or by the Public Prosecutor against the final decision issued by the Judicial Council of

[309] See article 17 par. 3 of the Greek 3251/2004 law.
[310] See article 21 par. 1 of the Greek 3251/2004 law.
[311] See article 18 of the Greek 3251/2004 law.
[312] See article 21 par. 2 of the Greek 3251/2004 law.
[313] If for example the judicial authority deciding on the execution of the warrant finds the information forwarded by the issuing Member State to be insufficient, it has to request through the public prosecutor by the Court of Appeal, the urgent submission of the necessary supplementary information, and therefore the time limits must be extended. See article 19 par. 2 of the Greek 3251/2004 law.
[314] See article 21 par. 3 of the Greek 3251/2004 law.
[315] For this issue see the recent case of the Supreme Court **No. 1006/2009**, Poinika Chronika, 2010, p.287.

the Court of Appeal. This must happen within a period of twenty four hours following the publication of the decision in accordance with the provisions of article 451 of the Greek Code of Criminal Procedure[316]. The Supreme Court, sitting in chambers, has to take its decision within a period of eight days following the lodging of the appeal. The requested person is entitled to be summoned in person or through his process agent twenty four hours prior to the hearing under the care of the Public Prosecutor to the Supreme Court[317].

However, one could rightly argue that this 'suffocating' time limit of 24 hours in order for the arrested person to appeal to the Supreme Court seems to be problematic[318]. The Council in its report on the implementation of the EAW suggests that this time limit is 'extremely short' and that may hamper the right of the accused to appeal[319]. Indeed, it involves the danger that the arrested individual may not be able to find a lawyer or even if he does that his/her lawyer may not have adequate time to find all the relevant documents, to submit the essential evidence and to prepare the appropriate defense. Nonetheless, if that is really the case, then this raises serious questions, about the compatibility of this provision with the right of fair trial provided in article 6 of the ECHR.

Once the judicial authority has decided on the execution of the warrant, hence the surrender of the requested, it must notify the issuing judicial authority of its decision, without delay[320]. Then, the remaining action to accomplish the puzzle of the operation of the EAW is the surrender of the requested person. To that end, under the care of the Public Prosecutor to the Court of Appeal, the requested person must be surrendered as soon as possible on a date agreed with the authorities of the issuing State[321]. In any event, he cannot be surrendered later than 10 days after the final decision on the execution of the European arrest warrant[322]. At the time of surrender, the same Public Prosecutor provides to the competent authorities of the issuing State, all information relative to the duration of detention of the requested person.

[316] See article 22 par.1 of the Greek 3251/2004 law. With respect to the appeal a report has to be drawn up before the Registrar to the Court of Appeal. For the meaning of this provision see the recent case of the Supreme Court **No. 2027/08** in Poinika Chronika, 2009, p.2009.
[317] See article 22 par. 2 of the Greek 3251/2004 law.
[318] See in the following chapter the relevant arisen case of the Supreme Court of Athens No. 1325/2005.
[319] See the '*Evaluation Report – Report on Greece*', id. 2008, p.40.
[320] See article 26 of the Greek 3251/2004 law and the corresponding article 22 of the Council Framework Decision.
[321] See article 27 of the Greek 3251/2004 law.
[322] This is in line with article 23 par. 2 of the Council Framework Decision.

This happens, because according to article 26 of the Council Framework Decision, the issuing Member State must deduct all periods of detention arising from the execution of the warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

Nevertheless, it is possible that the surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endangers the requested person's life or health[323]. Furthermore, the competent judicial authority may, after deciding to execute the EAW, postpone the surrender of the requested person so that he/she may be prosecuted in the Greek State or, if he/she has already been sentenced, so that he/she may serve, in the Greek territory, a sentence passed for an act other than that referred to in the European arrest warrant[324].

d. Chapter Four

Chapter four of the Greek implementing law consists of only three articles (30-32). It provides for the terms of transit of the requested person through the Greek territory[325] as well as the terms for the application submitted by Greek judicial authority for the transit of a requested person[326]. The competent authority to receive the transit request, to decide on it, as well as to submit a request, for the transit of the requested person through the territory of a Member State of the European Union, to the competent authority of such State, when this is necessary for his/her surrender to Greece, is the Public Prosecutor to the Court of Appeal[327].

e. Chapter Five

The next chapter is chapter five. Its four articles (33-36) refer to the effects of the surrender. In particular, article 33 provides that when the requested person has been surrendered to the competent Greek authorities, then the period of his/her detention in

[323] See article 27 par. 3 of the Greek implementing law which corresponds to article 23 par. 4 of the Council Framework Decision.
[324] See article 28 of the Greek law which corresponds to article 24 par. 1 of the Council Framework Decision.
[325] See article 30 of the Greek 3251/2004 law which corresponds to article 25 of the Council Framework Decision.
[326] See article 32 of the Greek 3251/2004 law.
[327] See article 31 and 32 of the Greek implementing law.

the executing State is deducted from the total period of deprivation of liberty in Greece as a result of a custodial sentence or a detention order being passed.

The subsequent article 34 has a particular interest as it provides for the entrenchment of the rule of speciality (i.e. that the requesting State may only prosecute with regard to those offences agreed to by the requested State), and its exceptions. In particular, in par. 1 it is provided that the requested person who has been surrendered to the competent public prosecutor by the Court of Appeal cannot be prosecuted, sentenced or otherwise deprived of his/her liberty for an offence committed prior to his/her surrender other than that for which the European arrest warrant had been issued[328].

Par. 2 of article 34 of the Greek implementing law provides for the cases where the rule of speciality may not be applied. Like article 27 par. 3 of the Council Framework Decision, seven cases are provided where the executing judicial authority may not apply the aforementioned paragraph 1 of article 34 and therefore it can prosecute, sentence, or otherwise deprive the liberty of the requested person for other offences, committed prior to his/her surrender, but not included in the EAW.

In particular, this may happen when: (a) the surrendered person having had an opportunity to leave the Greek territory, nevertheless has not done so within a period of forty five days of his final release or has returned to that territory after leaving it[329]. Yet, the definition of 'final discharge' is not provided either in the Council Framework Decision, or even in the Convention on Extradition of 1957, or in other similar documents. This may be in practice problematic. The question that comes out is what will happen in the case where the person, who, after his surrender, was subjected to another measure of enforcement, namely where detention was replaced with a measure of suppression other than related to imprisonment, and who is released. Does this person have, in fact, the right to leave the territory according to this article? Or to put it in other words, what does the term 'final discharge' include? It is not clear if it includes only imprisonment or/and completion of any kind of restriction of personal liberty.

[328] See the corresponding article 27 of the Council Framework Decision with the title '*Possible prosecution for other offences*'.
[329] See the corresponding article 34 par. 2 (a) of the Council Framework Decision.

To answer this question, one should go back to the purpose and the nature of applying any kind of measures of enforcement. According to the Greek Criminal Procedure Law,[330] the purpose of these measures is to ensure the participation of the suspect, accused, or even sentenced person in all the stages of the legal procedure. (pre-trial, hearing at the court, execution of the sentence). They are aimed, in other words, at ensuring that the person in question will not avoid the administration of justice. If the surrendered person is subject to any kind of measure other than imprisonment (i.e. bail, obligation to appear every 15 days in the local police station etc.) this should not mean that he still has the right to leave the country. Undoubtedly, all these measures lead to a degree of limitation of personal liberty and, therefore, it should be accepted that the term 'final discharge' includes also the completion of any kind of restriction of personal liberty, namely any kind of suppression, in order for article 34 par. 2 (a) to be applied.

The subsequent six exceptions to the rule of speciality according to article 34 involve cases: (b) where the offence is not punishable by a custodial sentence or a detention order[331]; (c) where the criminal proceedings do not give rise to the application of a measure restricting personal liberty[332]; (d) when the surrendered person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular, a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his/her personal liberty[333]; (e) when the surrendered person has expressly renounced before the competent judicial authority of the executing state the speciality rule, at the same time with his consent to be surrendered to the Greek State[334]; (f) when the person after his/her surrender has expressly renounced entitlement to the speciality rule with regard to offences committed prior to his surrender[335]; (g) when the executing judicial authority gives its consent after the submission of a relevant request by the competent Public Prosecutor to the Court of Appeal[336].

[330] See article 296 of the Greek Criminal Procedure Law.
[331] See the corresponding article 27 par. 3 (b) of the Council Framework Decision.
[332] See the relevant article 27 par. 3 (c) of the Council Framework Decision.
[333] See article 27 par. 3 (d) of the Council Framework Decision.
[334] See article 27 par. 3 (e) of the Council Framework Decision.
[335] See article 27 par. 3 (f) of the Council Framework Decision.
[336] See article 27 par. 3 (g) of the Council Framework Decision.

The last two articles of chapter five of the Greek implementing law set the requirements and the details of the subsequent surrender -without the consent of the executing Member State- of a person, who has been surrendered to the competent Public Prosecutor to the Court of Appeal in execution of a EAW, to a Member State of the European Union pursuant to a European arrest warrant issued for an offence committed prior to his/her surrender[337]. On the other hand, article 36 provides that a person, who has been surrendered to the competent public prosecutor by the Court of Appeal in execution of a European Arrest Warrant, cannot be extradited to a third State, without the consent of the competent authority of the executing Member State.

f. Chapter Six

The last chapter of the Greek implementing law consists of the final and transitory three provisions of the Law[338] regarding expenses and the relation of this Law with other legal instruments in the field of extradition.

[337] See article 35 of the Greek implementing law.
[338] See the recent case of the Supreme Court **No.1811/09** regarding the meaning of the final provisions. Poinika Chronika, 2010, p. 596, in Greek.

VI. The Academic Point of View on the EAW

Since the announcement of the adoption of the Council Framework Decision on the European Arrest Warrant in 2002 and the subsequent implementation in the Greek jurisdiction of the Framework Decision, in the Greek legal literature two main tendencies appeared: the academics who have been proponents of the evolution of judicial cooperation in the field of criminal law at the European level and, on the other hand, the academics who have been critical of both the notion, in general, of the principle of mutual recognition and the operation of the European Arrest Warrant in the Greek legal order. Their criticisms are focused mainly in three spheres: (a) lack of legal basis for the European Union to adopt measures based on the principle of mutual recognition; (b) the abolition of double criminality as being contrary to the Greek Constitution; and (c) the surrender of Greek nationals as being, once again, contrary to the Greek Constitution.

In the following section, all arguments of both sides will be examined and criticisms thereof.

A. Lack of legal basis

The first argument put on the table for discussion between the academics is the alleged lack of legal basis of the European Union to adopt such measures as the European Arrest Warrant based on the mutual recognition principle as such principle does not exist in the Treaty on the creation of the European Union with respect to the judicial cooperation between Member States in criminal matters. According to this view the '*magic invention*'[339] of the tool of the principle of mutual recognition is used to overcome the significant delays that appeared while implementing the instruments of the third pillar. However, this notion is to be found nowhere in the Treaty of the EU.

In that respect, they claim that either articles 29, 31, or 34 par. 2 (b) of the TEU do not give rise to the ability of the EU to use the Framework Decisions as a tool in order to establish the mutual recognition principle. In other words, it is a principle which is not provided directly in the TEU and, thus cannot be 'legalized' through the use of

[339] See Kaifa-Gbandi, *'Newer developments in the EU Criminal law and democratic deficits*, 2006, Poinika Chronika, p. 582, (in Greek). See also Eutuxi Fitraki, *'The EAW in practice: New developments, new concerns*, Poiniki Dikaiosini, 2006, p. 210, (in Greek).

Framework Decision. This happens, it is argued, because the Framework Decisions which are based on the notion of the principle of mutual recognition are not adopted in order to lead to the approximation of the national laws of the Member States, as it should be, but in order to create for the first time new rules which lead to new institutions.

As they argue, the characteristic example of that point is the Framework Decision on the European Arrest Warrant where the extradition procedure was replaced with the surrender procedure[340], however, without this possibility to be given directly from the TEU. According to article 31 (b) and 34 par. 2 (b) of the TEU the Council has the capability to adopt Framework Decisions in order to *facilitate* extradition between the Member States. Nevertheless, according to this side of academic opinion, the Council Framework Decision on the EAW itself provides for a new system of surrender which, indeed, replaced the older system of extradition. To that end, the Framework Decision uses new terminology (surrender instead of extradition) and it includes totally new procedures which lead to the surrender of nationals, instead of extradition.

The supporters of this claim argue that all this new system is based on the new concept of the principle of mutual recognition which, nonetheless, is not provided directly in the TEU. According to their view, it is indubitable whether or not the EU has the competence to deal with these issues in such a framework. To strengthen their argument they claim that, in fact, the Council has characterized the principle of mutual recognition as being the cornerstone of the judicial cooperation in criminal matters, but this legislative initiative by the Council cannot, and should not pass any such Law, as this goes beyond the power granted by the TEU to the Council[341]. As they characteristically argue, the power of the Council is granted upon its creation and is special and limited as to its scope[342] as well as the Council is often criticised for the so-called democratic deficit[343]. Therefore, as long as the Treaties do not establish

[340] See D. Spinelis, *'The EAW and the replacement of the extradition procedure- Hopes and Fears*, in the honor of A. Giotopoulou-Maragkopoulou, 2003, p.1273, (in Greek).
[341] Kaifa-Gbandi, *'The EAW: The provisions of the Law. 3251/2004 and the transition from the extradition to the surrender*, Poiniki Dikaiosini, 2004, p.1296, (in Greek).
[342] Ibid. See also A. Manitaki, *'The assignment of competences to the EU and the reservation of sovereignty according to art. 28 par. 2 and 3 of the Constitution*, E.E.EU.D.., 2003, p.755, (in Greek).
[343] See Grigorios Kalfelis, who also argues that the Council uses wrongly the provisions 31 (b) and 34 par.2 TEU and that leads not to a creation of an Area of Freedom, Security and Justice, but to an Area of 'one-dimensional and unilateral suppression'. *'The EAW - One-dimensional consolidation of the European suppressive mechanisms?*, Poiniki Dikaiosini, 2006, p.199, (in Greek). See also Dionisios Mouzakis, *'The criminal jurisdiction of the EC*, Poinika Xronika, 2004, p.485 (in Greek) and Kaifa-Gbandi, *'Searching for the EC jurisdiction on the criminal suppression- A crucial bend of the evolution of the criminal law in the framework of the EU*, 2004, E.E.E.D, p. 63, (in Greek).

the judicial cooperation on the principle of mutual recognition, this cannot happen, as they support, alternatively on the initiative of the Council. In that respect, they also argue that the Framework Decision on the Arrest Warrant lacks an appropriate legal basis and, thus, it constitutes an excess of the granted power of the Council[344].

The supporters of this argument, consequently, claim that the Greek Parliament, while implementing the Framework Decision on the EAW, should have been more generous than it really was. As they argue, the Framework Decision did not bind any of the Member States with regard to the provisions based on the principle of mutual recognition in the judicial cooperation in criminal matters, because the latter was/is a result of the excess of the granted power of the Council and not a granted EU fundamental principle. Therefore, the Greek Parliament should have pointed this out and it should have implemented the Framework Decision in a different way which would respect the fundamental provisions of the TEU as well as fundamental rights and which –at the same time- would send a strong message to the Council[345], something which, eventually, did not happen.

However, one could argue that the counter-argument to this point is the legal basis on which the Framework Decision on the EAW is founded, namely the principle of mutual recognition. As has already been thoroughly discussed in the previous chapter, the principle of mutual recognition was first presented at the Tampere European Council in 1999 as the '*cornerstone*' of the European judicial area and its vital importance was recognised in the Hague Programme, which linked its development to enhanced mutual trust between the Member States. It may not, indeed, have its legal basis on a specific provision of the TEU, but article 34 par. 2 TEU empowers the Council to unilaterally take measures, including Framework Decisions, in order to achieve the purposes of the TEU.

In particular, article 34 par. 2 of the TEU provides that 'the Council can take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may: (b) adopt Framework Decisions for the purpose of approximation of the laws and regulations of the Member States'. In that context, thus, one should subsume the effort of the Council to adopt the Framework Decision

[344] Kaifa-Gbandi, id. 2004, p.1296, (in Greek).
[345] Ibid. See also Kaifa-Gbandi, id. 2004, p.836, (in Greek).

on the EAW based on the principle of mutual recognition as a means for the enhancement of the judicial cooperation in criminal matters through the abolition of extradition between Member States and the introduction of a new simplified system of surrender, namely the European Arrest Warrant.

Yet, it should not be ignored that neither article 34(2) TEU nor any other provision of Title VI of the EU Treaty makes any distinction as to the type of measures which should be adopted on the basis of the subject-matter to which the joint action in the field of criminal cooperation relates. In fact, this was questioned in the recent case of *Advocaten voor de Wereld*[346] of the ECJ. As has already been explained in detail in the previous chapter, the ECJ with its judgement tried to settle the EAW question with regard to the validity of the Framework Decision with article 34 of the TEU by supporting 'the Council's discretion to give preference to the legal instrument of the Framework Decision in the case where, as here, the conditions governing the adoption of such a measure are satisfied[347]'. In addition, the ECJ asserted that the Framework Decision on the EAW was '*only binding in relations between Member States*' and therefore, any other interpretation to the contrary '*would deprive of its essential effectiveness the Council's recognised power to adopt framework decisions in fields previously governed by international conventions*[348]'.

B. Abolition of the Principle of Double Criminality

The second main argument is that the abolition of the principle of double criminality is itself contrary to article 7 par. 1 of the Greek Constitution which provides for the entrenchment of the fundamental principle of *nullum crimen, nulla poena sine lege*. In particular, the proponents of this argument claim that the principle, which was traditionally connected with the older system of extradition between Member States, has now been widely and significantly changed, while the extent of such change is difficult for one to assess[349]. At the same time they argue that the abolition of the double criminality under the new system of surrender through

[346] Case 303/05, *Advocaten voor de Wereld*. Judgment of 3 May 2007, [2007], 3 C.M.L.R.1. See also Dorota Leczykiewicz, *'Consitutional Conflicts and the Third Pillar'*, European Law Review, (2008), 33, p. 230-242 and Steve Peers, *Salvation outside the Church: Judicial Protection in the Third Pillar after the Pupino and Segi Judgments*, Common Market Law Review, (2007), 44, p.883-929.
[347] See par. 41 of the Judgement.
[348] See par. 42 of the Judgement.
[349] See Kaifa-Gbandi, id. 2004, p.1298, (in Greek).

the operation of the EAW creates a status of absolute legal uncertainty for the citizens[350]as they may be surrendered to the issuing the EAW State for an offence which, however, may not constitute an offence according to the Greek Criminal Code. That constitutes a breach of the Greek Constitution, in particular in the light of the lack of a common system of criminal laws at the EU level. It has been argued that a common area of Justice regarding the cooperation in criminal matters does not exist and that the double criminality principle should not have been abolished[351].

However, one should not ignore that when we are talking about the operation of the EAW, in fact, we mean that the executing State facilitates the exercise of a criminal claim of a foreign judicial authority rather than satisfying its own criminal claim[352]. Having this in mind one could rightly argue that the arrest and the subsequent surrender of the requested person constitutes part of inter-States cooperation in criminal matters, where the applicable law is the law of the issuing EAW State. In that case, the principle of double criminality (and hence article 7 of the Greek Constitution) can only be breached in the case where the EAW has been issued based on an offence which is not described in any law of the issuing State (principle of legality). However, one should not also ignore that the ECJ in its *Advocaten* ruling clearly held that the principle of legality in criminal matters stems from the issuing State.

One should also refer to article 11 (g) of the Greek implementing law[353]. From this provision is apparent that the abolition of double criminality concerns only offences which have been committed in the territory of the issuing the EAW State and/or -in any event- which have been committed wholly or partly outside of Greek territory. This provision constitutes a 'limitation' of the abolition of the double criminality only to offences committed outside of the Greek territory[354]. There is, thus, no incompatibility of the abolition of the double criminality requirement with article 7 of the Greek Constitution since the Greek executing authority carries out the EAW for an offence which was not committed within its jurisdiction, but for which it

[350] See Elisavet Simeonidou-Kastanidou, *'The law on the EAW and the encounter of terrorism - the basic characteristics and a first interpretative approach*, Poiniki Dikaiosini, 2004, p.776, (in Greek).
[351] See Dimitrios Kioupis *'The Law 3251/2004- A brief presentation of its basic points*, Poinikos Logos, 2004, p. 974, (in Greek).
[352] See Olga Tsolka, *'EAW: an ambitious tool for the promotion of the judicial cooperation in the framework of the EU*, Nomiko Bima, 2002, p. 103, (in Greek).
[353] See also the corresponding article 4 par. 7 of the Council Framework Decision.
[354] See Elisavet Simeonidou-Kastanidou, id. 2004, p.777, (in Greek).

is willing to assist the foreign judicial authority as part of their common solidarity to combat the criminal behaviours listed in the Framework Decision.

It must also be noted that the dual criminality principle was gradually abolished well before the operation of the EAW[355]. A characteristic example is the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union in 1996, where according to article 3, the principle of dual criminality was –since then- abolished for the crimes of conspiracy and association to commit several offences listed in that Convention[356].

Moreover, a guarantee to compensate for the abolition of the principle of double criminality is the reference in all the mutual recognition instruments to the absolute respect of fundamental rights[357]. Having taken this into account, one can argue that the fight against crime as well as the abolition of double criminality for specific offences, but for which the Member States do have the will and the determination to fight effectively, find their limitation to the protection and respect of fundamental rights, as these have been determined in article 6 of the TEU and the ECHR. Therefore, human rights protection constitutes, indeed, the safety valve and the counterbalance to the elimination of double criminality and it can restrict any potential consequences and reactions from the abolition of the afore-mentioned principle.

The second objection concerning dual criminality is related to the list itself of the 32 offences for which the double criminality requirement is abolished. In particular, the proponents of this argument claim that from the list itself it is very hard to determine how many criminal acts are referred and related to the abolition of the double criminality, as this list contains a diverse category of different offences which are broadly described, without particular definitions, and which cannot constitute specifically defined offences[358]; and, thus, the principle of *nullum crimen, nulla poena*

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[355] See Pararas P., *'The Constitution and the EAW*, 13/01/2002, Newspaper 'The Bima', where he argues that the principle of dual criminality should have been totally abolished as it is a theory 'out of date'. Available online at: http://tovima.dolnet.gr. , (in Greek).

[356] See 'Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union', Official Journal C 313 , 23/10/1996 p. 0012 – 0023.

[357] See article 1 par. 2 of the Greek implementing law as well as point 13 of the Preamble of the Council Framework Decision.

[358] See Elisavet Simeonidou-Kastanidou, id. 2004, p.775, (in Greek). See also Kaifa-Gbandi, id. 2004, p.1300 where she claims that the abolition of the principle of double criminality regarding the listed

sine lege is once again infringed[359]. Furthermore, this attitude leaves open the opportunity to the issuing State to add in the future other offences which have no relation to the essence of the criminally punishable behaviour; however, that may lead to the accumulation of criminal power by the State and to the transfer of the criminal jurisdiction to the politically and economically powerful States against the weaker States[360].

Nevertheless, one can find the counter-argument of this point in the above-mentioned decision of *Advocaten voor de Wereld.* As already has been analysed in the previous chapter, the Court was of the opinion that the definition of the listed offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State[361], which, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU, as the Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract.

In addition to the ECJ reasoning, it is important to note that the above mentioned argument lacks cogency for one more reason: the criminal characterization of an act for which an EAW has been issued belongs to the exclusive competence of the issuing State. The judicial authority of the executing State, when is called to execute the warrant, it does so in the framework of the cooperation of the different judicial authorities in the common European area of Justice in order to assist each other in the administration of Justice. In that framework, the punishability of the act of the requested person can be verified only *in abstracto* (namely only if the act is described generally in the criminal laws) and not *in concreto* (namely if the act for which the EAW has been issued exists with the same elements as in the issuing State and the executing State). Thus, when the EAW has been issued for an act which is, according to the Greek criminal laws, punishable *in abstracto*, but, the latter cannot be applied because of the lack of the connecting link, then the EAW can and, in fact should be

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offences in the Greek implementing law was not only 'inaccurate', but also 'contrary to both the Greek Constitution and the rule of law', (in Greek).

[359] See Giannis Bekas, *'Political choices and the Law - The Extradition - surrender of the requested and the EAW*', Poinikos Logos, 2007, p. 555, (in Greek).

[360] See Christos Milonopoulos, *'The abolition of the double criminality as an abuse of right and the case law of the ECJ on the EAW*, Poinikos Logos, 2007, p. 1, (in Greek). See also Christos Milonopoulos, *'Report on the Bill of the EAW*, Poinika Chronika, 2004, p.1048, (in Greek).

[361] See par. 52 of the Judgement.

executed without this implying any incompatibility of the abolition of the double criminality with article 7 of the Greek Constitution[362].

C. The Surrender of Greek Nationals

The third objection raised during the debate on the EAW instrument by the opponents of its operation is that the surrender of the Greek nationals under the framework of the EAW is contrary to the Greek Constitution. In particular, it is asserted[363] that article 5 of the Greek Constitution in par. 2 and par. 4 as well as the general legal tradition do not permit the extradition of Greek nationals[364].

As to the first objection, namely that article 5 par. 2 prohibits the extradition of the Greek nationals, the latter provides that: '*The extradition of aliens prosecuted for their action as freedom-fighters shall be prohibited*'. The supporters of this argument claim that it is clear from the grammatical meaning of the above-mentioned provision that extradition is permitted exclusively and only for foreign citizens[365]. It is nowhere to be found in any other provision of the Greek Constitution that Greek nationals can be extradited. In contradistinction to the lack of specific provision allowing the extradition it is implied that this was not in the thoughts and will of the Constitutional Legislator and therefore the surrender of the Greek nationals is prohibited[366].

The discussion goes back to 1975, while drafting the Greek post-military junta Constitution. Greece had just gone through a 7 years dictatorship (1967-1974) and inevitably the first Constitution after the collapse of the junta would reflect the social and political values of this period of time[367]. In that context the meaning of protection of those who fight for freedom in the Greek legal and constitutional order was and

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[362] See Christos Milonopoulos, id. 2004, p.1049, (in Greek) where he accepts this point, but he finds an incompatibility with article 7 of the Greek Constitution when the act is not either *in abstracto* punishable.

[363] Interview with Mr. Chamilothoris (24/03/2008), Interview with Mr. Vgontzas in 02/05/2008 and Mr. Anagnostopoulos in 02/05/2008.

[364] See '*Comments and Proposals of the National Commission for Human Rights for the application of the Law 3251/2004*, 22/03/2007, which argues also the unconstitutionality of the surrender of Greek nationals. Available online at: http://www.nchr.gr, (in Greek).

[365] See Aristotelis Charalampakis, *'Problems with regard the correct meaning and execution of the EAW*, Poinikos Logos, 2005, p. 759, (in Greek). See also Chari Papacharalampous, *'The criminal law of the enemy: EAW, terrorism, and extraordinary antiterrorism legislation in the U.S.A*', Poiniki Dikaiosini, 2002, p.190, (in Greek). See also Dimitrios Simeonidis, *'The EAW and the extradition of Greek citizens'*, Timitikos Tomos Maloledaki, p. 971, (in Greek).

[366] See Ioannis Manoledakis, Maria Kaifa-Gkmpanti, *'Comments on the Commission's Proposal regarding the adoption of a Framework Decision related to the EAW*', Poiniki Dikaiosini, p.1108, (in Greek).

[367] For a detailed analysis see Kostas Maurias, *'Constitutional Law*', Sakkoulas, 2004, (in Greek).

still is a very sensitive issue. One should not ignore that even in the implementing law, and in particular in article 11 (e), the Greek Legislator added that that the execution of the EAW is refused on the grounds of 'his/her activities for Freedom'. This, however, was criticized by the European Council which, in its report, noted that 'the Greek Legislator overstepped the Framework Decision in that respect and that it was not, thus, empowered to insert this addition relating to 'activities for freedom', no matter how understandable it may be in view of recent Greek history'[368].

Nevertheless, the supporters of this argument claim that during the parliamentary discussions on the Constitution of 1975 the –at that time- MP Kaklamanis asked the Minister of Justice to add in this provision that the 'extradition is prohibited for Greek nationals whatever their crime committed', but the Minister of Justice Stefanakis claimed that there is no need for this to be done since it is evident and implicit that this amendment is needless given that extradition is referred only to the foreign nationals[369], but for those who are 'freedom fighters'. They, thus, claim that from both the literal meaning of this provision and from the historical will of the Constitutional Legislator it is apparent that Greek nationals cannot be extradited[370] due to the operation of the EAW which has been characterized as 'weakening the rule of Law safeguards'[371].

The second basis that they invoke is that the extradition of Greek nationals is prohibited by article 5 par. 4 which provides that 'individual administrative measures restrictive of the free movement or residence in the country, and of the free exit and entrance therein of every Greek shall be prohibited[372]. Such measures may be imposed in exceptional cases of emergency and only in order to prevent the commission of criminal acts, following a criminal court ruling, as specified by law'. However, as they argue, extradition is not included therein and therefore the non-extradition of the Greek nationals which is strongly connected with their right of personal freedom as entrenched in article 5 of the Constitution, is absolutely secured as a 'silent prohibition'[373].

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[368] See the '*Evaluation Report – Report on Greece*', id. 2008, p. 40.
[369] See Parliamentary Minutes of the discussion on the Constitution in 1975, p. 757.
[370] See Giannis Mpekas, *'Political choices and the Law - The Extradition - surrender of the requested and the EAW*', Poinikos Logos, 2007, p. 549, (in Greek). See also Christos Milonopoulos, *'Extradition of nationals and the execution of the EAW against nationals*, Poinikos Logos, 2005, p. 751, (in Greek).
[371] See Grigoris Kalfelis, *'Extradition of Greek nationals*, Poiniki Dikaiosini, 2007, p. 1191, (in Greek).
[372] See Dagtoglou, *'Constitutional Law – Individual Rights*, 2005, p.495, (in Greek).
[373] See A. Charambakis and Nikoleta Tsiakoumaki, *'Problems regarding the correct meaning and execution of the EAW*, Poinikos Logos, 2005, 768, (in Greek).

Nonetheless, both arguments have their counter-arguments. First of all, one should keep in mind that the Framework Decision on the EAW since its operation replaced the old system of extradition and therefore from the technical-terminology point of view we no longer talk about extradition, but rather of surrender of nationals. Taking this into account, as to the first argument (incompatibility to article 5 par. 2) it is notable that this article is very much connected to actions related with the attempted overthrowing of the political power exercised within a country, without there having democratic legitimation[374]. As a political, thus, crime, the freedom-fighter can seek asylum under this provision of the Greek Constitution.

The arising then question is what does the notion of freedom-fighter mean and whether article 5 par.2 of the Greek Constitution can be applied in cases where the requested person claims to be a freedom-fighter. As to the meaning of the notion of freedom-fighter there is not any sufficient interpretation of what it constitutes. However, the Supreme Court of Greece has put as a limit in the application of this article in the sense that the freedom-fighter cannot use acts that can damage human value. Characteristic example is a case[375] regarding a requested person who bombed the Jewish synagogue in Rome resulting to the death of one person and the injury of many others. The Italian authorities asked the Greek authorities to extradite him. He claimed that he was a freedom-fighter. However, the Supreme Court of Greece interpreting article 5 par. 2 of the Greek Constitution rejected his argument by stating that the refusal of extradition of a person who claims to be a freedom-fighter cannot be justified if that person has used actions that may jeopardize or even harm the life of innocent people. This is contrary to article 2 par. 1 of the Greek Constitution that protects the value of human being and thus, such cases cannot be regarded as being freedom-fighters.

In this context, article 5 par. 2 cannot be applied –to either foreign or Greek nationals- when the requested person has committed other crimes (i.e. the ones listed in the Framework Decision on the EAW) to the political crimes as described in article 5 under the constitutional notion of actions as a freedom-fighter. However, it will be very interesting to see how the Greek Courts will interpret the notion of freedom-fighter within the context of the operation of the EAW, if such a case appears. Nevertheless, -at the moment- one can draw the safe conclusion that if a Greek

[374] See Pararas P., id. 2002, (in Greek).
[375] See Supreme Court case **No.820/1989**, in Poinika Chronika, M, p.183, in Greek.

national is prosecuted for any criminal behaviour related to the listed crimes of the Framework Decision this cannot (and in fact should not) mean that the Greek Constitution prohibits his surrender because of article 5 par. 2. To put it in other words, the fact that the Constitution prohibits the extradition of a foreign citizen for actions related to freedom, as a political crime, has no relevance with the purpose of the EAW which is the administration of Justice for common crimes which cannot –in any case- characterized as political crimes under the provision of article 5 par. 2 of the Greek Constitution. In that respect, thus, there is no incompatibility of the surrender of Greek nationals with article 5 par. 2 of the Constitution[376].

Furthermore, as to the second basis (namely that is contrary to article 5 par. 4) this is not a persuasive enough argument. The nature of the arrest of the requested person and his subsequent surrender according to the EAW Framework Decision is different from the one described in article 5 par. 4. The latter, in its essence, refers to the case of deportation of Greek nationals which is a totally different institution from the case of surrender under the Framework Decision of the EAW[377]. The purpose of deportation is to remove a person from the territory of a State because either he has committed a particular offence or because he is illegally residing in the territory of that State. It, thus, belongs to the very meaning of the exercise of the governmental power of the State.

However, the nature of the surrender in the EAW is different: it constitutes a significant step in judicial cooperation between Member States, but in no case can it constitute the exercise of governmental power of the State as in the case of deportation. This happens so because the State now has no discretionary power to decide whether or not to execute the EAW, as it has undertaken the obligation to leave to the judicial authority the exclusive responsibility to decide on its execution.

One can arrive at the same conclusion if one goes back to the parliamentary discussion in 1975 where the Constitutional Legislator clearly referred while drafting this provision to cases of deportation, but not extradition. In addition, in the amendment of the Greek Constitution in 2001, the –at the time- Minister of Justice Mr. Stathopoulos referring to the same provision stated that this related to the

[376] See D. Spinellis, who argues that the indirect interpretation of article 5 par. 2 of the Constitution is *contra legem.* 2003, p.1286, (in Greek). See also Olga Tsolka, id. 2002, p. 111, (in Greek).
[377] See Eleni Kamperou-Ntalta, *'Crimes committed by Greek nationals to a foreign State*', Poinika Chronika, 2005, p.313, (in Greek).

possibility of deportation[378]. It is, therefore, clear that this provision prohibits the deportation of Greek nationals and not the surrender (or extradition) due to the operation of the EAW.

The third basis used in order to prove the unconstitutionality of the surrender of the Greek nationals is the Greek legal tradition in general. According to this argument[379] the Greek State has traditionally and historically continuously refused to extradite Greek nationals without any distinction or exception. This had happened in all the previous legal instruments of extradition between Member States (bilateral, multilateral, or in the framework of the Council of Europe and the EU) which Greece has ratified and where the Greek Legislator had made clear reservation on the surrender of Greek nationals.

Characteristic is the example of article 2 (c) of the Law 2718/1999 which implemented the Convention on extradition between Member States[380] where it is clearly provided that Greece will not extradite its nationals. Having this into account, the supporters of this claim argue that it is very difficult to call into question the constitutional entrenchment of the right of the Greek nationals to feel 'secure' while being in the Greek territory that they will not face the risk to be extradited to a foreign judicial system, but with which they are not familiar[381]. Nevertheless, the fear of some academics goes one step further by stating that the fact that the Greek Legislator in the EAW Framework Decision did not explicitly prohibit the extradition (or surrender) of the Greek nationals to a foreign judicial authority leaves open the window of opportunity for the extradition of Greek nationals to third (non EU) countries (i.e. USA) which would create many serious legal issues[382].

Yet, when one invokes the legal tradition in order to prove the unconstitutionality of a specific provision one should take into consideration that this is the last source of law in the general order of Laws. In the same first position with the Greek Constitution are the fundamental Treaties establishing the EU.[383] Article 28 par.1 of the Greek Constitution formally integrates international and European law into Greek

[378] See the Parliamentary Minutes of 24th January 2001, session 6th.
[379] See Dimitris Simeonidis and Stefanos Paulou, *'EAW and extradition of Greek nationals*, Poinika Chronika, 2006, p.196, (in Greek).
[380] See Law 2718/1999, F.E.K (Φ.Ε.Κ) Α΄ 105/26-05-1999.
[381] See Basilakakis E., *'ECHR and Extradition*, Poiniki Dikaiosini, 2004, p.204, (in Greek).
[382] See Kaifa-Gbandi, id. 2004, p.1303, (in Greek). See also Kaifa-Gbandi, id. 2004, p.838, (in Greek).
[383] For a detailed analysis of the theoretical debate on the primacy of EU Law over Constitutional Law see Nikos Skandamis, *'European Law*', Sakkoulas, 2003, p. 144 (in Greek) where he argues the supremacy of EU law over Constitutional Law and also see Kostas Maurias, id. 2004, p. 272, where he argues that these two sources of law co-exist in the same level, (in Greek).

law by giving clear precedence over domestic law to the obligations undertaken by Greece at EU level: '*The generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law*'. In addition, the interpretative clause states that: '*Article 28 constitutes the foundation for the participation of the country in the European integration process*'. It is, thus, apparent that if there is something to be found either in the TEU and its principles or in the law of the EU which, however, may contradict the Greek legal tradition, or even the Greek domestic law (excepting only the provisions of the Greek Constitution) then this automatically should mean that the EU law has an increased formal (constitutional) validity, and thus, prevails over the latter.

In these circumstances, it should not be ignored that the adoption of the Council Framework Decision and the operation of the European Arrest Warrant constitute part of the European legislation. However, at the same time, the implementation of the Framework Decision and its execution in the Greek legal order, as in all the EU legal orders, constitutes an accomplishment of the obligations undertaken by the Greek Republic, as a Member of the EU, to abolish extradition and replace it by a system of surrender between the judicial authorities which would serve the purpose of the Union becoming an area of Freedom, Security, and Justice. In this context, the execution of the EAW, under the umbrella of the human rights protection[384], has –according to article 28 of the Greek Constitution- an increased validity as opposed to any invoked custom, even if such custom is a constitutional one. Having taken all these into account, it is apparent that -for several reasons- the alleged unconstitutionality of the arrest and the subsequent surrender of a Greek national lack persuasive force.

[384] See Dimitrios Zimianitis, *'The application of the EAW in the context of the protection of individual rights*', where he argues the compatibility of the EAW with the Greek Constitution. Human Rights, 2004, p. 1209, (in Greek). See also Dionisios Spinellis, *'Past and future of the extradition in Europe*, Poinika Chronika, 2001, p. 681, (in Greek).

VII. The point of view of the Greek Practitioners on the principle of mutual recognition and the EAW

It is commonly accepted among Greek practitioners that the differences in the substantive criminal law between Member States affect –to some extent- the effective application of the mutual recognition principle in the context of the judicial cooperation in criminal matters and make the acceptance of the complete abolition of the principle of dual criminality difficult. The reality, yet, is that the Greek practitioners have different views between them as to whether the verification of the double criminality principle hampers or not in practice judicial cooperation in criminal matters. In particular, Mr. Pantelis and Mr. Anagnostopoulos were of the opinion that it does not hamper the judicial cooperation[385]; whereas Mr. Chamilothoris agreed that it does hamper the judicial cooperation between Member States as it may constitute an 'obstacle' to the surrender of the requested national[386]. On the contrary, its abolition for the specific listed offences constitutes a step forward for the effective judicial cooperation between Member States in order to jointly combat the contemporary types of crime for which they share same points of view. Nevertheless, Mr. Vgontzas went a step further by stating that in practical terms the verification of double criminality was even in the previous system of extradition informally abolished as, for example, the Greek judicial authorities considered fraud as being the same crime as in Russia, even if the crime of fraud in Russia did not coincide exactly with the elements of the equivalent crime in Greece[387]. Therefore, all this theoretical discussion about the abolition of the principle of double criminality, because of the operation of the EAW, is practically of limited importance[388].

However, in any event, they all, correctly, believe that it would be very useful to create a database which would contain all the national definitions of offences listed in the catalogue of the EAW with respect to the abolition of dual criminality, as they believe (even if they characterize it as a very ambitious goal) that this will improve the cooperation between the judicial authorities, increase the trust and provide equivalence and transparency between the different and diverse legal systems as well as it will reduce the reactions by the opponents of the abolition of the principle in

[385] Interview in 28/03/2008 and 02/05/2008 respectively.
[386] Interview with Mr. Chamilothoris (24/03/2008).
[387] Interview with Mr. Vgontzas in 02/05/2008.
[388] See also Antonis Vgontzas, *'Judicial Cooperation between EU and USA – A new prospect in the fight against crime or a defeat of the rule of law?*, Poiniki Dikaiosini, 2003, p. 746, (in Greek).

question[389]. On the other hand, a list also of offences excluded from the abolition of the double criminality would be a very helpful step in order to make mutual recognition more effective and operational. This will, undoubtedly, improve the cooperation, increase the trust and provide equivalence and transparency between the different and diverse legal systems[390].

On the other hand, according to the Greek Ministry of Justice, the differences in procedural law should be a reason not to recognize and execute a decision, unless in the future there will be an approximation of the rights of the suspected and of the accused. Yet, the Ministry, correctly, points that mutual trust should exist between Member States, but individual constitutional rights should not be affected or even violated. At the same time, it is felt that the reference to the fundamental rights in the mutual recognition instruments implies that a control should be exercised by the executing authority on the procedural safeguards and the respect of the rights of the defense in the issuing Member State[391].

Furthermore, it is notable that an attempt of the European Union to codify the various instruments based on the mutual recognition principle would be an important step in the direction of effective judicial cooperation as it would facilitate implementation and improve consistency on the one hand, and, on the other, it would accommodate the judicial authorities in Member States. It is, thus, essential that the European Union continues to take measures to support and facilitate mutual recognition. One of the suggested measures -and the most important– is felt to be the promotion of a mechanism which would evaluate the quality of the judicial system in Member States[392]. Nevertheless, both the Greek Ministry and the Greek practitioners[393] strongly believe that harmonization (approximation) of criminal laws (both substantive and procedural) is a necessary condition to further effective developing cooperation based on mutual recognition. Indeed, this might have been the case. Mutual recognition itself might not be a sufficient condition. It seems that what is also needed is at least a minimum level of harmonization of laws in order to operate effectively now and in the future.

[389] Ibid. Also Interview with Mr. Chamilothoris (24/03/2008).
[390] Interview with Mr. Chamilothoris (24/03/2008) and Mr. Anagnostopoulos in 02/05/2008. However, they characterize it as being ‘a very ambitious goal’.
[391] Interview with X official of the Greek Ministry of Justice in 28/03/2008.
[392] Ibid. Also Interview with Mr. Chamilothoris in 24/03/2008.
[393] Interview with Mr. Chamilothoris in 24/03/2008 and Mr. Anagnostopoulos in 02/05/2008.

Furthermore, it is very important to note that the practitioners, generally, are well informed of the new mutual recognition instruments, and in particular of the EAW, as they participated in both the stage of negotiations and the stage of drafting the implementing legislation. In addition, according to the Ministry of Justice, there is a constant mechanism of informing and educating the practitioners on the meaning and application of the new instruments based on the principle of mutual recognition.

However, one should not ignore that our contact with Mr. Chamilothoris and Mr. Anagnostopoulos gave another view[394]. Mr. Chamilothoris was of the opinion that despite the efforts, a deficit exists and Mr. Anagnostopoulos characterized the briefing of the practitioners as very much deficient. They strongly believe that there should be a more periodical and constant briefing on the EAW mainly to the judges to whom its application has been assigned. As far as Mr. Chamilothoris experience is concerned he could claim that some judges face it for the first time. And the reality is that even if they are trying to be careful, yet, the undeniable fact is that better briefing is still required.

Nevertheless, the general picture is that the Greek practitioners have faced some (minor) difficulties up to now. The main difficulty that can be found in judicial cooperation in this period of time lies in the lack of homogeneity in the penal legal orders of the European States as well as the important methodological and systemic differences between domestic criminal justice systems and criminal law doctrine. In the light of these differences, it is felt that the creation of European coordinating bodies such as Eurojust, and the operation of national networks of contact such as the EJN are very helpful.

Another notable aspect is that the practitioners believe that the differences in Member States' legislation regarding the use of coercive / investigative measures, in fact, hamper cooperation between the judicial authorities. This happens because, for example, different rules apply in Greece to put someone in custody, or to confiscate someone's property than apply in France or in the United Kingdom. The issue of the preliminary investigation by the police is even more difficult.

The Greek Judges believe that these cases reveal more problems, as they are unsure as to whether the police authorities in Member States respect the guarantees for the protection of human rights while they investigate a suspect. To that end, it is felt that more control and more appropriate sanctions for violations of the rights

[394] Interview with Mr. Chamilothoris (24/03/2008).

of the defendants are some of the desired measures[395]. The weakness of the preliminary police investigation is because police investigation stage has become increasingly influenced by the Executive. Consequently, EU harmonisation is necessary regarding the coercive/investigative measures. In this context, the decoupling of executive decision-making from the (judicial) surrender process under the EAW is a very welcome step.

[395] Interview with Mr. Chamilothoris (24/03/2008).

VIII. Review of the Greek Case Law on the EAW

The Greek implementing law gives the power to deal with the European Arrest Warrant from the legal point of view to three jurisdictional authorities[396]: (a) The Public Prosecutor to the Court of Appeal[397]; (b) The Court of Appeal[398]; and (c) The Supreme Court[399]. Their role depends each time on whether Greece is the issuing or the executing the EAW State.

At this section the development of the case law of the Court of Appeal and the Supreme Court of Greece since the operation of the Framework Decision on the EAW in the Greek Jurisdiction will be examined. The following seven categories have emerged in these two Courts these years involving: (a) the effects of converting some optional grounds for refusal to mandatory ones; (b) the question of the Constitutionality of the surrender of Greek nationals; (c) the decision to stay the proceedings to ask for additional information; (d) the verification of double criminality; (e) the irrevocability of the decision; (f) the guarantees to be given according to article 13 of the Greek implementing law; and last, but not least, (g) the meaning of the term 'judicial authority'.

A. Grounds for Refusal

As to the first band of the raised arguments, the fact that the Greek Legislator has converted some optional grounds for refusal into mandatory ones or has added new grounds for refusal which are not provided in the original adopted Council Framework Decision (article 11 of the Greek implementing law) has proved to be a serious obstacle to the surrender of the requested person to the issuing the EAW judicial authority which seriously reaffirms what Mr. Chamilothoris characterized as being a '*serious limitation to judicial discretion*[400]'.

[396] For a detailed analysis of the structure of the Greek Courts see the '*Evaluation Report – Report on Greece*', id. 2008.
[397] The so-called 'Eisageleas Efeton' or in Greek 'Εισαγγελέας Εφετών'.
[398] This is the so-called 'Efeteio' or in Greek 'Εφετείο'.
[399] This is the so-called 'Areios Pagos' or in Greek 'Άρειος Πάγος'.
[400] Interview with Mr. Chamilothoris in 24/03/2008.

a. (1) Article 11 (g) of the 3251/2004 – 'The offence has been committed wholly or in part in the Greek territory'

Two of the leading cases concerned article 11 (g). The first case which appeared was case **No. 1255/2005** of 20/05/2005[401]. The facts of the case were in summary that the German judicial authorities issued an EAW against a German national for five committed crimes of fraud and one attempt. Some of these crimes had been committed in German territory and some others in the territory of Greece. The Court of Appeal decided to surrender the requested person to the German authorities.

However, the German national appealed in front of the Supreme Court of Greece invoking the argument that his surrender was contrary to article 11 (g) of the Greek implementing law. The Supreme Court was of the opinion that the Court of Appeal was mistaken in its judgement as long as '*the alleged crimes have been committed partly in the Greek territory or the results of such criminal behaviour have been occurred wholly or partly in the Greek legal order*'. The Court went even a step further by stating that this principle also applies to the continuous committed crimes where each of the separate committed crimes includes the same elements with the main crime. Therefore, the Supreme Court annulled the decision of the Court of Appeal and refused the surrender to the German authorities only for the offence committed partly in the Greek territory applying article 11 (g) of the Greek implementing law[402].

The second case which deals with the same provision, but has a particular interest, is case **No. 6/2007** of the Court of Appeal of Athens in 06/02/07[403]. In that case the German authorities requested the Greek judicial authorities to arrest and surrender a German national who had, allegedly, committed the crime of fraud wholly in Rome, Italy. To put it in other words, the crime of fraud for which the EAW was issued by the German authorities was not committed in either the issuing the EAW State (Germany) or even the executing the warrant State (Greece), but in a third country (Italy). The result was that the Court of Appeal was of the opinion that due to the mandatory reason of refusal of the execution of the EAW provided in article 11 (g)

[401] See the judgment of the Supreme Court in Poiniki Dikaiosini, Case Law of the Supreme Court (in Greek) 2005, p. 1498.
[402] The same approach was taken in the Court of Appeal of Athens Case **No. 29/2005**. See the judgment of the Council of Court of Appeal in Poiniki Dikaiosini, Poiniki Dikonomia, 2005, p.1160.
[403] Case not yet reported.

(ii), the Greek judicial authorities had no jurisdiction to arrest and surrender the requested person, and, therefore, they had to release him.

Nevertheless, one should not ignore the fact that this case involves as mentioned above, the exercise of the so-called *extraterritorial jurisdiction* by the German judicial authorities. By that is meant that a State (Germany) exercises its extraterritorial jurisdiction when none of the components of the alleged crime has been committed in the territory of that State, but it seeks for judicial assistance. In these cases, it should be, generally, accepted that in the framework of the judicial cooperation between Member States in an Area of Freedom, Security and Justice, the EAW should be executed if two conditions are met cumulatively: (a) the issuing State exercises its extraterritorial jurisdiction, and (b) the offence constitutes an offence also according to the criminal law of the executing State[404]. Otherwise, the execution should be refused. In this framework, thus, the Greek Court, at a first glance, should have executed the EAW as both conditions are met.

However, the fact that the Greek Legislator has transformed the exercise of the extraterritorial jurisdiction by a Member State to a mandatory ground of refusal has two main consequences which are both contrary to the spirit of the Framework Decision: (a) the further limitation of the judicial discretion, as the judicial authority of the executing State cannot provide mutual assistance and execute the EAW on the exclusive basis of his discretion; and (b) a more practical result which is that a criminal can be released, as happened in this case, where the only way that this person could be brought in front of Justice was that a new warrant should be issued by the Italian judicial authorities to the Greek authorities, something which, eventually, did not happen. It is felt, thus, that the transposition of the territoriality clause as a mandatory reason to refuse the arrest and surrender of a requested person is proved to be, in practical terms, an obstacle to effective judicial cooperation[405] and may render the operation of the EAW ineffective.

[404] See '*Explanatory memorandum to the Commission proposal for a framework decision on the European Arrest Warrant*' COM (2001) 522 final/2, p.16.
[405] This was also the view with Mr. Chamilothoris. Interview with Mr. Chamilothoris in 24/03/2008.

a. (2) Article 11 (f) of the 3251/2004 – 'The requested is a Greek national'

In two other cases the Court of Appeal had to deal with article 11 (f). In particular, in the first case **No. 4/2006** of 18/05/2006 the Court of Appeal of Pireas[406] was asked to apply article 11 (f) in the following circumstances: A Greek national was sentenced by the Court of First Instance of Evry in France to a custodial sentence of four years for the crime of manslaughter as well as for the crime of bodily injury. The Public Prosecutor of the Court of First Instance of Evry issued the EAW in question asking the Greek authorities to surrender the Greek national in order for it to execute the imposed sentence in France. The requested individual did not consent to his surrender to the French authorities and the case was held before the Court of Appeal.

The latter was of the opinion that when the case concerns Greek nationals who are sentenced by a foreign judicial authority to any sentence then the Greek judicial authorities covenant not to execute the EAW according to the provision 11 (f), but they are obliged to order the execution of the imposed sentence in the Greek territory according to the Greek criminal laws. As characteristically was stated in that decision '*the Greek judicial authorities have no other option'*. It was, therefore, decided not to execute the EAW and hence to keep the Greek national to execute his imposed sentence in the Greek legal order. The same approach was taken in the case **No. 25/2007** on the 10/05/2007 by the Court of Appeal of Athens[407] where the Court found that that the Greek implementing law gives no discretion to the Court to decide in a different way as it is obliged to refuse the surrender and order the execution of his imposed sentence in the Greek jurisdiction according to the Greek criminal laws. Therefore, once more, the Greek judicial authorities refused to execute the EAW.

a. (3) Article 11 (b) of the 3251/2004 – 'The requested has been irrevocably judged'

The next notable case **No 10/2006** of 22/12/2006[408] concerned the application of article 11 (b) of the Greek implementing law. The facts of the case were, in summary, the following: The Italian judicial authorities issued an EAW to the Greek judicial authorities regarding an Iraqi national (resident of Germany) in order to prosecute him

[406] Case not yet reported.
[407] Case not yet reported.
[408] Ibid.

for offences related to human trafficking. According to the Italian EAW the accused had committed these crimes while travelling by lorry from the Greek territory (port of Hgoumenitsa) to the Italian territory (port of Ancona). However, while he was in the Greek territory he was arrested by the Greek authorities and he was sentenced by the Court of Appeal of Kerkira to imprisonment for 2 years and 4 months.

Nevertheless, the Court of Appeal of Thessaloniki which had to decide on his surrender to the Italian authorities was of the opinion that since the requested person was tried and sentenced by the Greek judicial authorities for the same acts as in the Italian EAW, then, because of article 11 (b) of the Greek law the Greek judicial authorities must refuse to execute the Italian request.

a. (4) Article 11 (h) of the 3251/2004 – 'The requested is Greek national and is being prosecuted in Greece'

The next case regarding the application of the grounds for refusal provided in the Greek implementing law is case **No.2030/2007** of 16/11/2007 of the Supreme Court of Greece[409]. In this case, the Belgian authorities requested the Greek judicial authorities to arrest and surrender a Greek national in order to prosecute her for the crimes of participation in a criminal organization and money laundering. All the alleged relevant crimes were committed exclusively in Belgian territory. The Court of Appeal of Ioannina decided to execute the warrant. However, the requested person appealed in front of the Supreme Court of Greece seeking that her surrender was contrary to article 11 (h) because it was not ensured that she would be returned to the Greek State, in order to serve there the custodial sentence or the detention order passed against her in the issuing Member State.

However, the Supreme Court of Greece rejected this claim because, as it stated, the reassurance of returning any Greek national back to the Greek State in order to serve his/her sentence '*does not necessarily presuppose that this should be given by the relevant requesting judicial authority, but it could be given by any authority, as such also being any administrative authority'*. Therefore, the Court found no violation and ordered the execution of the Belgian EAW.

[409] Case not yet reported.

a. (5) Article 11 (d) of the 3251/2004 – 'The prosecution is statute-barred'

The last, but very interesting, point from the Greek case law was made by the Supreme Court in two very recent cases, **No.1024/2008**[410] and **No. 1266/2009**[411]. The first concerned an EAW issued by the German judicial authorities, whereas the second was issued by the British authorities, both against two Greek nationals in order to prosecute them for committing the offence of tax evasion. However, the Court refused to surrender the requested persons because of the application of article 11 (d).

The majority opinion of the Supreme Court, in both cases, ruled that the fact that this provision has been transformed into a mandatory reason for refusal establishes a 'prohibitive provision' for the execution of the EAW which, however, as the Court characteristically said, is contrary to what the Council Framework Decision provides. In addition, the Court stated that if the EAW is executed, but the criminal prosecution or punishment is statute-barred according to the Greek criminal laws, this would, in fact, violate the general principle of the Statute of Limitations, a principle which is closely connected to the principle of the public order.

The Court, thus, pointed out that if the Greek Legislator wanted to give the power to the executing judicial authority to execute an EAW which, however, is based on an act or punishment which is statute-barred according to the Greek criminal laws, but not according to the criminal laws of the issuing State, he would explicitly provide this option in the Law. Yet, this was not the choice of the Legislator who preferred to refuse the execution in cases where the prosecution or punishment of the requested person is statute-barred *only* according to the Greek criminal laws and not *also/either* according to the criminal laws of the issuing State. Therefore, the Supreme Court for these offences refused the surrender.

However, the dissenting opinion of the Court, in the first case, very interestingly supported that the interest protected in this case was strictly related to the Greek, and not to the German authorities. In particular, as they stated, the crime of tax evasion is directed against lawful rights which, however, are closely related only to the legal order of the executing State. It was, thus, felt that since the requested person had committed in another legal order the crime of tax evasion this should mean that this person should not be arrested and surrendered by the Greek judicial authorities as

[410] See the judgment in Poinika Chronika, 2008, p. 513.
[411] See the judgment in Poinika Chronika, 2010, p.326.

the punishable act does not fall within the jurisdiction of the Greek judicial authorities, and thus, article 11 (d) of the 3251/2004 could not be applied. However, the majority opinion of the Court, correctly, rejected this argument since article 6 par. 1 of the Greek criminal code provides that the Greek laws can be applied in cases where a Greek national has committed in a foreign country a crime which is considered criminal in both the Greek criminal laws and the criminal laws of the State where the act is allegedly committed, as happened in the case in question.

B. The question of the Constitutionality of the surrender of Greek nationals

The Supreme Court of Greece since the first operation of the European Arrest Warrant was in all of its cases indisputably against the alleged unconstitutionality of the surrender of the Greek nationals to other Jurisdictions. The first leading case which seriously challenged the constitutionality of the surrender of Greek nationals was case **No. 591/2005** of 08/03/2005[412]. The facts of the case were, in summary, the following: The Spanish judicial authorities issued on 23/12/2004 an EAW concerning a Greek national, being also a priest and a teacher, who was accused by the Spanish authorities of committing in Barcelona, Spain, in the period 2001-2002 the crime of child sexual abuse against a girl younger than ten years old. The Greek national did not consent to his surrender and the Court of Appeal of Crete, having the relevant jurisdiction, decided to execute the warrant. However, the arrested person appealed in front of the Supreme Court of Greece, where he raised constitutional objections, while he remained in custody until the Supreme Court reached its decision.

In particular, the defence mainly claimed that: (a) the surrender of Greek nationals is prohibited by the Greek Constitution (article 5), and (b) in any event there is a Greek Constitutional legal tradition which prohibits the surrender. It is notable that the defence sustained their claims with reference to the aforementioned academics that supported the unconstitutionality of the surrender, due to the operation of the EAW, with main provisions of the Greek Constitution.

The Supreme Court of Greece in its judgment found no violation of the surrender of any provision of the Greek Constitution. In particular, the Court rejected the claim

[412] See the facts of the case in Poiniki Dikaiosini, 2005, p.1093. See also the judgment in Poiniki Dikaiosini, 2005, with the dissenting opinion to the Judgment of the Court by Aleksandros Papadopoulos, p. 550 who strongly supports the unconstitutionality of the surrender under the EAW framework, (in Greek).

that articles 5 par. 2 and 4 prohibit the surrender of the Greek nationals by stressing that there is no 'contradiction' of the surrender with any Constitutional provision[413]. It even went a step further by stating that the law which implemented the Council Framework Decision constitutes the implementation of the obligations undertaken unanimously by the Member States in order to combat different types of crimes at the EU level. The Court also rejected the second raised basis, namely that in all the previous Conventions of extradition Greece had raised reservations on the surrender of the Greek nationals. It characterized this as being an argument without having any 'legal influence' on the decision, and thus, the Supreme Court ordered the execution of the Spanish European Arrest Warrant.

Few months later, on 17/01/06, the Supreme Court of Greece was asked in case **No. 109/2006** to rule again on the question of the compatibility of the surrender with the Constitutional provisions[414]. The case concerned an EAW issued by the judicial authorities of Leeds, UK, against a Greek national in order for the former to prosecute him for committing the offences of sexual abuse and kidnapping against a young English woman. The case was brought in front of the Supreme Court of Greece where the Court reaffirmed what it had said few months previously. It found that the provision in article 5 cannot be interpreted in such a way that establishes an obstacle in the surrender of the Greek nationals. Therefore, the Court stressed once again that the essence of the rights provided and guaranteed in this article has nothing to do with the surrender as provided in the Framework Decision on the EAW. The Court went even one step further by stating that the prohibition of the surrender of Greek nationals to another Member State has not any more any 'practical importance' as Member States have developed between them 'mutual trust and they commonly respect the fundamental freedoms and principles of the Equitable State'.

The next challenge before the Supreme Court of Greece came in case **No. 1773/2007** on the 28/09/2007[415]. This case concerned an EAW issued by the German authorities against a Greek national in order for the former to prosecute him for the crime of fraud which was allegedly committed in Germany. The main

[413] See '*Comments*' on the case 591/2005, Dimitrios Zimianitis, Poiniki Dikaiosini, 2005, p. 837 (in Greek) where he supports the compatibility of the surrender with all the provisions of the Greek Constitution. See also *'EAW and the surrender of nationals in order to be prosecuted*', Poiniki Dikaiosini, p. 587, (in Greek).
[414] See the Judgement in Poinikos Logos, 2006, p. 99, (in Greek).
[415] See the judgment of the Court in Poinika Chronika, 2007, p. 597 as well as in Poinikos Logos, 2007, p. 368, (both in Greek). The same approach was taken in the cases **No. 2310/2007** and **No.2030/2007** both in Greek**.**

argument put by the defence of the requested person was that his surrender to the German authorities was unconstitutional because of the application of the article 5 par.2 and 4 of the Greek Constitution.

The Supreme Court, once again, stressed that it does not appear from any provision of the Constitution that the latter prohibits the surrender of the Greek nationals. On the contrary, the Court very interestingly said, that currently this prohibition has 'no reason for existence' because the historical reasons of its existence, namely that the State was obliged to protect their citizens from the difficulties of extraditing them in a foreign judicial system, 'do not any more exist as mistrust between the judicial systems of the EU Member States is unjustifiable'[416]. In addition, the Court rejected the claim that there is a constitutional custom according to which the Greek State because of the reservations that had made to the previous legal instruments on extradition of the Greek nationals was bound not to surrender him. The Court said that since the EAW replaced the previous status of extradition then such custom does not any more exist, and thus, ordered the surrender of the Greek national.

The last, but not least, interesting case, is case **No 558/2007** of 15/03/2007 by the Supreme Court[417]. The case concerned an EAW issued by the German judicial authorities against a Greek national who was prosecuted for committing the crime of tax evasion. The Supreme Court once again reaffirmed its position that there is nothing to prevent the surrender of Greek nationals. The Court, very interestingly, pointed out that the prohibition of the surrender of Greek nationals does not arise either from the Greek Constitution or any provision of the Greek Criminal Procedure Law as the provisions on the EAW constitute *lex specialis*. This is so because between the judicial authorities of the Member States of the EU there is mutual trust founded on the fundamental Freedoms, while the historic reasons for the prohibition of the surrender, namely the obligation of the State to protect its citizens and to protect them from an unknown legal environment do not any longer justify such prohibition as there is not any mistrust between the European judicial authorities. The same approach was followed in two very recent cases, **No. 2166/2009**[418] and

[416] The same reasoning was stressed by the Supreme Court in the case **No. 1066/2007** of 15/05/2007 where the Supreme Court reaffirmed its position.
[417] See the judgment of the Court in Poinika Chronika, 2007, p. 597 as well as in Poinikos Logos, 2007, p. 368, (both in Greek).
[418] See the judgment of the Court in Poinika Chronika, 2010, p.684.

No.1083/2008[419], showing that the Supreme Court has, without any doubt, consolidated its position.

From all the afore-discussed cases it is apparent that the Supreme Court, since the first operation of the EAW, rejected the expressed constitutional concerns and fears of some academics and practitioners. Having the jurisdiction to genuinely interpret the provision of the Greek Constitution, the Supreme Court shut the window of opportunity on Greek criminals to use the Greek Constitution as an 'excuse' not to be surrendered. The Supreme Court is very clear: if a Greek national commits a crime in a Member State of the EU then the administration of Justice cannot be obstructed only because this person is a Greek national. Therefore, the discussion on the constitutionality of the surrender of the Greek nationals remains only on a theoretical basis.

However, one should note that very interestingly the Supreme Court of Greece did not follow the same path with the other European –even Constitutional- Courts with regard the question of the constitutionality of the surrender of their nationals. As has already been examined in the previous chapter, the Constitutional Courts of Poland and Germany as well as the Supreme Court of Cyprus expressed their serious concerns, and in fact, their objection regarding the incompatibility of the surrender with their Constitution. The result in all these cases was that shortly after the judgements, legislative –even constitutional- reforms were introduced in order to conform their national law to EU law.

However, that was not the case in Greece. The Greek Courts since the very first leading case on the question of the constitutionality of the surrender of Greek nationals did not question the compatibility of surrender with the Greek Constitution unlike the other European Courts. Even if the defence was expressing its objections by raising the question of the unconstitutionality of the surrender with specific provisions of the Constitution, the Supreme Court as well as the Courts of Appeal explicitly rejected all the expressed arguments and fears and strongly supported the compatibility with the Constitution of the surrender of the Greek nationals to any EU Member State. This, yet, at the same time means that Greece did not have to reform its national law and that Greek Courts tried to follow the ECJ's approach taken in *Pupino*, namely, to interpret national –even Constitutional- law in conformity with the obligations undertaken by Greece under EU law.

[419] See the judgment of the Court in Poinika Chronika, 2009, p.350.

C. The decision to stay the proceedings in order to ask for additional information

Since the operation of the European Arrest Warrant in the Greek legal order there have been several cases in which the Supreme Court had to stay the proceedings in order to ask from the issuing judicial authority additional information regarding the contents of the EAW. A characteristic example is case **No.2358/2007** of 21/12/2007[420]. This case concerned an EAW issued by the judicial authorities of Poland against a Polish national in order to prosecute him because he was refusing to pay alimony for his children. However, because the alleged crime by the Polish judicial authorities is not included in the 32 listed offences for which double criminality is abolished the Greek judicial authorities had to verify double criminality of the alleged crime committed by the requested person.

Nevertheless, according to the Greek criminal Code, and in particular to article 358, such behaviour can constitute a crime only if the obligation of the parent who refused to pay alimony is based on a judicial decision. Yet, from the provided information by the judicial authorities of Poland it was not evident where the obligation of the requested person was arising from. Thus, the Court, applying article 19 par. 2 of the Greek implementing Law, decided to stay the proceedings for 40 days and ask the Polish judicial authorities to provide them with the necessary supplementary information.

D. The verification of double criminality

The abolition of double criminality has –in general terms- no implications in the judicial cooperation between the Greek judicial authorities and the other EU judicial authorities. At the same time, the verification of the double criminality with respect to offences not included in the list of the Framework Decision has not yet caused any problems as the Supreme Court and the Court of Appeal verifies the double criminality without facing, up to now, any serious obstacles. Characteristic examples

[420] Case not yet reported. The same reasoning was expressed by the Supreme Court in the cases **No. 504/2005** and **No. 124/2007**, in Greek.

are the cases[421]: a. **No. 306/2007** in 12/02/2007; b. **No.1836/2007** in 12/10/2007; and c. **No. 382/2008** in 15/02/2008.

The first case concerned an EAW issued by the French judicial authorities against a French national in order to prosecute him for committing, in France, several crimes of fraud. The second case concerned an EAW by the Italian judicial authorities against a Bulgarian national in order to be prosecuted for committing several burglaries. In the third case the Italian authorities asked the Greek judicial authorities to surrender an Albanian national in order to prosecute him for crimes related to drug trafficking. In all of the above cases the Supreme Court did not find that the abolition of the double criminality rule with respect to the listed offences was either unconstitutional or an obstacle to the judicial cooperation or incompatible with the rights of the accused.

However, it is interesting to note that in all cases the Supreme Court, even if it stresses that for these offences there is no need to verify the double criminality, at the same time, it makes a reference in the judgement that the offences in question constitute offences *also* according to the Greek Criminal Code by giving in the judgement even the specific provision of the Criminal Code. This, yet, raises questions as the essence of the partial abolition of the double criminality with regard to the specific offences in that the judge has no need to make such reference since he is not expected to verify in its national law the existence of the offence in question.

In particular, this seems to be contradictory to the Framework Decision. The Courts in their judgement do not have to refer to the specific provision of their domestic national law which provides for the punishment of the criminal behaviour as the fundamental nature of the abolition of the double criminality regarding the listed offences is that the executing judicial authority recognizes, in general terms, the elements of the described in the EAW crime without being necessary to verify each time which provision of the Greek law *also* provides for this crime and what punishment that law provides. In other words, such an attitude seems to be an indirect verification of the double criminality principle for the listed offences which is contrary to both the literal meaning and the spirit of the Framework Decision.

With respect to the cases which do not fall in the category of the listed offences, the Court of Appeal and the Supreme Court have shown, in general terms, trust in the foreign judicial system and the verification of double criminality has not, up to now,

[421] Cases not yet reported.

caused any problems to the judicial cooperation. Characteristic examples are the recent cases **No.2155/2008**[422]**;** and case **No.415/2008** in 20/02/2008[423]. The second case, in particular, is the resumption of the afore-mentioned case **No.2358/2007** regarding the Polish national accused for not paying the alimony to his children. The Polish judicial authorities having provided the Greek Supreme Court with the required information the latter had to verify the double criminality principle because the criminal offence for which the Polish national was requested according to the Polish Criminal Code is not included in the list of the Framework Decision.

The Supreme Court found no difficulty to verify the double criminality as the same offence for which the arrest warrant was issued is provided in the Greek Criminal Code[424]and thus, the Supreme Court gave its permission to surrender the Polish national to the Polish judicial authorities[425]. However, it will be very interesting and tempting to see how the Supreme Court will rule in a case where the double criminality of the offence for which the EAW is issued is not abolished on the one hand, and on the other where this offence does not constitute an offence according to the Greek Criminal Code at all or it constitutes the same, but with different elements from the one allegedly committed by the requested person.

E. The irrevocability of the decision

As noted earlier of this chapter, the Greek implementing Law requires that in order to execute an EAW, the decision on which is based, must be *irrevocable*[426] (contrary to the provision of the Council Framework Decision which requires to be final). However, both the Court of Appeal and the Supreme Court in order to avoid any possible problems arising from this provision of the Greek law seem to adopt the afore-expressed view of Mr. Chamilothoris. The given examples are two[427]: (a) case **No. 25/2007** of 10/05/2007; and (b) case **No.33/2007** of 07/06/2007. In both cases the Court of Appeal of Athens ruled that the condemnatory decision must have passed from the all the stages of the essential trial (to be final) and must be enforceable according to the law of the issuing State, without it being necessary to be

[422] See the judgement in Poinika Chronika, 2009, p.823.
[423] Case not yet reported.
[424] See article 358 of the Greek Criminal Code.
[425] The same approach was taken in another case **No.2348/2004**.
[426] See Article 2 (1) of the Greek implementing law.
[427] Cases not yet reported.

an irrevocable decision. It, therefore, avoided using directly the term irrevocable, but preferred to use the stages of the trial as the point of reference.

Nevertheless, the Supreme Court in the recent case **No.1594/2007**[428] went even a step forward. It clearly stated that even if the Greek implementing law states that the EAW should contain the penalty imposed, if there is an irrevocable decision, this does not mean that the law requires *necessarily* referring to an irrevocable decision. It is sufficient if, the Court stated, the issuing State provides the prescribed scale of penalties for the offence under its law without being necessary to have in fact an irrevocable decision.

F. The guarantees to be given according to article 13 of the Greek implementing law

Several cases concerned the application of article 13 of the Law 3251/2004. Characteristic examples are the recent cases[429]: **No.1853/2007** of 15/11/2007 and **No.382/2008** of 15/02/2008. In both cases, the Supreme Court examined whether the issuing EAW State provided sufficient guarantees that the requested person would be able to apply for retrial of his case and be present at the judgement. In both cases it was also proved by the information given in the EAW that the judicial authorities were providing such guarantees, and thus, the Supreme Court ordered the execution of the EAW. Nevertheless, it is apparent that whenever the procedural rights of a requested person are infringed or may be infringed, then the Supreme Court is not willing to close its eyes in order to execute a EAW, but rather it will carefully and intensively seek for the reassurance by the issuing State that such rights are fully guaranteed.

G. Meaning of the term 'judicial authority'

One very interesting case was case **No. 1735/2005** of the Supreme Court in 07/09/2005[430]. This case dealt for the first time with the question of what constitutes a judicial authority in the light of article 1 and 2 of the Greek implementing law.

[428] See the Judgment in Poinikos Logos, 2007, p.1136, (in Greek).
[429] Cases not yet reported.
[430] See the judgement in Poiniki Dikaiosini, 2006, p. 162 and Poinikos Logos, 2005, p. 1696, (both in Greek).

The facts of the case were -in summary- the following: The Danish Ministry of Justice, being the competent authority to issue an EAW according to the Danish law 433/10.6.2003 which implemented the Framework Decision on the EAW, issued an EAW against a Danish national in order to be prosecuted in Denmark for four, in total, offences. However, the Greek Court of Appeal while deciding on the execution of the warrant in question, refused to execute it. The reason was that the EAW can be issued only by '*judicial authorities*' which means that it cannot be issued by any police or governmental executive authorities such as the Ministry of Justice even if this has been designated as the competent authority to issue an EAW. Therefore, the Court of Appeal refused the surrender because, otherwise, that would violate the Greek legal order as being contrary to the fundamental constitutional principle of the separation of Powers.

Nevertheless, the Public Prosecutor acting in accordance with art. 22 of the Greek implementing law, appealed in front of the Supreme Court in order to annul the judgement of the Court of Appeal. The Supreme Court disagreed with the opinion of the Court of Appeal and ordered the execution of the EAW. The invoked reasoning was that '*according to the Greek law and in the light of an effective co-operation for the fight against crime in the EU, as a single judicial area, and of the existing differentiation of the legal systems of the Member States, since there is not, in the present stage, harmonisation of national laws, it is left only upon to the issuing the EAW State to designate the competent authority to issue the EAW and not to the executing State to decide whether this authority is, in fact, 'judicial' or not*'. Therefore, the Court stated that, in accordance with the Framework Decision, the legal characterization of the foreign authority as being 'judicial' belongs *only* to the issuing State[431]. On the contrary, the executing judicial authority has to refuse to execute the warrant only if the conditions of issuing the warrant, associated with the issuing authority of the Member State, *violate fundamental constitutional provisions, which are related with the human rights of the requested person*.

However, such approach taken from the Supreme Court of Greece seems to ignore that one the main innovations of the Council Framework Decision on the European Arrest Warrant is the removal of the possibility of political involvement from the surrender proceedings. This means that the execution of the European Arrest Warrants

[431] The same exactly approach was followed in the recent case **No. 2252/08**, published in Poinika Chronika, 2009, p.829 and in the case **No. 819/2008**, in Poinika Chronika, 2009, p.159.

is simply *only a judicial process* under the supervision of the national judicial authority which is, inter alia, responsible for ensuring the respect of fundamental rights. Therefore, since the designation of an organ of the State as a judicial body, impacts on fundamental principles upon which mutual recognition and mutual trust are based[432], this organ cannot be the Ministry of Justice. It is felt, accordingly, that the Supreme Court should have followed the opinion of the Court of Appeal and should have refused the execution of the Danish EAW; in any event it is felt that the Greek judicial authorities may examine the law of the issuing State and especially the provisions for the sufficient respect of fundamental rights.

H. Concluding Remarks

In summary, all the aforementioned cases suggest that the EAW is, in practical terms, operational and effective. Greek Judges are, in general terms, willing to accommodate and facilitate the execution of an EAW through interpreting Greek law in the light of EU law. On the contrary, it is apparent that Greek courts refuse to execute an EAW mainly in cases where the crime has been committed partly or mainly in the Greek territory by a Greek national. This, yet, suggests that the Greek judicial authorities do have trust, in general, in foreign legal systems as it is evident that, unlike other judicial authorities, they have not refused the surrender of Greek nationals due to the Greek Constitution. Also, they have not followed the scepticism expressed in other -even Constitutional- judicial systems or the criticism made by some Greek academics.

This, yet, further suggests that -at the same time- the Greek Courts are in the same line with the ECJ ruling on the case of *Gozutok*[433]where the Luxembourg Court, as has already been thoroughly examined in the previous chapter, stated that '*there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were*

[432] See also Commission Staff Working document, *Annex to the report from the Commission*, where the Commission is critical on this issue by stating that the Framework Decision '*does not define what a judicial authority is, this question being left to the national law of Member States. Whilst it is understood that the Minister of Justice is designated by national Danish law as being a judicial authority, it is difficult to view such a designation as being in the spirit of the Framework Decision*'. SEC (2005) 267, Brussels, 23.02.2005, p.13.

[433] See the joined cases C – 187/01 '*Gozutok* and *Brugge'* C – 385/01 of 11 February 2003.

applied'. Nevertheless, one should not ignore that the Greek Courts in several cases have been critical as to the conformity of the Greek implementing law with the Council Framework Decision.

On the other hand, it is also very interesting to note that neither the Courts of Appeal nor the Supreme Court of Greece make in their judgements any explicit reference to the ECJ rulings. In fact, they might be almost in line with the ECJ rulings, but without making use in their decisions of the judgements of the Luxembourg Court. In particular, it is notable that unlike to other European Supreme Courts, the Greek Supreme Court in all of its judgements has not ever made any explicit use of the most popular case of *Pupino*[434].

However, one should not ignore that the Greek Courts, following impliedly the reasoning of *Pupino*, are trying to interpret the Greek national law in conformity to the EU law as well as to the ECJ judgements even if they do not make any explicit reference and even if the implementation of the Greek law by the Greek Legislator has limited the scope for judicial discretion. In addition, it is important to note that the Greek Courts, following once again the *Pupino* as well as the very recent case of *'Advocaten voor de Wereld'*[435], expressly have stated that both EU law and the national application of EU law will be interpreted, each time, in the light of human rights principles. This is an inviolable rule for the Greek Courts which makes apparent that the Greek Judges are prepared to check each time the compatibility of the execution of any EAW with fundamental rights. It seems that if there is any doubt that the execution of an EAW may violate any of the fundamental rights then the Greek Judges will refuse its execution. This attitude, yet, sends at the same time a strong message to those Greek practitioners who have been critical about the Supreme Court accusing it as being a Euro-blinded Court which follows *faithfully* the directions given by Brussels[436], and thus, possibly, not sufficiently protecting fundamental rights.

[434] Case C-105/03, '*Pupino'*, [2005] ECR I-5285, 16/06/2005.
[435] Case C-303/05, *Advocaten voor de Wereld*, judgment of 3 May 2007.
[436] Interview with Mr. Vgontzas in 02/05/2008.

IX. Conclusion

The principle of mutual recognition has been an issue which provoked a very controversial debate in the Greek public opinion. Its only application, namely the European Arrest Warrant, has caused several reactions and concerns mainly with regard to the question of the constitutionality of its operation in the Greek legal order and its conformity with the sufficient protection of fundamental rights. The parliamentary discussion on the implementation of the Council Framework Decision proved that the EAW was, in fact, a very sensitive issue, but which, at the end, successfully passed through the parliamentary voting.

Nevertheless, one should not ignore the fact that the Greek implementing law is generally a copy and paste of the Council Framework Decision[437] without having at the same time changes in the criminal code as well as the criminal procedure code. This yet may, in practice, cause problems in the operation of the EAW. In particular, it is felt that practitioners may face problems while handling the EAW in practice as it is difficult to obtain a clear picture of the law and practices that apply in respect of the EAW[438]. To that end, it is felt that an amendment of the implementing law is required, with the active participation of the practitioners, in order to give to the Framework Decision complete validity and eliminate any possible contradiction with the rest of the Greek criminal law. This, in particular, is needed as to the grounds for refusal and the list of offences covered and not by the abolition of the principle of double criminality[439]. It is also important to reconsider the strict time limits for the right to Appeal in front of the Supreme Court[440] as well as to specify the maximum period of the duration of the temporary transfer of the requested person to the issuing State[441].

In addition, the way that the Council Framework Decision has been implemented in the Greek legal order has been, in some cases, problematic. In particular, this has happened in the implementation of the grounds of refusal where the Greek Legislator has transformed some optional grounds of refusal to mandatory ones as well as it has added some other which, however, are not provided in the originally adopted Council

[437] See the '*Evaluation Report – Report on Greece*', id. 2008.
[438] Ibid. The Council is also suggesting that in order to remedy this situation, it would be advisable that practitioners be invited to take part in producing written guidelines providing detailed guidance on how the Greek implementing law should be applied in practice.
[439] See also ibid.
[440] See art. 22 par. 1 of the Law 3251/2004.
[441] See art. 23 par. 4 of the Law 3251/2004.

Framework Decision. This, as has already been seen, is not only contrary to the Council Framework Decision, but also seriously eliminates the judicial discretion which, in turn, is not in line to the spirit of the EU Legislator who wanted to leave upon the national judge the power and discretion to decide on the application of the grounds of refusal. It also can make on the one hand the operation of the EAW very ineffective and on the other it can make it easier for the criminals to choose the most 'convenient' legal environment for their illegal activities. It should, therefore, have been chosen, while implementing the Framework Decision, instead of restricting the judicial discretion, to keep the grounds for refusal as optional which would mean that the judicial authorities, being the depositary of the fundamental principles and guarantees of the equitable State, would be more able to facilitate more effectively the purposes and goals of the EAW and hence would be more able to contribute to the creation of a common EU Area of Freedom, Security and Justice.

Nonetheless, the Greek Courts have, in practice, rejected all the fears and concerns expressed by both practitioners and academics by efficiently accommodating the operation of the EAW and by stating as clearly as possible that its application constitutes the '*passport*' through which a final criminal decision of a judicial authority of a Member State asserts its free movement between the Member States[442]. Greek judges have, in fact, tried to find explanatory ways in order to fully accommodate the EAW imperatives within the framework of the protection of fundamental rights and the Greek Constitution even if there is a significant lack of specialization and training of judges with regard to the operation of the European Arrest Warrant[443]. This, yet, leads to one main conclusion, which is that the EAW has positively passed and without serious problems, as happened in other EU Member States, the test for the operation of the principle of mutual recognition in the judicial cooperation in criminal matter in the enlarged EU. The effectiveness of the operation of the EAW in the Greek legal order can be gauged also from the figures presented in annex (4) of this thesis.

At the same time, the Greek implementing law and its application in the Greek Jurisdiction suggest that the relation between EU law and Greek law is closely linked. Even if an explicit reference to the ECJ case law has been avoided, it is apparent that the Greek Courts follow the principles which arose from the Court of Luxembourg.

[442] See the Judgment **No. 25/2007** of the Court of Appeal of Athens in 10/05/2007. Case not yet reported.
[443] See the '*Evaluation Report – Report on Greece*', id. 2008.

This, further, suggests that Greece supports and facilitates the effort for a common European judicial area in the field of criminal law. While, as discussed in chapter one, other EU Member States were seriously challenging the validity and the legality of the EAW as well as their national Constitutional Courts were challenging its operation in regard to the constitutionality of the surrender of their own nationals and the protection of fundamental rights, the Greek case proves that these matters did not concern Greece and that the latter was trying to facilitate the EU requirements. However, this support is not unlimited or unconditional.

In particular, it is apparent that, despite the general success of the operation of the principle of mutual recognition, further steps are required to be taken in order to accomplish the goal of creating an EU area of Freedom, Security and Justice. Issues related to the absolute protection of human rights are closely linked to Greek national sovereignty and, thus, will play a key role in the development of the implementation in Greece of EU criminal law. In that framework, it is felt that not only the application of the principle of mutual recognition, but also any instrument or principle which is related to the field of criminal law, will have its boundaries in the guarantee that these measures are accompanied by the effective protection of human rights. If this condition is not sufficiently guaranteed then, it is expected that serious objections will be raised by Greece as to the proposed or adopted measure and its application. It also seems that the Greek legal order requires -in the short term- that EU will, urgently, focus its interest in the adoption of common rules for the rights of the suspected and of the accused.

Chapter 3

'Harmonization of Substantive Criminal Laws in Europe'

I. Introduction

Harmonization of criminal laws in Europe has been an issue which has raised a very intensive and controversial debate. The discussion was until recently limited due to the fact that it was questioned whether criminal law falls within the Community's sphere of competence and/or within the exclusive competence of Member States.

The Treaty of Amsterdam gave harmonization a significant boost as article 31 of the Treaty urged the Member States to approximate their criminal law provisions with a view to improving mutual co-operation in criminal affairs. At the same time, the European Court of Justice played a very significant role through its jurisdiction to the evolution of EU criminal law. Also, the Treaty of Lisbon constitutes a very significant step for the enhancement of the adopted harmonized criminal laws and their effective application in the various national legal orders.

In this context, the purpose of this chapter is to explore the main issues regarding harmonization of only substantive criminal laws in Europe. In particular, it will be starting the analysis by looking at the evolution of harmonization throughout the fundamental Treaties of Europe. It will then go to examine the competence of the European Community to define criminal offences and impose criminal sanctions by examining, in particular, the two famous cases regarding the protection of the Environment and Ship-Source Pollution.

The analysis will then focus on the competence of the European Union to adopt substantive criminal law by using as examples the following three areas: (a) the fight against terrorism; (b) the fight against organized crime; and (c) the fight against money laundering. These areas have been chosen on the basis that they are very serious offences with prominent threats on security, they have largely a transnational element and they constitute the most representative cases of the substantive EU criminal law which have significant importance and effect on the domestic national law, on the protection of fundamental rights, and for which the obstacle of double criminality has been overcome.

II. Harmonization of Criminal Law in Europe

Harmonization of criminal law in the European Community and European Union has been for many years –and still remains- a very controversial and much debated issue, as it involves a very complex process of harmonizing systems in the very sensitive field of national criminal law[444]. Beginning from the creation of an economically integrated Europe which is based on the internal market[445] and its free circulation across open borders, transnational crime has gradually become one of the main focuses of the European Community and the European Union, as there is common concern between Member States for the emergence of areas of criminality that affects the interests of the EU.

The development of this fastest-growing area of EU law can be divided into three main steps[446]: (a) the period before the Treaty of Maastricht; (b) the period of evolution from the Maastricht Treaty to the Treaty of Amsterdam and beyond; (c) the very significant changes that have emerged due to the Treaty of Lisbon which has already entered into force. These steps will be –in summary- discussed in the following section in order one to appraise the function of harmonization towards an EU criminal law.

a. *Before the Treaty of Maastricht*

Before the Treaty of Maastricht in 1992, in general terms, the European Communities did not have any express competence in the area of criminal law and criminal procedure as this field was regarded to be lying at the very core of national sovereignty and, thus, was left outside the scope of the EEC[447]. However, there was a general understanding that the gradual development of the EU internal market with the abolition of borders in 1980's on the one hand, and the rapid development of transnational crime on the other, strengthened the need for a much closer cooperation

[444] See Mireille Delmas-Marty, '*The European Union and Penal Law*', European Law Journal, Vol. 4, No. 1, March 1998, pp. 87–115.
[445] For the operation of harmonization in the internal market see Dougan, '*Minimum Harmonization and the Internal Market*', Vol. 37, Common Market Law Review, (2000), p.853.
[446] See Peter-Alexis Albrecht and Stefan Braum, '*Deficiencies in the Development of European Criminal Law*', European Law Journal, Vol. 5, No. 3, September 1999, pp. 293–310. Also, Valsamis Mitsilegas, '*EU Criminal Law'*, Oxford and Portland, 2009, pp 107-110. For the regimes and sources of European Criminal Law see Christopher Harding, '*Exploring the intersection of European Law and National Criminal Law*', European Law Review, 2000, 25(4), 374-390.
[447] For an early discussion see Janet M. Dine, '*European Community Criminal Law?*', Criminal Law Review, 1993, pp.246-254.

between the Member States regarding the new areas of criminality that, however, significantly affected their common interests[448].

In fact, the only early provision related to criminal law is to be found in the Treaty establishing the European Atomic Energy Community at article 194 (1) which imposed a duty to Member States to *prosecute* anyone within its jurisdiction who infringed his duties and his obligation for professional secrecy[449]. However, cooperation between Member States did exist also outside the EU framework. Characteristics are the examples of cooperation within the intergovernmental framework of the Council of Europe which had led to the adoption of criminal law instruments that had an influence to some extent to the internal EU law[450] as well as the example of the establishment of TREVI, an intergovernmental network of national officials set up by the Rome European Council in 1975[451], having as its main focus the fight against terrorism. However, when the Treaty of the EU entered into force all these arrangements were absorbed into the institutional framework of the Union[452].

Yet, all these efforts reveal that although EC did not have any official competence in the area of criminal law as it was left outside the Treaties[453], Member States were concerned that the problems caused by transnational crimes and crimes against the interests of the Community would be an unavoidable factor justifying further initiatives on the field of criminal law.

b. The Treaty of Maastricht

In 1992, Member States went a step forward and put a new legal basis regarding their legal relations by creating the European Union[454]. The new model of cooperation between Member States was founded on the European Communities[455] and was built

[448] See Valsamis Mitsilegas, id. 2009, pp 05-57. See also V. Mitsilegas, J Monar and W. Rees, '*The European Union and Internal Security*', Basingstoke, Palgrave Macmillan, 2003, pp 19-22.
[449] See for an early discussion of criminal law in the EC, J.W. Bridge, '*The European Communities and the Criminal Law*', The Criminal Law Review, 1976, pp 88-97.
[450] See Valsamis Mitsilegas, id. 2009, pp 05-57.
[451] A further prominent example is the Schengen Agreement 1985, which was supplemented by the Schengen Implementing Convention 1990.
[452] See Estella Baker and Christopher Harding, '*From past imperfect to future perfect? A longitudinal study of the third pillar'*, 2009, European Law Review, p.2.
[453] See the 8th report of Activities of the Commission in 1974 where it is noted that criminal law '*is a subject which does not as such enter the Community's sphere of competence, but remains within the province of each Member State*'.
[454] OJ 1992 C 191. For an overview analysis of Treaty see D. Curtin, '*The Constitutional Structure of the Union: A Europe of Bits and Pieces*', Common Market Law Review, vol. 30, 1993, pp17-69.
[455] See article 1 of the TEU.

on the so-called 'three pillar' structure which was in fact the most striking feature of the TEU[456].The rationale of creating the three pillars structure was that Member States wanted a more systematic and established mechanism of cooperation in the fields of Common Foreign and Security Policy as well as in Justice and Home Affairs[457].

It was, in fact, the first time that the European Union had an official competence in the field of Justice and Home Affairs which included *inter alia* judicial cooperation in criminal matters[458]. In order to enforce this new European cooperation, Member States created new legal instruments which included 'Joint Positions', 'Joint Actions', and 'European Conventions'. Although the Treaty of Maastricht did not change the idea that criminal law is a matter which belongs not to the European Community, but to the sphere and competence of the Member States, the creation of the third pillar, undoubtedly, resulted in the establishment and improvement of the cooperation of Member States in criminal cases.

In practical terms, the Union adopted Conventions harmonizing substantive criminal law regarding for example fraud against the EU budget[459], as well as Joint Actions harmonizing, for example, drug trafficking[460], organized crime[461], racism and xenophobia[462], money laundering[463] and other types of international crime. However, as Valsamis Mitsilegas notes, the powers given to the Union to exercise the competence in the field of Justice and Home Affairs remained *limited* and *unclear*[464]. This weakness of the operation of the third pillar was discussed in the intergovernmental conference on the review of the TEU[465] resulting in the new Treaty of Amsterdam.

[456] See Stephen Weatherill, '*Cases and Materials on EU Law*', 2007, Oxford, pp 04-11.
[457] See Paul Craig and Grainne De Burca, '*EU Law – Text, Cases and Materials*', Fourth Edition, 2008, Oxford, pp 14-20.
[458] See article K.1 (7) of TEU.
[459] See the Council Act of 26 July 1995. OJ C 316 of 27.11.1995.
[460] See the 96/750/JHA Joint Action of 17 December 1996. OJ L 342, 31.12.1996, p. 6–8.
[461] See the 98/733/JHA Joint action of 21 December 1998. OJ L 351, 29.12.1998, p. 1–3.
[462] See the Joint action/96/443/JHA of 15 July 1996. OJ L 185 of 24.07.1996.
[463] See the 98/699/JHA Joint Action of 3 December 1998. OJ L 333, 9.12.1998, p. 1–3.
[464] See Valsamis Mitsilegas, id. 2009, pp 09-11. See also P.C. Muller-Graff, '*The Legal bases of the Third Pillar and its Position in the framework of the Union Treaty*', Common Market Law Review, vol.31, 1994, p.509.
[465] See the General Report of 1997.

c. The Treaty of Amsterdam

Having in mind both the obvious weakness of the third pillar and the increasing challenges for the Member States in areas such as organized crime, drug-trafficking, money laundering and other areas of international crime, the experts participating in the 1996/1997 intergovernmental conference agreed on the need to improve and optimize the decision-making in the third pillar, as well as to introduce new objectives and instruments in order to improve effectiveness and accountability[466], although there were different opinions on the question whether this could be achieved by further 'communitarization'[467].

Nevertheless, the result, after long negotiations, was to sign of the Treaty of Amsterdam in October 1997[468], a Treaty which significantly intensified the development started through the Treaty of Maastricht. One of the main innovations of this new Treaty was that the third pillar itself contained a new and stronger model of cooperation between the Member States by including provisions on police and judicial cooperation in criminal matters and having as its objective the creation of an '*Area of Freedom, Security, and Justice*'.

Furthermore, particular targets mentioned were[469]: organized crime, terrorism, trafficking in persons, drug and arms trafficking, corruption and fraud. All these aims were to be achieved, among others, through: [a] the *approximation of rules on criminal matters* in the Member States. Also, article 34 TEU[470] introduced new tools for the effective cooperation of the Member States under the framework of the third

[466] See Neil Walker, '*Justice and Home Affairs*', International and Comparative Law Quarterly, 1998, pp 01-05. See also J.Monar, '*European Union – Justice and Home Affairs; a Balance Sheet and an Agenda for Reform*', in G. Edwards and A. Pijpers (Eds), The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond (1997), pp.326-339.

[467] See R. Bieber, '*The Third Pillar and the 1996 Intergovernmental Conference*', in R. Bieber and J. Monar (eds), 'Justice and Home Affairs in the European Union, European Interuniversity Press, Brussels, pp. 383-390. See also D. O'Keeffe, '*Recasting the Third Pillar*', Common Market Law Review, 1995, Vol.32, pp. 893-920. Also see the '*Progress Report on the Intergovernmental Conference of 17 June 1996*' (doc. CONF 3860/1/96 REV 1). See also Jorg Monar, '*Justice and home affairs in the Treaty of Amsterdam: reform at the price of fragmentation*', European Law Review, 1998, p.321.

[468] The Treaty entered into force on 1 May 1999. See the original text: OJ C340 of 10 November 1997. See also Alan Dashwood, '*European Community Legislative Procedures after Amsterdam*', Cambridge Yearbook of European Legal Studies, vol. 1, 1998, pp.25-38.

[469] As Steve Peers suggests EU has not itself the aim of harmonizing all national substantive criminal law but, rather, concerns itself with certain listed crimes, although the lists in Articles 29 and 31 (e) are both expressly non-exhaustive. See S. Peers, '*EU Justice and Home Affairs Law*', second edition, Oxford University Press, 2006, pp. 382-387.

[470] Ex-article K.6.

pillar[471], including the Framework Decisions as well as the ECJ was given jurisdiction to give preliminary rulings *inter alia* on the validity and interpretation of Framework Decisions and on the validity and interpretation of the measures implementing them[472].

d. From the Treaty of Amsterdam to the Tampere European Council, the Hague Programme and the Stockholm Programme

Shortly after the coming into force of the Treaty of Amsterdam, the European Council in 1999 organized a special meeting in Tampere, where the Council expressed its determination to make full use of the possibilities offered by the Treaty of Amsterdam. At the same time the Council sent a strong political message to reaffirm the importance of this objective and agreed on a number of policy orientations and priorities which would *speedily* make this area a reality[473].

For the purposes of this chapter it is important to note that the European Council in this meeting also expressed the view that with regard to national criminal law, Member States should give efforts to agree on common definitions, incriminations and sanctions which would be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime, drugs trafficking etc. Also the Council called in its Conclusions for the approximation of criminal law and procedures on money laundering[474]. Since then, the EU has mainly used Framework Decisions, rather than any other instrument, to achieve all these goals.

The European Council in November 2004 endorsed the so-called '*Hague Programme'*, a five-year programme for closer co-operation in Justice and Home Affairs from 2005 to 2010. With regard to harmonization, in the plan implementing the Hague Programme, there is a specific reference concerning the fight against organized crime; proposals on counterfeiting as well as trafficking in persons,

[471] For an evaluation of the reforms which the Treaty of Amsterdam introduced see Jorg Monar, id. 1998, pp. 320-335. See also Paul Craig and Grainne De Burca, '*EU Law – Text, Cases and Materials*', Fourth Edition, 2008, Oxford, pp 229-267.
[472] See article 35 TEU (ex-article K.7). See also Albertina Albors – Llorens, '*Changes in the Jurisdiction of the European Court of Justice under the Treaty of Amsterdam*', Common Market Law Review, Vol. 35, 1998, pp. 1273-1294.
[473] See the Introduction of the Tampere European Council - Presidency Conclusions of 15 and 16 October 1999.
[474] See par. 55 of the Presidency Conclusions.

fraud, and other types of international crime[475]. Yet, the European Council on 1 December 2009 adopted the successor to the Hague Programme, the so-called *Stockholm Programme*[476], setting out the priorities for 2010-2014 for the EU. However, it is noteworthy that in this Programme, as noted in chapter one, the principle of mutual recognition is fully promoted, whereas harmonization will be used only where 'necessary to facilitate mutual recognition'[477].

[475] See point 3.3 of the Hague Programme. OJ C 198/15 of 12/08/2005.
[476] See the '*Stockholm Programme – An open and secure Europe serving and protecting the citizens*', Brussels, 02/12/2009, 17024/09.
[477] See id. Point 3.1.1.

III. The competence of the European Community to define criminal offences and impose criminal sanctions

The debate on the question of the competence of the European Community in the field of criminal law has been long-standing with different and often conflicting expressed views. This vagueness is reasonable if one takes into account the absence in the Treaty establishing the European Community of any explicit reference on the competence of the Community regarding criminal law[478]. Even after the introduction of the third pillar through the Treaty of Maastricht and the expressly Union's competence in criminal law matters, the EC remained without an explicit competence to define criminal offences and impose criminal sanctions.

Nevertheless, in a number of cases the European Court of Justice has demonstrated that criminal law interacts with the implementation and application of Community Law. One of the prime examples is the right to free movement where the Court *inter alia* stated that[479]: '*In principle, criminal legislation and the rules of criminal procedure are matters for which the Member States are still responsible. However, it is clear from a consistent line of cases decided by the Court, that Community law also sets certain limits in that area as regards the control measures which it permits the Member States to maintain in connection with the free movement of goods and persons*'. As, thus, it is evident, the European Court since 1981 based on the principle of proportionality placed specific limits regarding the application of national criminal law, in cases where the latter would have diverse effect to the Community Law rights or where it deemed necessary for the effective application of Community Law[480].

Nevertheless, since then, there have been expressed opposing views that could be categorized in two main bands: (a) the one supporting that the European Community is not competent as regards criminal law matters; and (b) the other one arguing that the European Community has competence insofar as being a necessary means to enforce Community law[481].

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[478] See V. Mitsilegas, '*Constitutional Principles of the European Community and European Criminal law*', European Journal of Law Reform, vol. 8, 2006, p. 302.
[479] Case *Casati*, referred to Valsamis Mitsilegas, id. 2009, p.61.
[480] Ibid, p. 62.
[481] For a discussion of these two different approaches see Martin Wasmeier and Nadine Thwaites, *'The "battle of the pillars": does the European Community have the power to approximate national criminal laws?'*, European Law Review, 2004, vol. 24, p. 613.

The supporters of the first band taking the 'literal' view of the Treaties argue –in summary- that since there is no any explicit provision in the TEC on criminal law, it is meant that the latter is not included in the purposes of the European Community, and thus, the Community has no competence to harmonize national criminal law as this falls out with the Community's competence. On the other hand, those in favour of Community competence to define criminal law and to impose criminal sanctions argue that criminal law should not be considered as a policy that is separate from the Community policies, but rather as a means to achieve these. In that sense they argue that the Community can ask Member States to use criminal law in order to enforce Community law as well as to safeguard the integrity of the Community's legal order[482].

Nevertheless, this debate was often accompanied by the European Commission arguing that the Community does have competence in the field of criminal law in order to ensure the achievement of Community's objectives. A characteristic example[483] of this approach was the first Money Laundering Directive which was adopted in 1991[484]. During the negotiations, the European Commission in its proposal expressed its view that criminalizing money laundering by Member States '*is not only a necessary repressive means of combating money laundering, but also a previous prerequisite for cooperation between financial institutions and judicial or law enforcement authorities*'[485]. The same approach was taken in all the following Money Laundering Directives in 2001 and 2005, namely after the introduction of the third

[482] See Valsamis Mitsilegas, id. 2009, p.65. See also ibid.

[483] Another example is the so-called *Corpus Juris*, a funded project by the Commission regarding the fight against the financial interests of the Community and proposing the establishment a new European criminal code for the detection, investigation, and prosecution of offences affecting the financial interests of the Community. However, the very optimistic project of the *Corpus Juris* was not finally incorporated in the legal order of the European Community. See M. Delmas- Marty and J.A.E. Vervaele, '*The implementation of the Corpus Juris in the Member States*', vol.1, Antwerp, Interentia, 2000. Also see M. Delmas – Marty, '*Guest Editorial: Combating Fraud – Neccesity, Legitimacy, and Feasibility of the Corpus Juris*', Common Market Law Review, vol.37, 2000, pp. 247-256. Also, J.R. Spencer, '*The Corpus Juris Project and the Fight against Budgetary Fraud*', Cambridge Yearbook of European Legal Studies, vol. 1, 1998, pp.77-106. Also, the 9th Report of the House of Lords, European Communities Committee, on '*Prosecuting fraud on the Communities' finances – The Corpus Juris*', of 26 May 1999, Session 1998-99 as well as the criticism on this Report by J.R. Spencer, '*The Corpus Juris Project –Has it a future?*', Cambridge Yearbook of European Legal Studies, vol. 2, 1999, pp.355-367.

[484] See the Council Directive 91/308/EEC of June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L 166 of 28 June 1991. However, money laundering will be examined in detail further on this chapter.

[485] See the Proposal for a Council Directive on prevention of the financial system for the purpose of money laundering, COM 90 - 106 Final of 23 March 1990.

pillar, which led, as Valsamis Mitsilegas correctly notes, to a *de facto* criminalization of money laundering in the Member States of the EU[486].

Nevertheless, there were a number of cases –in particular, after the Treaty of Amsterdam- where tools of the third pillar were used in combination with tools of the first pillar in order to achieve Community's objectives[487]. The logic behind this strategy was that for the effective application of specific policies of the Community, it was necessary to adopt also criminal law measures, but it was unclear whether these could be taken under the framework of the first pillar. Given the constitutional implications in the structure of the European Union and the European Community as well as the reluctance of the Member States to give to the Community any competence in criminal matters, it has been chosen to use tools from both the first and the third pillars: (a) a first pillar Directive which describes the regulated subject matter; and (b) a third pillar Framework Decision which specifies that the regulated matter under the Directive constitutes also a criminal offence under the framework of the third pillar and also determines the imposed criminal sanctions[488].

Yet, this path lead the European Court of Justice to intervene, as it was called to rule on the legality of one adopted under this framework measure challenged by the Commission. Also, the Court, in another case, was called to rule on the legality of another measure taken by the Council exclusively under the third pillar. Both cases gave to the European Court a very significant opportunity to distinguish the relationship between EU and EC law regarding criminal law, hence to give answers to very controversial and hotly debated substantial constitutional issues on which there has been no precedent.

[486] See Mitsilegas, id. 2009, p. 67.
[487] See G.J.M. Corstens, '*Criminal Law in the First Pillar?*', European Journal of Crime, Criminal Law, and Criminal Justice, Vol. 11/1, 2003, pp.131-144.
[488] See Mitsilegas, id. 2009, p.69.

a. The case regarding the protection of the Environment

In 1998 the Council of Europe adopted a Convention on the protection of the Environment through criminal law[489] which was the first international convention using criminal law for the prevention of environmental violations[490]. A few years later, on the 27th January 2003, the Council adopted a third pillar Framework Decision 2003/80 JHA on the protection of the environment through criminal law provisions[491].

The Commission reacting to the Council's choice to adopt criminal law measures in a field which was regarded to belong to the Community's objectives brought an action challenging the legality of the Framework Decision and seeking its annulment as not being the appropriate legal instrument by which to require Member States to introduce sanctions of a criminal nature at national level as well.

The European Court of Justice sitting as the Grand Chamber, in its judgment[492], ruled in favour of the Commission and annulled the Framework Decision. Using articles 29 and 47 TEU it stressed that nothing in the TEU is to affect the TEC. The Court, then, went on to examine the aim of the Framework Decision and whether it fell within the objectives of the Community's policy regarding the protection of the environment. In that respect, it concluded that '*it is clear both from its title and from its first three recitals that its objective is the protection of the environment*'[493].

Furthermore, the Court recalled that as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence[494]. However, it went a step further by stating that this finding does not prevent the Community Legislature, when the '*application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully*

[489] For the protection of the environment through criminal law see M. Faure and G. Heine, '*Criminal Enforcement of Environmental Law in the European Union*', Comparative Environmental Law and Policy Series, 2005, pp.1-90. See also Francoise Comte and Ludwig Kramer, '*Environmental Crime in Europe*', Europa Law Publishing, 2004.
[490] See the '*Convention on the protection of the Environment through Criminal law*', Council of Europe, Strasbourg, 04/11/1998.
[491] See the '*Council Framework Decision 2003/80/JHA of 17 January 2003 on the protection of environment through criminal law'*, O.J L 29/55 of 05/02/2003.
[492] See Case C-176/03, *Commission v. Council*, of 13 September 2005.
[493] See par. 46 of the judgment.
[494] Ibid.

effective'[495]. The Court, thus, concluded that, on account of both their aim and their content, articles 1 to 7 of the Framework Decision have as their main purpose the protection of the environment and they could have been properly adopted on the basis of article 175 EC[496]. In those circumstances, the entire Framework Decision infringed article 47 TEU as it encroached on the powers which article 175 EC confers on the Community[497], and thus, the Framework Decision was annulled[498].

On the one hand, it is questionable whether the decision by the European Court of Justice extends far beyond the sphere of environmental law[499] as an example of the question of distribution of competences between the first and third pillars[500]. On the other hand, it is undoubted that this judgment confirmed the primacy of EC law over EU law[501] as well as that it has been a landmark decision[502]in the sense that for the first time the Court explicitly recognized competence to the Community to require from Member States to adopt and impose criminal sanctions in order to ensure the effectiveness of the Community policies[503].

In fact, the Court interpreted the Treaties *creatively*[504] in order to establish such criminal competence to the Community. This is of great importance if one considers that traditionally criminal law has been a core element of national sovereignty of Member States. However, what was clear due to this judgment is that in the battle of the pillars[505], the Community seems to be the winner: if a measure is to be adopted aiming at the achievement of a Community objective, in particular, even through the imposition of criminal sanctions, then the Community will have the competence to determine what means (even criminal) are necessary to achieve this objective. This is more evident if one considers that this judgment resulted in the adoption of the

[495] Ibid par. 48.
[496] Ibid par. 51.
[497] Ibid par. 53.
[498] Ibid par. 55.
[499] See point 6 of the '*Communication on the implications of the Court's judgment of September 13'*, 2005 COM (2005), 583 Final, where the Commission argued that in the environmental case, 'the Community policy concerned is environmental protection. However, the judgment lays down principles going far beyond the case in question. The same arguments can be applied in their entirety to the other common policies and to the four freedoms'.
[500] See Ester Herlin-Karnell, '*Commission v. Council: Some Reflections on Criminal Law in the First Pillar*', European Public Law, vol. 13, 2007, p. 73.
[501] See C. Tobler, '*Case-Note*', Common Market Law Review, vol.43, 2006, p.841.
[502] See Francis Jacobs, '*The Role of the European Court of Justice in the protection of the Environment',* Journal of Environmental Law, vol. 18, 2006, p. 204.
[503] See S. White, '*Harmonisation of Criminal Law under the First Pillar'*, European Law Review, vol. 31, 2006, p. 89.
[504] See Valsamis Mitsilegas, id. 2009, p. 72.
[505] Martin Wasmeier and Nadine Thwaites, *'The "battle of the pillars": does the European Community have the power to approximate national criminal laws?'*, European Law Review, 2004, vol. 24, p. 613.

Directive 2008/99/EC of 19 November 2008[506] regulating the protection of the environment through criminal law and significantly contributing to the more effective implementation of environmental protection policy at EU level.

b. The case regarding 'Ship-Source Pollution'

Almost two years after the delivery of the judgment in the environmental case, the Court of Justice was called once again to rule on the question of competence of the European Community in criminal law matters. This time the case concerned ship-source pollution[507]. In particular, the Commission took an initiative to take legal proceedings and annul the Council Framework Decision on strengthening the criminal law framework for the enforcement of the law against ship-source pollution[508] as according to the view of the Commission, this infringed article 47 of the TEU. According to the Commission, the Community is empowered to require Member States to provide for penalties –including, if appropriate, criminal penalties– at national level, where this proves necessary in order to achieve a Community objective and this was the case with regard to questions of ship-source pollution.

The Court of Justice, as in its judgment in the environmental case, began its syllogism by referring to articles 29 and 47 TEU and by examining whether the Framework Decision could have been adopted on the basis of the EC powers[509]. It then found that the provisions laid down in the contested Framework Decision relate to conduct which is likely to cause particularly serious environmental damage as a result, in this case, of the infringement of the Community rules on maritime safety[510]. However, and contrary to the submission of the Commission, the determination of the type and level of the criminal penalties to be applied, according to the Court's view, did not fall within the Community's sphere of competence[511]. It followed that the Community could not adopt provisions such as articles 4 and 6 of Framework Decision, since these articles relate to the type and level of the applicable criminal penalties. Consequently, those provisions were not

[506] See Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, *OJ L 328, 06.12.2008, p. 28-37.*
[507] See Case C-440/05 of 23/10/2007.
[508] See the Council Framework Decision 2005/667/JHA of 12 July 2005. OJ L 255/164 of 30/09/2005.
[509] See par. 52-54 of the judgment.
[510] Ibid par. 67.
[511] Ibid par. 70.

adopted in infringement of Article 47 EU[512]. Nevertheless, articles 4 and 6 of the Framework Decision were inextricably connected to the provisions of the Framework Decision which encroached upon EC competence, as were the final provisions of the Framework Decision and thus, the latter had to be annulled in its entirety[513]. This judgment resulted in the adoption of Directive 2009/123/EC[514], amending Directive 2005/35/EC on ship-source pollution introducing criminal penalties for infringements and so strengthening its substantive provisions.

To summarize, it is questionable whether the ECJ adequately clarified the delimitation of the Community competence with regard to criminal law matters. Also, it seems that the extent of this competence remained unclear[515]. This is of greater importance if one considers the view of the President of the ECJ Mr. Skouris who stressed[516] *inter alia* that '*the importance of these cases has been over-estimated as the Court in both cases did not examine the issue of competence, but only the issue of legal basis. The Court did not examine whether the Community or Member States had the competence to adopt criminal law provisions as the latter had already given this competence through the Framework Decision.* Thus, the President concluded that '*the Court did not establish any competence of the Community or of the Union regarding criminal law as this was not at all the question in these cases. To put it in other words, the Court did not recognize any general competence of Community in the area of criminal law*'.

Despite this view of the President of the ECJ, one should note that it is unfortunate that the Court of Justice did not give greater weight to the fact that Member States have preferred to attribute criminal competence to the EU under the third pillar, and not to the EC under the first pillar[517]. However, as Valsamis Mitsilegas notes, the Court of Justice has by no means given *carte blanche* to the adoption of a wide range of first pillar criminal law measures[518]. Whilst the Commission was successful in the environmental case, in the shipping-source

[512] Ibid par. 71.
[513] Ibid par. 74.
[514] See Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, OJ L 280/52 27.10.2009
[515] See Steve Peers, '*The European Community's Criminal Law Competence: The Plot Thickens*', European Law Review, vol. 33, 2008, p.410.
[516] Interview with the President of the European Court of Justice Mr. Vasilios Skouris in 09/01/2010.
[517] See Anthony Dawes and Orla Lynskey, '*The ever-longer arm of EC Law: the extension of Community competence into the field of criminal law*', Common Market Law Review, 2008, Vol. 45, pp.131-158.
[518] See Valsamis Mitsilegas, id. 2009, p. 84.

pollution case, its victory was rather limited[519]. The Court this time was prepared to reiterate its position, namely that the criminalization of specific activities for the effective application of a particular Community objective falls within the competence of the Community, but, at the same time, it was rather clear that the determination and imposition of the specific criminal sanctions should be a matter which would fall within the third pillar. In any event, the extent of the Community competence in criminal law matters still remains, in essence, an open issue.

[519] See Martin Hedemann – Robinson, '*The EU and environmental crime: the impact of the ECJ's judgment on Framework Decision 2005/667 on ship-source pollution*', Journal of Environmental Law, 2008, p. 287.

IV. Harmonization and Criminal Law in the light of Lisbon Treaty

While Europe was constantly changing, it was common sense between the 27 Member States that they needed more effective and coherent tools so that they could function more properly and respond to the rapid changes in the world. The result was that on 13 December 2007, EU leaders signed the Treaty of Lisbon[520] (the so-called Reform Treaty), and thus brought to an end several years of negotiation about serious institutional issues and concerns. The Treaty of Lisbon, which officially entered into force on 1 December 2009, amends the current EU and EC treaties, but without replacing them.

Nevertheless, it is undoubted that the biggest and perhaps the most important changes that the Treaty of Lisbon brings, concern the third pillar and the EU criminal law[521]. The 'Area of Freedom, Security and Justice' constitutes one of the highest on the list priorities of the Union's objectives: Article 3 (2) of the consolidated version of the TEU states that the Union will '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'[522]. Also, Title V of the consolidated version of the TEU which covers the current areas of the third pillar, states that 'the Union will constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States'[523].

One of the major innovations of the Treaty of Lisbon is the abolition of the existing pillars structure: The third pillar is abolished and EU criminal law is '*communitarised*'[524]. This practically means that the decision-making is changing in the sense that the Council and the Parliament co-decide. Yet, the strengthening of the role of the Parliament will alleviate the expressed concerns and fears about the so-

[520] See the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ 2007/C-306/01. Also see the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 83 of 30 March 2010.
[521] See Steve Peers, '*EU criminal law and the Treaty of Lisbon*', European Law Review, 2008, pp.507-529.
[522] See art. 3 (2) of the Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union. ibid.
[523] See article 67 of the consolidated version of the TEU.
[524] However, as Valsamis Mitsilegas notes, a number of intergovernmental elements will still remain. See Valsamis Mitsilegas, id. 2009, p. 37.

called 'democratic deficit' in the previously existing function of the third pillar[525]. Also, the role of the European Court of Justice is significantly strengthened with the Court having full jurisdiction to rule on infringement proceedings in criminal matters[526] as well as to give preliminary rulings[527]. Yet, these innovations may open the window of opportunity without conditions between the national Courts and the European Court to exchange views and examine the relationship between the EU criminal law and the national criminal law, with all the significant constitutional implications from the application of EU principles being a key role in the development of EU criminal law. The view of the President of the ECJ Mr. Skouris in this matter is very illustrative: '*I think',* he said*, 'that in fact this will be the case and I hope that only significant questions will be raised to the Court in order the latter to express its view in the way that it should do*[528]'.

Another significant change with the Treaty of Lisbon is the introduction of a new system for the adoption of criminal law. In particular, in the new 'Area of Freedom, Security, and Justice', the instruments to be used for the adoption of criminal legislation are Regulations, Directives, Decisions, Recommendations and Opinions[529]. As it is apparent, under the Lisbon Treaty, Framework Decisions, Conventions and Common Positions, do not any longer constitute instruments through which criminal law can be adopted, while instead there have been chosen instruments which constitute Community's instruments and which will mean that Community law principles will apply in the areas currently covered under the third pillar[530].

As to harmonization, the Treaty of Lisbon expands criminal law competence and grants to the Union the competence to 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[531]. In particular, the list of the areas of crimes is 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

[525] It is important to note that the Parliament will have a right to veto.
[526] See art. 258, 259, and 260 TFEU.
[527] See art. 276 TFEU.
[528] Interview with the President of the European Court of Justice Mr. Vasilios Skouris in 09/01/2010.
[529] Art. 288 (1) TFEU.
[530] See Valsamis Mitsilegas, id. 2009, p. 41.
[531] See art. 83 par. 1 TFEU.

and organised crime. This exhaustive list may be expanded 'on the basis of developments of crime'[532] by a unanimous decision by the Council and after obtaining the consent of the European Parliament. However, it is noteworthy that it is now the Union that is granted the competence to adopt such minimum rules on criminal law definitions and sanctions, rather than to require Member States to adopt proportionate, effective and dissuasive penalties[533].

Also, the Union's competence to act in criminal matters is expanded, according to article 83 (2) TFEU, 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 harmonization measures*'. To that end, Directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned[534]. However, this provision is important for one more reason: it seems that it reflects the ECJ case law on environmental crime and ship-source pollution as the Treaty, like the Court, uses *effectiveness* to justify the Union's criminal law competence, though in a broader scope (namely policies than objectives). This, however, raises serious questions regarding the meaning of what is 'essential' and who will prove that a criminal law measure is 'essential' in this context[535]. These questions, nevertheless, are left to be seen.

It is evident that the Treaty of Lisbon brings a new era in the process of European integration. Undoubtedly, the merging of the first and third pillars will establish a more coherent and more easily understood and applied scheme of EU competence in the area of EU criminal law[536]. Nevertheless, in particular with regard to harmonization, the shift to the Community method, namely to qualified majority voting and the co-decision procedure, along with a strengthening in the role of the Commission and the Court of Justice, will constitute a very significant step for the enhancement of the adopted harmonized criminal laws and their effective application as well as for the facilitation of an enhanced judicial cooperation in criminal matters.

[532] Ibid.
[533] See Valsamis Mitsilegas, id. 2009, p.107.
[534] See art. 83 par. 2 TFEU.
[535] See Valsamis Mitsilegas, id. 2009, p.108.
[536] See the 10th Report of Session 2007-08 of the House of Lords – European Union Committee, '*The Treaty of Lisbon: an impact assessment*', p.114.

V. EU criminalization of terrorism, organized crime and money laundering

1. The Fight Against Terrorism

a. The European Union and the fight against terrorism

Terrorism has been for Europe for many decades one of the key strategic threats[537]. The TREVI group, as discussed earlier, had originally focused primarily on the cross-border fight against the terrorist groups which were trying to destabilize several of the EC Member States at that time[538]. However, it was only after the introduction of title VI TEU through the Treaty of Maastricht that EU action against terrorism was for the first time provided with a specific legal basis[539], which was then preserved by the Treaty of Amsterdam.

The legal basis of the EU action against terrorism is to be found in the fundamental Treaties establishing the EU[540]. Article 29 par. 2 TEU, specifically mentions *terrorism* as a form of crime which should be targeted '*in particular*'. Also, article 31 (e) TEU provides that common action on judicial cooperation in criminal matters include the adoption of measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field of terrorism.

[537] See '*The La Gomera Declaration'* adopted at the informal Council meeting on 14 October 1995 where it was stressed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development. Also characteristic is the example of the creation of Europol. Among the crimes with which Europol should deal terrorism is included. For further analysis see Emanuel Marotta, '*Europol's Role in Anti-Terrorism Policing*', in 'The Future of Terrorism', ed. Max Taylor and John Horgan, Routledge, 2000, p.15.

[538] For the different periods of terrorism as a concern of the European Union see Nikola Vennemann, '*Country Report on the European Union*', in 'Terrorism as a challenge for National and International law: Security versus Liberty?', Springer, 2004, pp.217-232.

[539] Nevertheless, one should not ignore that the Maastricht Treaty elevated the co-operation regarding terrorism to new levels. For example, on 1996 the Council decided by a Joint Action of 15 October 1996 to create and maintain a directory of specialized counter-terrorism competences, skills and expertise to facilitate counter-terrorism co-operation between the EU Member States and in 1998 also adopted a Joint Action on the European Judicial Network. See JA 96/610 and JA 98/428 respectively.

[540] For an analysis see Jorg Monar, '*Anti-terrorism law and policy: the case of the European Union*', in Global anti-terrorism law and Policy, Cambridge University Press, 2005, pp. 425-452.

b. The EU responses to the 11 September 2001 terrorist attacks - The Council Framework Decision on combating terrorism

The atrocious and unprecedented terrorist attacks in the USA in 2001 threw Europe into turmoil and immediately altered the discussions for a decisive and catalytic response of the European Union to the terrorist attacks which were considered by some as being *acts of war*[541]. Until that time, the reality was that there was no common legal definition of terrorist acts, no harmonized system of penalties and no basis for accelerated extradition[542]. On the contrary, different situations in Member States in relation to legislation related to terrorism existed. Some of the States had no specific regulations on terrorism[543]. In these States, terrorist actions were punished as common offences. In other States, specific typified laws concerning terrorism existed. This was the case in France, Germany, Italy, Spain, Portugal and the United Kingdom[544].

However, in the wake of the tragic events in the USA, the European Commission presented a proposal for a '*Framework Decision on combating terrorism*' to the special meeting of EU Justice and Home Affairs Ministers in Brussels on 20 September 2001[545]. Shortly afterwards, namely on the 13 June of 2002, the Council adopted the final Framework Decision on combating terrorism[546]. The Framework Decision aims at harmonising the definition of terrorist offences in all Member States and ensures that the latter set up penalties and sanctions for those having committed or being liable for such offences that reflect the seriousness of the offences[547]. It also sets out jurisdictional rules to guarantee that terrorist offences may be

[541] See Jackson Nyamuya Maogoto, '*Battling Terrorism – Legal Perspectives on the Use of Force and the War on Terror*', Ashgate, 2005, pp.1-40. For the legal characterization of the 11 September events see Georges Abi-Saab, '*The Proper Role of International Law in Combating Terrorism*', in 'Enforcing International Law Norms against Terrorism', ed. Andrea Bianchi, Hart, 2004, p. xii-xxii.
[542] See Jorg Monar, id., 2005, p.432.
[543] See the Proposal for a Council Framework Decision on combating terrorism, COM (2001) 521 Final.
[544] See Peter J. van Krieken, '*Terrorism and the International Legal Order*', T.M.C. Asser Press, 2002, pp. 395-424.
[545] See the '*Proposal for a Council Framework Decision on combating terrorism*', COM (2001) 521 Final of 19/09/2001. However, one should note that the 11/09 attacks should be considered as catalyst of an already EU action in the field of terrorism.
[546] See the *Council Framework Decision on Combating Terrorism 13 June 2002*, OJ L164/3 of 22/06/02. See also the Council docs. 12647/01 and 12647/1-4/01. The outcome of the discussions is recorded in Council doc 14845/01 and the agreed text is in Council doc 14845/1/01.
[547] See par. 6 of the Preamble of the F.D.

effectively prosecuted[548] and, finally, it adopts specific measures with regard to victims of terrorist offences because of their vulnerability[549].

Before analyzing the instrument itself, it is interesting to note that the deadline for its implementation was the 31 of December 2002. Nevertheless, the national implementation of the Framework Decision brought about remarkable changes in the domestic legal systems the most important of which was that it was no longer regarded as sufficient that terrorist offences were considered simply common offences, but the terrorist nature of these offences was now required to be part of the definition[550].

[548] Ibid par. 7.
[549] Ibid par. 8.
[550] See Kimmo Nuotio, '*Terrorism as a catalyst for the emergence, harmonization and reform of criminal law*', Journal of International Criminal Justice**,** 2006, pp. 998-1016.

c. Overview of the Framework Decision

C.1 The definition of terrorism

Defining terrorism has been for a long time a very controversial and sensitive issue which has been -at the same time- an important obstacle to the creation and achievement of effective counter-terrorism strategies and measures in international law[551] as one country's terrorist is often another country's freedom fighter[552]. Overall, one can assume a high degree of consensus amongst the Member States as to the need for a common action against terrorism, but when it comes to deciding on a common definition, these differences remain. The arising, thus, question is why terrorism should be treated separately from the existing international and national crimes where conduct overlaps different categories (such as murder, assault, arson or crimes against humanity). The rationale for criminalization and treating of terrorism as a distinct category of criminal harm is more symbolic. It expresses the determination of the international community to condemn and stigmatize 'terrorism' as such and beyond its ordinary criminal characteristics. Thus, by doing so, the international community is willing to send a strong message to those who try to jeopardize its fundamental values and interests through the use of terrorism[553].

From time to time the meaning of *terrorism* has changed[554]. The core meaning of terrorism might have been clear enough, however, there is often scope for genuine debate whether particular acts or types of action, really belong to that meaning[555]. On the other hand, even terrorists do not see or regard themselves as other do. Characteristics are the examples of fighters for freedom and liberation, such as the Popular Front for the Liberation of Palestine, which have been regarded by some as terrorists or actual self-defense movements as the Afrikaner resistance movement.

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[551] For a discussion on the difficulties in defining terrorism see Elisabeth Simeonidou-Kastanidou, '*Defining Terrorism*', European Journal of Crime, Criminal Law and Criminal Justice, Vol.12/1, 2004, pp.14-35. See also Marcello Di Filippo, '*Terrorist crimes and international co-operation: critical remarks on the definition and inclusion of terrorism in the category of international crimes*', European Journal of International Law, 2008, pp. 533-570.

[552] See Omer Elagab and Jeehaan Elagab, '*International law documents relating to terrorism*', third Edition, Routledge – Cavendish, 2007, p.xxv.

[553] See Ben Saul, '*Defining Terrorism in International Law*, Oxford University Press, 2006, pp.1-66.

[554] For a historical analysis of the meaning of the term terrorism, see Bruce Hoffman, '*Defining Terrorism*' in 'Inside Terrorism', revised and expanded edition, Columbia University Press, 2006, pp. 1-41.

[555] See Adam Roberts, '*Countering Terrorism: A Historical Perspective*', in 'Counterterrorism: Democracy's Challenge', edited by Andrea Bianchi and Alexis Keller, Hart, 2008. See also Adrian Guelke, '*Varieties of terrorisms*', in 'The new Age of Terrorism and the International Political System', I.B. Tauris, 2009, pp. 52-70.

All these reveal the fact that terrorism has proved increasingly elusive in the attempts to construct one consistent definition.

This problem was not resolved either with the UN Security Council Resolution 1373, as Member States did not succeed in adopting a common definition of the term 'terrorism', though sometimes the UN has condemned it in the abstract or specific acts of it[556]. Also, the European Parliament in a number of non binding resolutions[557] and recommendations[558] on terrorism has tried to contain a definition of terrorism, but this effort had limited influence on the creation of a commonly accepted definition by the Member States. This international lack and maybe the most difficult legal and political issue, was, thus, complemented with article 1 of the Council Framework Decision on combating terrorism which sets a three-part definition of terrorism consisting of[559]: (a) the context of the action; (b) the aim of the action; and (c) the specific acts of the action that have being committed.

With regard to the context of the action of terrorism, each Member State must take the necessary measures to ensure that the intentional acts, defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organization, are criminalized[560]. Secondly, with regard to the aim of the action, this must be with an aim either of 'seriously intimidating a population'; or 'unduly compelling a Government or international organisation' to act or fail to act; or 'seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organisation'.[561] The third part of the definition regards the specific acts that must be related to one of the provided offences.[562]

Furthermore, the Council Framework Decision defines offences related to a terrorist group and other offences linked to terrorist activities which should be criminalized. In particular, for the purposes of the Framework Decision, '*terrorist group*' means a structured group of more than two persons, established over a period

[556] See Frederick H. Gareau, '*State Terrorism and the United States – From Counterinsurgency to the War on Terrorism'*, Clarity Press, 2004, p. 3-35.
[557] See the '*Resolution on combating terrorism in the European Union*', OJ C 55 of 24/02/1997.
[558] See the '*Recommendation on the role of the EU in combating terrorism*', of 5 September 2001.
[559] See Steve Peers, '*EU Responses to Terrorism'*, International and Comparative Law Quarterly, 2003, p.228.
[560] See article 1 par. 1 of the F.D.
[561] Ibid.
[562] Ibid.

of time and acting in concert to commit terrorist offences[563]. Member States are obliged to criminalize[564]: (a) directing a terrorist group; and (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group. On the other hand, as for the linked offences, Member States are also obliged to criminalize[565]: (a) aggravated theft; (b) extortion with a view to committing one of the acts listed in Article 1(1); and, (c) drawing up false administrative documents with a view to committing either a terrorist offence or participate to a terrorist group.

The list of ordinary offences contained in articles 1 and 2 of the Framework Decision has been criticized by some authors as being too extensive and as not reflecting the particular danger inherent in terrorist acts[566]. In that sense it has been suggested that the definition does not satisfy the requirement of legal certainty of Article 7 par. 1 ECHR because the terms are too vague[567] and includes largely subjective notions. As they characteristically argue, under this definition, acts, for example, of urban violence or anti-globalization demonstrations could be considered as terrorist acts since they might cause extensive destruction to public places likely to result in major economic loss and are aimed at compelling Governments or international organizations to perform or abstaining from certain acts.

However, one can find the counter-argument in the Preamble of the Framework Decision. In particular, after referring to the protection of fundamental rights, the Preamble makes clear that it 'respects fundamental rights' as guaranteed by the ECHR and establishes the general rule that nothing in the Framework Decision can be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate[568]. Thus, this implies that demonstrating in order to influence a Government or an organization does not

[563] See article 2 par.1 of the F.D. For the purposes of the F.D '*structured group*' means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.
[564] See article 2 par. 2 of the F.D.
[565] See article 3 of the F.D.
[566] See Tony Bunyan, '*The War on Freedom and Democracy*', Statewatch analysis of 6 September 2002.
[567] See August Reinisch. '*The Action of the European Union to Combat International Terrorism*', in 'Enforcing International Law Norms against Terrorism', ed. Andrea Bianchi, Hart, 2004, p.144-151.
[568] See par. 10 of the Preamble of the F.D.

(and should not) mean that the demonstrators aim at compelling the institution to perform an act 'unduly' in the sense of art. 1 par.1 of the Framework Decision, but rather that they exercise their recognized right to freedom of assembly[569].

C.2 The imposed penalties

The Council Framework Decision comprises also a further element of minimum harmonization. This element regards the imposition of penalties. The debate about the issue of criminal sanction was extensive[570]. The Commission proposal of 19 September 2001 contained a detailed list of prison sentences, ranging from two to twenty years maximum penalties that Member States should adopt as a bottom line. Nevertheless, in the text finally agreed even though detailed penalties for terrorism as defined by the Framework Decision are largely left to the Member States, the latter are obliged to take necessary measures for terrorism offences to be punishable by effective, proportionate and deterrent criminal sanctions, which may entail extradition[571]. Member States are also obliged to make individuals responsible for a violation liable to imprisonment of a maximum term of not less than fifteen years for leading a terrorist group and eight years for participating in terrorist activities.[572]

Furthermore, Member States are obliged to take the necessary measures to criminalize 'terrorist-linked offences' such as aggravated theft, extortion, and the drawing up of false administrative documents[573] as well as inciting or aiding or abetting a terrorist offence[574]. However, for those offences no maximum penalty levels are set. Furthermore, a special provision on possible penalty reduction exists for terrorist offenders who cooperate with the administrative or judicial authorities[575].

As is apparent, the Framework Decision in essence obliges Member States to punish the defined terrorist offences with sentences heavier than those imposable under national law for the basic offences committed without the intent characteristic of terrorist offences[576]. This seems to be justified due to the specific features of

[569] See Nikola Vennemann, '*Country Report on the European Union*', in 'Terrorism as a challenge for National and International law: Security versus Liberty?', Springer, 2004, p. 234-238. As she argues the same principle applies to the case of freedom fighters.
[570] See August Reinisch. id. 2004, p.119-162.
[571] See article 5 of the F.D.
[572] See article 5 par. 3 of the F.D.
[573] See article 3 of the F.D.
[574] See article 4 of the F.D. Yet, these acts will be defined by Member States according to their national law.
[575] See article 6 of the F.D.
[576] See article 5 par. 2 of the F.D.

committing a terrorist offence, namely: (a) the intention and motivation of the terrorist; (b) the risk of serious damage to a country or an international organization; and (c) the danger inherent in acts committed with such an intention. At the same time, it is apparent that far from definitely harmonizing the national laws in regard to the penalties, Member States accepted the risk of having divergent penalties for terrorist offences in the different national laws.

c.3 Other provisions

One of the innovations of the Framework Decision is that it establishes liability of '*legal persons*' in the form usually imposed by EU measures, where the acts were 'committed for their benefit'[577]. There is also a form of liability based on negligence, where the legal person 'can be held liable where the lack of supervision or control by that person' has made the commission of a specified criminal act possible 'for the benefit of that legal person by a person under its authority'[578]. Such liability does not exclude criminal proceedings against natural persons[579]. Article 8 then specifies the form that sanctions must take 'effective, proportionate, and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions too[580]. Finally, article 9 sets out specific rules with regard to the jurisdiction over the offences covered by the Framework Decision and article 10 obliges Member States to take all the measures possible to ensure appropriate assistance for the victims of terrorism and their families.

Undoubtedly, overall the Framework Decision is a very significant step ahead for systematic EU action against the terrorism. However, one should not ignore that the Framework Decision establishes the so-called minimum common denominator in the sense that it does not go beyond a minimum harmonization of the criminal laws leaving it to the Member States a wide margin of discretion. Nevertheless, as Steve Peers correctly points out, this process is a '*race to the bottom*', where the risk is that defendants may fall subject to the Member State with the lowest standards of rights for the accused[581].

[577] Ibid article 7 par. 1.
[578] Ibid article 7 par. 2.
[579] Ibid article 7 par. 3.
[580] Ibid article 8.
[581] See Steve Peers, id. 2007.

c.4 The amending 2008/919 JHA Framework Decision on terrorism

The rapid evolution of the terrorist threat and of its techniques as well as the use of Internet in order to inspire and mobilize local terrorist networks and individuals in Europe, led the Council in 28 November 2008 to adopt the 2008/919 Framework Decision[582] which rather amends and does not repeal the Framework Decision 2002/475 JHA on combating terrorism. In fact, the new instrument expands the scope of the 2002 Framework Decision to introduce to the EU legal order offences related to terrorism in order to contribute to the more general policy objective of preventing terrorism through reducing the dissemination of those materials which might incite persons to commit terrorist attacks[583].

In particular, the 2008 instrument introduces three new offences: (a) public provocation to commit a terrorist offence[584]; (b) recruitment for terrorism[585]; and (c) training for terrorism[586]. The basis for the introduction of these offences has been the 2005 Council of Europe Convention on the prevention of terrorism. The offences in question exist along with the three other offences in the 2002 Framework Decision, namely 'aggravated theft', 'extortion', and the 'drawing up false administrative documents'. All these acts constitute offences for the purposes of this Framework Decision only when they are committed intentionally[587]. On the other hand, incitement for the new added offences is not punishable[588] and the criminalization of attempt is left to the discretion of Member States[589].

However, it is important to note that the new instrument introduces a new element: for any of the acts to be punishable according to this Framework Decision, it is not necessary that a terrorist offence is actually committed[590]. As Valsamis Mitsilegas notes, this has led to the Framework Decision being strongly criticized for compromising freedom of expression (and academic freedom in particular), and for cementing a criminal law of prevention, where the focus is not on the actual commission of acts, but on the control of individuals who are perceived as a threat at

[582] See the '*Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism*', OJ L 330, 9.12.2008, p. 21–23.
[583] See recital 7 of the Preamble of the F.D
[584] For meaning of the term '*public provocation to commit a terrorist offence*' see article 1 (1) of the F.D.
[585] For the meaning of the term '*recruitment for terrorism*' see article 1 (1) of the F.D.
[586] For the meaning of the term '*training for terrorism*' see article 1 (1) of the F.D.
[587] See article 1 (2) of the F.D.
[588] See article 4 (2) of the F.D.
[589] See article 4 (4) of the F.D.
[590] See article 3 (3) of the F.D.

a temporal stage far removed from the commission of crime[591]. It is, thus, left to be seen how these provisions will be implemented in the various national legislations of the Member States, since the deadline for the implementation of the Framework Decision was the 9th December 2010.

To summarize, all these measures make apparent that the European Union has contributed to a great extent to the fight against terrorism, especially through the closer cooperation between the authorities of Member States. It must also be noticed that the 11 September 2001 attacks gave a major impetus to cooperation in the field of Justice and Home Affairs and a significant boost to the cross-pillar activity. Harmonization of criminal laws was considered to be absolutely necessary in order for Europe to act as a single unit against the threat of terrorism. However, any effort for the adoption of any counter-terrorism measure must find its boundaries in the protection of Fundamental Rights, as human rights should be seen as complementary, and not conflicting, goals of the European Union.

[591] See Valsamis Mitsilegas, '*The third wave of third pillar law. Which direction for EU criminal justice?*', European Law Review, 2009, p. 525-526. See also M. Kaiafa - Gbandi, 'The Prevention of Terrorism and the Criminal Law of Pre-Preventive Enforcement: New Criminal Acts for the Fight against Terrorism in the European Union', (in Greek), 2009, Poinika Chronika, p. 385 - 400.

2. The fight against organized crime

The fight against organized crime has been a global concern especially over the last decade, affecting many areas of the United Nation's[592] and European Union's actions and policies as well. Organized crime has been felt not only as a threat to security, but also as a source of major damage to the social, economic, political, and cultural developments of any society. Yet, even if it is not a new phenomenon, there is a new threat of transnational organized crime in the post-Cold War period. With the rapid development in information and technology, criminals are more mobile and illicit markets are expanding from the domestic economy across national boundaries, corrupting the legitimate economy and undermining political institutions[593]. Organized crime, has, thus, evolved in times of an increasing globalization and expanding international trade, especially within the enlarged Europe without internal frontiers, so the range of organized crime activities has diversified and broadened. At the same time it symbolizes a number of weaknesses in the security arrangements, notably the permeability of national borders, the vigor of free trade and the evolution of the global community[594]. All of these factors have led to international pressure to harmonize the law against organized crime, even if there is not always a clear understanding of what 'it' is[595] as well as justifying the expansion of EU powers in criminal matters.

The European Union's response in the fight against organized crime is adapted to the complexity of this phenomenon which complexity is further reflected in the various attempts at the criminalization of organized crime at EU level. The term 'organized crime' is not only largely differentiated in each Member State, but also represents different phenomena[596]. Yet, national paradigms have influenced international initiatives (including European ones) regarding the fight against

[592] See the United Nations Convention against 'Transnational Organized Crime of November 2000. For a detailed analysis of the UN efforts to combat transnational organized crime see David McClean, '*Transnational Organized Crime – A commentary on the UN Convention and its Protocols*', Oxford University Press, 2007.

[593] See Angela Veng Mei Leong, '*The Disruption of International Organized Crime – An Analysis of Legal and Non-Legal Strategies*', Ashgate, 2007, p. 17.

[594] See Emilio Viano, '*Global Organized Crime and Internal Security*', Ashgate, 2000, p. 14.

[595] See Michael Levi, '*Reflections on organized crime: Patterns and Control*', The Howard Journal of Criminal Justice, Vol. 37, 1998, p. 337.

[596] This was confirmed by a comparative internal EU report which verified the 'idea that organized crime in Europe is not controlled by large, monolithic and well-structured criminal organizations, but rather by small organizations and networks with multinational orientation. See M.Den Boer, '*The Fight Against Organized Crime in Europe: A Comparative Perspective*', European Journal on Criminal Policy and Research, 2001, vol. 3, p.259-260.

organized crime[597]. All these have led the European Union to develop a systematic, integrated and multilevel framework of both preventive and repressive measures in order to combat organized crime[598]. However, for the purposes of this chapter, the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime will be discussed in detail.

a. *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime*

Since 3 May 2000 the Union's efforts to combat organized crime have been based on a paper entitled: '*the prevention and control of organized crime: a European Union strategy for the beginning of the new millennium'*[599], which invited the European Commission to develop policy initiatives to combat organized crime.

To that end and before the end of 2004, the Commission announced that it would prepare a Framework Decision to replace the Joint Action of 1998[600]. Almost at the same time, the Commission presented the so-called *Hague Programme* according to which 'a strategic concept on tackling organized crime at EU level would be developed and implemented[601]' by setting up strategic priorities complemented by concrete actions. The Commission finally presented its proposal on the fight against organized crime on 19/01/2005.[602] The finally adopted instrument which repeals the above-mentioned Joint Action, was adopted three years later, namely on

[597] See Valsamis Mitsilegas, '*From National to Global, From Empirical to Legal: The Ambivalent Concept of Transnational Organized Crime*', in 'Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption, ed. Margaret E. Beare, University of Toronto Press, 2003, pp. 55-87.

[598] For an early discussion of the criminal policy in Europe see Gunther Kairer and Hans-Jorg Albrecht, '*Crime and Criminal Policy in Europe*', Freiburg, 1990.

[599] See '*The prevention and control of organized crime: a strategy for the beginning of the new millennium*', OJ C 124 of 3.5.2000.

[600] See the '*Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union*' (1) (98/733/JHA), OJ L 351, 29/12/1998 p. 0001 – 0003. For a discussion see Valsamis Mitsilegas, '*Defining organized crime in the European Union: the limits of European criminal law in an area of freedom, security and justice'*, European Law Review, 2001, p.568. Also, Valsamis Mitsilegas, Jörg Monar and Wyn Rees, '*The European Union and Internal Security – One Europe or several?*', Palgrave Macmillan, 2003, p. 97.

[601] See point 10 (8) of the '*Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice*', COM/2005/0184 final.

[602] See the '*Proposal for a Council framework Decision on the fight against organized crime*' COM/2005/0006 final.

24/10/2008[603]. The deadline for its implementation in the Member States was set for 11 May 2010[604].

According to the finally adopted measure, the Framework Decision not only takes into account, but also builds on the important work done by international organizations[605] and, in particular, the United Nations Convention Against Transnational Organized Crime[606] (the so-called 'Palermo Convention'). The aim of this Framework Decision is to harmonize Member States' definitions of crimes related to a criminal organization and to lay down corresponding penalties for these offences.

In particular, there are two types of conduct of which Member States must recognize at least one as an offence[607]: (a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organization[608] or its intention to commit the offences in question, actively takes part in the organization's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organization's criminal activities; and (b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1[609], even if that person does not take part in the actual execution of the activity.

Furthermore, Member States must take steps to criminalize the above offences in that the first results in a maximum term of imprisonment of a minimum of two to five years, and the second in a maximum term of imprisonment equivalent to that of the planned activities or in a maximum term of a minimum of two to five years[610]. However, the Member States may reduce, or allow for an exemption from, these penalties if the offender renounces criminal activity and assists the authorities by

[603] See '*Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime*'. OJ L 300, 11.11.2008, p. 42–45.
[604] See article 10 of the F.D.
[605] See Recital 6 of the F.D.
[606] See '*The United Nations Convention against Transnational Organized Crime*', adopted by General Assembly Resolution 55/25 of 15 November 2000.
[607] See article 2 of the F.D.
[608] For an analysis of the organization as an autonomous criminal actor, see Christopher Harding, '*Criminal Enterprise – Individuals, organizations and criminal responsibility*', Willan Publishing, 2007, p. 224-242.
[609] For the meaning of the terms '*criminal organization*' and '*structured association*' see article 1 of the F.D.
[610] See article 3 of the F.D.

providing them with otherwise unobtainable information on the offence and the other offenders or identify or bring to justice the other offenders; or deprive the criminal organization of illicit resources or of the proceeds of its criminal activities; or prevent further offences referred to in Article 2 from being committed[611].

Furthermore, the Framework Decision introduces the liability of legal persons[612]. In particular, Member States must hold any legal person accountable for the above offences that have been committed on its behalf by a person who has a central role in the legal person in question, even if that person has acted in an individual capacity. These legal persons must be punished by effective, proportionate and dissuasive penalties, which include criminal or non-criminal fines and may include other penalties, for example[613]: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; and (c) placing under judicial supervision and other.

Finally, the Framework Decision provides a complete set of jurisdictional rules[614]. In particular, each Member State must ensure that its jurisdiction covers the offences if they are committed on its territory, in whole or in part, by its national or on behalf of a legal person set up on its territory. However, if the offence is committed outside a Member State's territory, it may choose whether or not to apply the last two rules. If the offence falls within the jurisdiction of several Member States, they must cooperate, for example with Eurojust, in order to decide on the prosecuting country. However, in doing so, the Member States must take special account of where the offence was carried out, the nationality or place of residence of the offender, the country of origin of the victim and the territory where the offender was found. Also, it is important to note that for offences that have been committed on the territory of a Member State, the investigations and prosecutions by that Member State must be carried out without depending on having a report or an accusation from a victim[615].

As is evident, the Framework Decision establishes the definitions of offences for participating in a criminal organization as well as providing for corresponding penalties to be imposed on the offenders, irrespective of whether they are natural or legal persons committing or responsible for the commission of the acts. However, some problems inevitably arise regarding this Framework Decision: (a) the terms of

[611] See article 4 of the F.D.
[612] For the meaning of the term '*legal person*' see article 5 (4) of the F.D.
[613] See article 6 of the F.D.
[614] See article 7 of the F.D.
[615] See article 8 of the F.D.

'*criminal organization'* and *'structured association'* are broad and vague terms which may contradict the principle of legal certainty; (b) the fact that the Council finally preferred to criminalize, following the example of the Palermo Convention, either participation in an organized criminal group or conspiracy leaving outside of its scope criminalizing the direction of an organized criminal group, has provoked the strong reaction of the Commission.

As has been argued elsewhere[616], the Framework Decision 'fails to achieve the objective sought by the Commission in relation to Joint Action 98/733/JHA and in relation to the United Nations Convention against Transnational Organized Crime'. Also, the Commission has argued that the Framework Decision 'does not achieve the minimum degree of approximation of acts of directing or participating in a criminal organization on the basis of a single concept of such an organization, as proposed by the Commission and as already adopted in Framework Decision 2002/475/JHA on the fight against terrorism. Furthermore, the Framework Decision enables Member States not to introduce the concept of criminal organization, but to continue to apply existing national criminal law by having recourse to general rules on participation in, and preparation of specific offences'.

In fact, the Commission in its argument has got a point. As Valsamis Mitsilegas correctly notes the fact that the Council harmonized *either participation* in a criminal organization group *or conspiracy* 'does not help towards legal certainty and creates a potentially very extensive scope of criminalization of organized crime across the European Union[617]'. This is of particular importance, if one considers that participation in a criminal organization is an offence for which the principle of dual criminality no longer applies under the EU mutual recognition instruments. However, this may further lead to significant diversity while implementing the instrument in question.

[616] See the Statement by the Commission, joined by France and Italy attached to the 'Proposal for a Council Framework Decision on the fight against organized crime', Brussels, 10 May 2006 (15.05), Doc. 9067/06.
[617] See Valsamis Mitsilegas, id., 2009, p.529.

3. The Fight against Money Laundering and Terrorism Financing

a. What is Money Laundering

As has been noted, money laundering is '*a process, often a highly complex one, rather than a single act'*[618] by which criminal proceeds are sanitized to disguise their illicit origins. In order to accomplish their goals, launderers use a wide range of techniques, often diverse and complex, depending on variables such as the degree of complexity of the structure of the criminal organization and the type of criminal activities in the illegal markets and their infiltration into legitimate industries[619]. However, whatever the nature of the technique used, all contain three common features[620]: (a) launderers need to conceal the true ownership and origin of the proceeds; (b) launderers need to retain control of the proceeds; and finally (c) they need to change the form of the proceeds. The process of laundering itself is generally explained as composing of three stages[621]: (a) placement; (b) layering; (c) integration. All these different stages may be viewed alone, but it is not rare that these steps may occur simultaneously or they may overlap.

Nevertheless, it should be emphasized that just hiding of unlawful funds without disguising their criminal origin is not money laundering. It is, therefore, only when the criminal origin of the money that has been concealed, disguised or obscured, and thus the appearance of legitimacy of that money has been created in a place where sanctions against its criminal origins exist, that this process constitutes money laundering[622]. Money laundering, then, is the process of transforming the proceeds of illegal activities into legitimate capital[623].

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[618] See William C. Gilmore, '*Dirty Money – The evolution of international Measures to counter Money Laundering the Financing of Terrorism*', Third edition, Council of Europe Publishing, 2004, p.32.

[619] See Valsamis Mitsilegas, '*Money Laundering Counter-Measures in the European Union – A New Paradigm of Security Governance versus Fundamental Legal Principles'*, Kluwer Law International, 2003, p.25.

[620] See William C. Gilmore, id. 2004, p. 32.

[621] For details on the process see Valsamis Mitsilegas, id. 2003, p. 27. See also William C. Gilmore, id. 2004, p. 32. See also Trevor Millington and M. Sutherland, '*The Proceeds of Crime*', second edition, OUP, pp. 571-601. The same approach with regard to the steps of the money laundering process has been taken in a various international organizations such as the Financial Action Task Force and the United Nations. See the FATF Report of 06/02/1990 and the United Nations international Drug Control Programme Fact Sheet No.5 for the General Assembly Special Session on the World Drug Problem, New York, 08-10 June 1998.

[622] The same approach has been taken in the relevant international conventions. For example, article 3 (1) (b) (i) of the Vienna Convention 1988 against illicit traffic in narcotic drugs and psychotropic substances.

[623] See Peter Alldridge, '*Money Laundering Law*', Hart, 2003, pp.2-19.

b. The fight against Money Laundering in the European Union

The European Community was seriously concerned since its creation for the protection of its financial systems due to the completion of the single market. It was also aware that the credit and financial institutions were mainly used to launder proceeds from criminal activities as criminals try to use the freedom of capital movements and the freedom to supply financial services in order to facilitate such activities[624]. It was, thus, felt that the soundness and the stability of the institutions concerned as well as confidence in the financial system as a whole could be seriously jeopardized[625] if certain, effective, dynamic and coordinating measures were not taken at Community level in order to counter money laundering. In this context, in the following section the evolution of the EU anti-money laundering measures will be examined by focusing, in particular, on the three anti-money laundering Directives.

c. The first money laundering Directive

The 1991 Directive on money laundering[626] has been a landmark Directive in the fight against money laundering in the European Community as it was the first legislative measure that was adopted by the EC in this area and has been cited as one of the major original instruments alongside the 1988 UN Vienna Convention as well as the 1990 Council of Europe Convention on Laundering and the 40 Recommendations of the Financial Action Task Force[627] (FATF) on Money

[624] See the Preamble of te Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC).
[625] Ibid.
[626] See the '*Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering*', OJ L 166, 28.6.1991, p. 77–83.
[627] *FATF* is an ad hoc body established by the so-called Group of Seven (G7) at the 1989 Paris Meeting, having as its main targets the examining of money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. Since 2001, it also focuses on the world-wide effort to combat terrorist financing. One of the main contributions of FATF is the formulation of the so-called '*40 Recommendations*' which provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and the international co-operation. The influence of the FATF is very important in the fight against money laundering as many countries (including the case study of Greece which will be analyzed in the next chapter) have transformed several of these Recommendations into national laws. For an overview see: http://www.fatf-gafi.org. Also, Peter Alldridge, id. 2003, p.104 and P. Duyne, K. Lampe and J. Newell, '*Criminal finances and organizing crime in Europe*', Willem-Jan van der Wolf, 2003, p.110. For a detailed analysis of FATF see also, William Gilmore and Michael Levi, '*Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control?*', European Journal of Law Reform, 2002, pp.337-377.

Laundering[628], which have been, several times, revised. The rationale and the main objective of the Directive were to cover aspects of both prevention and control[629]. As Gilmore comments the trigger for Community action in this area was the perceived need to ensure the integrity and cleanliness'[630] of the financial system in the light of moves towards the creation of the Single Market[631].

The legal basis used for the proposed Directive was the first and the third sentences of article 57 (2) of the EEC Treaty. However, this legal basis provoked the serious reactions of the Community institutions[632]. Most of the reactions were a result of the controversy surrounding the scope and objective of the measure. Given these reactions, it was finally decided to use also article 100A EEC Treaty as a legal basis which deals with the adoption by the Council of measures for the approximation of the laws of the Member States having as their objective the establishment and operation of the single market. Yet, as Valsamis Mitsilegas notes, 'although this formula deemed satisfactory, the addition of article 100A to embrace the criminal law character of the measure is far from unproblematic[633]' and this is more evident given the debate over the competence of the Community regarding criminal law.

Nevertheless, the preamble itself of the Directive constitutes an illustrative policy justification perceiving money laundering as being a particular threat to Member States' societies[634] as it may lead to losing the trust of the public in the financial system and it may significantly damage the financial system itself[635]. To that end, the Directive prohibited money laundering as it was felt that it was necessary that it must be combated mainly by penal means[636]. However, the preamble stated that a penal approach should not be the only way to combat money laundering since the financial system can play a highly effective role[637]. The Directive, thus, contained a number of provisions establishing the criminalization of the money laundering phenomenon and imposing significant obligations for credit and financial institutions.

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[628] See He Ping, '*The new weapon for combating money laundering in the EU*', Journal of Money Laundering Control, 2004, pp.115-121.
[629] For an extensive analysis of the 1991 Directive background see Valsamis Mitsilegas, id. 2003, p.52-63.
[630] See the '*1990 Commission Proposal and Explanatory Memorandum*' reproduced in W. Gilmore, in International efforts to combat money laundering, Cambridge University Press, 1992, p.244.
[631] See William C. Gilmore, id. 2004, p.194-195.
[632] For a detailed analysis see Valsamis Mitsilegas, id. 2003, p.56-58.
[633] Ibid.
[634] See Recital 3 of the Council Directive 91/308/EEC.
[635] See Recital 1, id.
[636] See Recital 4, id.
[637] See Recital 5, id.

As Valsamis Mitsilegas points out, this combination of criminalization and prevention policies renders the Directive 'a unique piece of legislative drafting in relation to prior international instruments in this field'[638].

c.1 The prohibition of Money Laundering

Article 2 of the Directive provided for the criminalization of money laundering. The arising, then, question is what is meant for the European Community as 'money laundering'. Article 1 of the Directive defined money laundering as the following conduct when committed intentionally[639]:

- The conversion or transfer of property[640], knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- The acquisition, possession, or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
- Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned in the foregoing paragraphs.

This provision, in fact, reiterated identically the provisions used by the Vienna Convention regarding the definition of money laundering. However, in particular with regard to the meaning and the use of the term '*criminal activity*', this has provoked a significant debate as in the initial Commissions' proposal, it was included that the offences from which the laundered property emanates relates to property from '*serious crime*', further elaborated as a crime specified in Article 3 par. 1 (a) and (c)

[638] See Valsamis Mitsilegas, id. 2003, p.64.
[639] See article 1, third indent of the Directive. The same are defined in the third Directive.
[640] For the meaning of the term '*property*` see article 1, fourth indent of the Directive. However, this interpretation has been criticized in that it broadens considerably the scope of the money laundering definition to include an overextended range of transactions and this might be a source of great legal uncertainty. See Valsamis Mitsilegas, id. 2003, p. 66.

of the Vienna Convention, terrorism and any other serious criminal offence (including particular organized crime), whether or not connected with drugs, as defined by the Member States. As characteristically the Commission stated in its proposal 'in spite of the importance that laundering of proceeds from drug trafficking has in the context of money laundering in general, it would not have been *appropriate* to exclude laundering of other serious crimes from the scope of the Directive'[641]. Nevertheless, and due to the provoked reactions[642], it was finally agreed to include instead of the term '*serious crime*', the broad term '*criminal activity*' meaning a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of the Directive by each Member State[643]. Yet, this has practically led to significant discrepancies in the implementation of the Directive as some Member States have chosen to include an exhaustive list of predicate offences[644], while other have preferred to use a basis for all crimes[645].

c.2 The imposed duties on financial and credit institutions

Based on the FATF Recommendations[646], the Directive imposed on credit and financial institutions a number of obligations such as: (a) to require (with a number of exceptions) identification of their customers (principle of 'know your customer') by means of 'supporting evidence' in a number of cases[647]. However, as Valsamis Mitsilegas correctly notes, the first money laundering Directive imposed a broad identification duty, but, in fact, it did not mention any specific method for identification[648]. This approach left to Member States a large margin of discretion, which resulted in different national legislations. Yet, as Gilmore makes the relevant point, this is justified and has been necessary given the 'diverse range of factual situations which are presented in practice'[649] and this is the reason why, in fact, it has

[641] See par. 2 of the '*Proposal for a Council Directive on prevention of the financial system for the purpose of the money laundering*', COM (90) 106 Final –SYN 254, of 23 March 1990.
[642] Ibid.
[643] See Article 1, indent 5 of the Directive.
[644] Characteristic is the example of Greece which will be examined in detail in the following chapter.
[645] Characteristic is the example of France. See for this issue the Report from the Commission, '*First Commission's report on the implementation of the Money Laundering Directive (91/308/EEC) to be submitted to the European Parliament and to the Council*', COM (95) 54 final, Brussels, 03.03.1995, where the Commission makes the comment that 'differences in the scope with respect to the kind of criminal proceeds covered by the definition of money laundering persist in the Member States' legislation'.
[646] See, in particular, recommendations 10-12 of the 40 FATF Recommendations of 1990.
[647] See article 3 of the Directive.
[648] See Valsamis Mitsilegas, id. 2003, p. 71, as well as chapter 5.
[649] See William C. Gilmore, id. 2004, p.199.

not proven to be problematic; (b) to report certain transactions that are likely to be connected to money laundering operations as this has been one of the major and necessary conditions for an effective fight against money laundering[650]; (c) to ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering; (d) not to disclose to the customer concerned nor to other third persons that a money laundering investigation is being carried out; (e) that the credit and financial institutions ensure that they: (i) establish adequate procedures of internal control in order to prevent operations related to money laundering; and (ii) take appropriate measures so that their employees are aware of the relevant provisions. As Gilmore comments, all these measures designed to involve the private sector to such an 'unprecedented extent' were necessary to ensure that those whose participation was required would, in fact, be in a position to play their role fully and effectively[651].

c.3 Sanctions

The Directive is complemented by a broad provision on the sanctions that Member States need to adopt for the purpose of effective application. In particular, Article 14 provided that each Member State had to take appropriate measures to ensure full application of all the provisions of the Directive and must, in particular, determine the penalties to be applied for infringement of the measures adopted pursuant to the Directive. Yet, one should note that the Directive was 'silent' on the nature of the imposed penalties[652]. This, in practical terms, led in the past to significant differences in the implementation between the different jurisdictions of the various Member States[653]. Also, the specific sanctions provided for the same infraction were rather different from one Member States to another. Nevertheless, one should note that although the Directive did not intend to harmonize the specific penalties to be imposed, the Commission in its report recalled that the following principles must be observed[654]: (a) the principle of effectiveness: the sanctions should produce a clear and concrete result; (b) the principle of proportionality: the sanctions

[650] See Guy Stessens, '*Money Laundering – A new International Law enforcement Model*', Cambridge University Press, 2000, p.159.
[651] See William C. Gilmore, id. 2004, p.201.
[652] Ibid, p. 78.
[653] See the '*First Commission's report'*, id. COM (95) 54 Final of 03/03/1995.
[654] See the '*First Commission's report'*, id. COM (95) 54 Final of 03/03/1995, p.16.

should be '*appropriate*' to the infraction committed; and (c) the principle of dissuasion: the sanctions should be sufficiently dissuasive to prevent infringements.

d. The second money laundering Directive

The rapid developments of the money laundering techniques and typologies led on the one hand the European Parliament to call for an '*updating and extension*' of the 1991 Directive[655], while on the other, the FATF revised its 40 Recommendations in 1996 with the main aim of extending the list of predicate offences for money laundering. At the same time, the European Commission on 19 July 1999 presented a proposal for a Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering[656] which was the result of inter-institutional synergy with the main reasons for the decision to reform the 1991 Directive being in international, domestic, and EU developments which had overtaken the scope of the existing instrument[657]. According to this proposal, it was felt '*appropriate'* to update the Directive as it should not only reflect best international practice in the area of money laundering, but should also continue to set a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime[658]. In its explanatory memorandum, the Commission referred in detail to its relationship with and the influence of FAFT, noting *inter alia* that 'just as the 1991 Directive moved ahead of the original FATF 40 Recommendation', the European Union should now give 'effect to or even go beyond the 1996 update of the FATF 40 Recommendations[659].

The second anti-money laundering Directive was finally agreed on 4 December 2001. The reasoning behind the adoption of the new Directive was that the limitation to drugs proceeds according to the 1991 Directive was soon found to be too restrictive and also it was seen that the tightening of controls in the financial sector had prompted money launderers to seek alternative laundering methods. Therefore,

[655] See Doc. A4-0187/96, OJ C 198, 8.7.1996, p. 245.
[656] See the '*Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering*' (2000/C 177 E/03), COM(1999) 352 final, 1999/0152(COD). For a detailed analysis of the background of this Directive see Valsamis Mitsilegas, id. 2003, p. 86-98.
[657] See Helen Xanthaki and Constantin Stefanou, '*The new EU draft Money Laundering Directive: a case of inter-institutional synergy*', Journal of Money Laundering Control, 2000, pp.325-335.
[658] See recital 5 of the Preamble of the Proposal.
[659] See Valsamis Mitsilegas and Bill Gilmore, '*The EU Legislative Framework Against Money Laundering and Terrorist Finance: A Critical Analysis In The Light Of Evolving Global Standards*', International and Comparative Law Quarterly, 2007, p.123.

the 2001 Directive amended the earlier 1991 Directive in two main respects: First, it widened the definition of criminal activity giving rise to money laundering to include all serious crimes, including offences related to terrorism. Second, it applied to activities and professions beyond credit and financial institutions (which were covered by the 1991 Directive) which now were subject also to the same obligations as regards customer identification, record keeping and reporting of suspicious transactions. Yet, none of the issues were undertaken lightly since the right balance must be sought between fighting crime and developing the economy, protecting human rights and punishing criminals, and respective contributions and harmonization of laws[660].

In particular, with regard to the money laundering offences, these have been extended to cover not only 'crimes specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of the first money laundering Directive by each Member State', but also 'any kind of criminal involvement in the commission of a serious crime'. As serious crimes, according to the second Directive are, at least[661]:

- any of the offences defined in Article 3(1) (a) of the Vienna Convention;

- the activities of criminal organizations as defined in Article 1 of Joint Action 98/733/JHA;

- fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests;

- corruption[662];

- an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.

The second main innovation of the new Directive is that it significantly widened the range of non-financial activities and professions upon whom the obligations laid down in the Directive are imposed. These are[663]:

- auditors, external accountants and tax advisors;

[660] See He Ping, id., 2004, p.119.

[661] See the amended article 1 (E) of the second Directive. Member States, though, still have the possibility to designate any other offence as a criminal activity for the purposes of this Directive.

[662] On the relation between corruption and money laundering see David Chaikin, '*Commercial corruption and money laundering: a preliminary analysis*', Journal of Financial Crime, 2008, pp. 269-281.

[663] See article 2 (a) of the Directive.

- real estate agents;
- notaries and other independent legal professionals;
- dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15000 or more;
- and last, but not least, casinos.

Finally, article 3 has been amended in that Member States must, in any case, ensure that the institutions and persons subject to this Directive 'take specific and adequate measures necessary to compensate for the greater risk of money laundering which arises when establishing business relations or entering into a transaction with a customer who has not been physically present for identification purposes' ('non-face to face' operations).

e. The third Money Laundering Directive

The deadline for the implementation of the second money laundering was 15 June 2003[664]. However, only one year after this deadline and while one would expect that the European Commission would discuss the implementation of the second money laundering, instead it presented a proposal for a third Directive[665] which would amend and replace the two earlier instruments. The justification for this proposal was the substantial revision of the FATF 40 Recommendations issued in June 2003[666].

The FATF in a number of areas considerably extended the level of detail in its Recommendations, notably as regards customer identification and verification, the situations where a higher risk of money laundering may justify enhanced measures and also situations where a reduced risk may justify less rigorous controls. This led the European Commission to believe that the revised FATF Forty Recommendations should be applied in 'a coordinated way' at EU level[667]. The main logic behind the adoption of this new Directive is, thus, to take into account new risks that have developed from criminal activity in new areas as well as vulnerabilities that have been exposed by the increased understanding of how the

[664] See art 3 (1) of the 2001 Directive.
[665] See the '*Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing*', COM (2004) 448 Final of 30 June 2004.
[666] Ibid, p.3.
[667] Ibid.

source of funds is hidden for criminal purposes. Nevertheless, it is also undoubted that the tragic events of 11 September and the subsequent 'war on terror' influenced not only the FATF whose mandate was extended to cover terrorist finance[668], but also the European Commission which in the presented proposal clearly made specific reference to the coverage of terrorism and terrorist financing.

The third money laundering Directive which repeals the previous Directives was finally published in November 2005[669]. The deadline for the implementation was 15 December 2007[670]. It reproduces much of the second Directive (reporting requirements, the requirement for training and appointing nominated officers), but it is significantly more detailed and increases the scope of the regulatory sector. Undoubtedly, the main innovation of this Directive is clear even from the title of the Directive which refers to the 'prevention of the use of the financial system for the purpose of money laundering and *terrorist financing*'. The very first recital of the Preamble makes the connection between money laundering and terrorism in that 'dirty money can damage the stability and reputation of the financial sector and threaten the single market, and terrorism shakes the very foundations of our society'[671]. Taking into account the revised FATF Recommendations[672], the new Directive finds it '*appropriate*', in accordance with the new international standards, to introduce more specific and detailed provisions relating to the identification of the customer and of any beneficial owner and the verification of their identity[673].

In that framework, article 1 of the new Directive prohibits money laundering and terrorist financing. It is noteworthy that despite the Commission proposal requesting it, the directive does not impose as such the 'criminalization' of money laundering and terrorist financing activities. The Council and the Parliament rejected the inclusion of the criminalization requirement in a first pillar directive, and thus, it was chosen to use the word 'prohibit'. For the purposes of this Directive, '*terrorist financing*' means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they

[668] See the revised 40 Recommendations as well as the 9 Special FATF Recommendations on Terrorist Financing which set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.
[669] See the '*Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*'. OJ L309/15 of 25/11/2005.
[670] See article 45 of the Directive.
[671] Recital 1 of the Directive.
[672] Ibid Recital 5.
[673] Ibid Recital 9.

are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA on combating terrorism[674]. Terrorist financing, thus, covers two distinct aspects: on the one hand the financing of terrorist attacks and on the other the financing of terrorist networks, including recruitment and promotion of terrorist causes. As terrorism requires money to finance terrorist acts and terrorist organizations, it is essential to cut the financial resources of terrorists in the fight against terrorism. This justifies the feasibility of extending the framework on money laundering to cover the district phenomenon of terrorist finance. Yet, this approach was taken following the series of the nine Special 2001 Recommendations of FATF.

A very significant aspect of the new Directive is the new definition of 'serious crimes' at the origin of the proceeds to be laundered[675]. The option has been to align the Directive with the definition of serious crimes in the third pillar instruments. To that end, as '*serious crime*' is considered to be: (a) terrorist acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA; (b) drug offences; (c) activities of criminal organizations; (d) fraud; (e) corruption; (f) all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.

A second important innovation of this Directive is that it devotes a whole chapter into customer due diligence and identification[676]. Comprising of articles 6-19, the Directive reflects a detailed and systematic depiction regarding due diligence. Article 6 is a new provision according to which 'anonymous accounts or anonymous passbooks are prohibited'. Furthermore, these due diligence measures require identification of beneficial owners and the verification of the beneficial owner's identity. The Directive also provides a complete set of rules for simplified due diligence for certain low risk situations to enhanced customer due diligence for situations that present a higher money laundering or terrorist financing risk and at least for non-face-to-face business, politically exposed persons and international correspondent banking relationships, norms that are new to the EU concept of the fight against money laundering. Yet, it is noteworthy that based on the FATF

[674] Ibid article 1 (4).
[675] See article 3 (5) of the Directive.
[676] See chapter 2 of the Directive.

Recommendation 5[677], the Directive provides that the institutions and persons covered by this Directive must apply to each new and existing customer 'due diligence requirements', but may determine the extent of such measures on a '*risk-sensitive basis*' depending on the type of customer, business relationship, product or transaction[678]. Yet, as Bill Gilmore and Valsamis Mitsilegas correctly comment, this 'may be a useful principle in ensuring that the institutions and professions concerned are not unnecessarily overburdened with obligations'[679].

At this point it is interesting to note the debate over the question whether the above duties apply to lawyers when engaged to a number of specified financial activities[680]. Given the special lawyer-client relationship with an increased level of trust and professional confidentiality it has been argued and seriously questioned that the imposition of money laundering duties on lawyers has the potential to create a conflict of interest for a lawyer who might have to balance protecting the interests of his client on the one hand, and on the other the administration of justice. In order to limit as much as possible any reaction in the sense of guaranteeing the right to fair trial, the Directive includes a number of provisions, relying on the discretion of Member States, exempting lawyers from duties of suspicion transaction reporting[681].

Nevertheless, this was questioned in a recent case in front of the ECJ, after a reference for a preliminary ruling from the *Cour d' Arbitrage* of Belgium[682]. The claimants –including the French Bar Association of Brussels- applied for the annulment of certain articles of the Belgian law which transposed the Directive, on the ground that they infringed provisions of the Belgian Constitution read in conjunction with article 6 of the European Convention on Human Rights, as, *inter alia*, the obligation on lawyers to inform the authorities if they came across facts which they knew or suspected to be linked to money laundering unjustifiably impinged on professional secrecy and the independence of lawyers. Interestingly, the Court of Justice ruled that 'lawyers would be unable to carry out satisfactorily their task of advising, defending and representing their clients, who would in consequence

[677] This provides that 'Financial institutions should apply each of the CDD measures under (a) to (d) above, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction'.
[678] See art. 8 (2), 11 (2) and 13 (1). See also Nicholas Ryder, '*The Financial Services Authority and money laundering: a game of cat and Mouse*', Cambridge Law Journal, 2008, pp. 640-642.
[679] See Valsamis Mitsilegas and Bill Gilmore, id., 2007, p. 125-127.
[680] See Valsamis Mitsilegas, id. 2003, pp 146-151.
[681] See article 23 (2) of the F.D.
[682] See the case C-305/05 – Judgment delivered on 26 June 2007.

be deprived of the rights conferred on them by Article 6 of the ECHR, if lawyers were obliged, in the context of judicial proceedings or the preparation for such proceedings, to cooperate with the authorities by passing them information obtained in the course of related legal consultations683'.

The Court also found that the obligations of information and of cooperation with the authorities responsible for combating money laundering, did not infringe the right to a fair trial as guaranteed by article 6 of the European Convention on Human Rights[684]. As it is, thus, evident, as a rule, if the nature of certain transactions is such that they take place in a context with no link to judicial proceedings, this means that these activities fall outside the scope of the right to a fair trial, and hence are not exempted from the duty to cooperate in combating money laundering. This was the case with advice and assistance given by lawyers in financial and real estate transactions that had no link with judicial proceedings.

Another significant aspect of the Directive is that it provides a whole chapter on the reporting obligations imposed on institutions and persons covered by this Directive. In particular, Member States must require that the institutions and persons covered by this Directive pay '*special attention*' to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing and in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose[685].

However, the most important innovation regarding reporting duties is the introduction of express provisions covering the so-called Financial Intelligence Units (FIU) whose importance has been increased. To that end, each Member State must establish a Financial Intelligence Unit with specific tasks in order effectively to combat money laundering and terrorist financing[686]. This follows FATF Recommendation 13. The FIU must have access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfill its tasks[687]. It is also noteworthy that the institutions and persons covered by this Directive now have obligations to report suspicion transactions directly to the FIU, and not to other competent authorities. Yet, one should note that

[683] See par. 32 of the judgment.
[684] See par. 37 of the judgment.
[685] See article 20 of the Directive.
[686] See article 21 of the Directive.
[687] Ibid.

the fact that the Directive makes no reference to the protection of the collected information raises serious questions and concerns concerning the protection of personal data.

The Directive also requires Member States to ensure that natural and legal persons are liable for infringements of the national law provisions adopted pursuant to the Directive and that penalties should be effective, proportionate and dissuasive[688]. This allows for a degree of flexibility in national implementation. Only in the case of credit and financial institutions does the Directive require that without prejudice to criminal sanctions, Member States should ensure that the appropriate administrative measures can be taken or administrative sanctions can be imposed.

An important innovation of this Directive is also the so-called prohibition of disclosure. According to the previous two instruments credit and financial institutions and their directors and employees were obliged not to disclose to the customer concerned or to other third persons the fact that information had been transmitted to the authorities or that a money laundering investigation was being carried out[689]. However, according to the new Directive this has changed not only in that this obligation covers 'terrorist financing investigations', but also that the prohibition of disclosure is extended to investigations that 'may be carried out'[690].

Finally, as to the legal professionals, the new Directive does not give Member States the possibility to allow them to disclose to their clients that a report on suspicions of money laundering has been filed with the competent authorities which may, in turn, undermine any subsequent investigation[691]. Also, it is noteworthy that the new Directive reinforces the key role of the Financial Intelligence Units in the reporting process[692]. This shows the importance that the Community attaches to the information related to money laundering and terrorist financing in order to be treated by a specialized body.

It is undoubted that the third Directive is an important step forward for the reinforcing of the prevention of the use of the financial system for the purpose of money laundering, and also now of terrorist financing, taking into account the latest international developments in this field. Undoubtedly, the terrorist attacks of 09/11 and hence the expansion of the FATF's mandate to cover terrorist finance played a

[688] See article 39 of the Directive.
[689] See article 8 of the 1991/308 Directive.
[690] See article 28 of the 2005/60 Directive.
[691] Ibid.
[692] See article 9 of the 2005/60 Directive.

very significant role in the prioritization of further amendments to the EC anti-money laundering legislative framework as money laundering was (and still is) the main source of terrorist finance.

VI. Conclusion

Harmonization of laws in Europe has affected ever wider areas of regulatory activity[693] such as consumer protection, environmental protection, labor market regulation, contract and tort law and especially the last few years, to an increasingly evident degree, criminal law. Harmonization of Member State's criminal laws has been a major area of activities in the third pillar of the EU ever since the Treaty of Maastricht. Undoubtedly, the existing legal diversity alongside with the rapid development of technology constitute a very useful tool in the hands of criminals[694]: they may take advantage of the heterogeneity and they may 'choose' the less 'dangerous' for their criminal activities legal environment. Harmonization is, thus, a *necessity* in order to ensure a high level of security within the Union[695].

The debate on harmonization of criminal law has been primarily focused on the issue of the competence of the Community to adopt and impose criminal sanctions since- up to the Treaty of Lisbon- only the Union had a clear competence on criminal law issues. However, the European Court of Justice gave answers which are of significant constitutional importance and which proved to be the precursor of the changes to come through the Treaty of Lisbon. As Valsamis Mitsilegas notes, the ECJ has treated criminal law '*as a means to an end*' by accepting Community competence to legislate in the field in order to achieve the effectiveness of Community law[696]. This means that criminal law is not a separate Community policy or objective, but rather another field of law which aims to achieve the Community's policies or objectives. Yet, one should note that the Court abstained from clarifying whether criminal law can be used in order to achieve *any* Community policy or objective.

On the other hand, the Union, over the last few years, has extensively used criminal law through the third pillar in order to achieve harmonization in the context of transnational or serious crime. This harmonization has resulted in the adoption of 'heavily securitized and broad' EU criminal legislation[697]. Characteristics examples are the fight against terrorism, the fight against money laundering and the fight

[693] See Stephen Weatherill, '*Harmonization: How much, how little?*', European Business Law Review, 2005, Vol. 16, p. 533.
[694] See Anne Weyembergh, '*Approximation of criminal laws, the Constitutional Treaty, and the Hague Programme*', Common Market Law Review, Vol. 42, 2005, p.1579.
[695] See Sibyl Stein, '*Combating Crime in the European Union: The Development of EU policy after the Convention*', European Journal of Crime, Criminal Law and Criminal Justice, Vol. 12/4, p.337-347.
[696] See Valsamis Mitsilegas, id. 2009, p. 110.
[697] Ibid.

against organized crime. Undoubtedly, in these examples one can see not only the effort, but also the determination of the European Union to develop and improve the existing legal framework with respect to its vital ambition to develop a genuine '*area of Freedom, Security and Justice'*. This goal is achieved by taking into account international standards as well as expressed national concerns. Yet, all the above-mentioned instruments practically prove the increasing influence of Union law on domestic national criminal law. It is undoubtedly a rapidly growing area of law whose impact on national law will be much clearer in the forthcoming years. This impact, in particular in the fields of terrorism, organized crime and money laundering, will be examined in detail in the following chapter, using Greece as a case study.

Undoubtedly, the changes for criminal law because of the Treaty of Lisbon may have a significant impact on its development. The new Treaty contains a clear legal basis for EU action on specific offences, which must be cross-border and serious[698]. In particular, the EU is only able to legislate to influence national criminal law in two main circumstances: (a) Where serious crime with a cross-border dimension is concerned, for example, in relation to terrorism; trafficking in human beings; sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; and organized crime; (b) Where the law in a certain field has already been harmonized throughout the EU, and uniform definitions and sanctions are needed to make the law work effectively and consistently.

On the other hand, it is undoubted that the Treaty of Lisbon gives priority to the principle of mutual recognition and leaves harmonization to be used only when it is '*necessary*' to ensure a high level of Security[699]. However, the communitarization of the third pillar and the significant changes in decision making along with the abolition of the national veto may jeopardize this and lead to an increased production of harmonized criminal law measures with a significant impact on national legal orders. At the same time, it will be very interesting to see how the Court of Justice will deal with the introduction of preliminary rulings in pending cases before a court or tribunal of a Member State with regard to a person in custody, where the European Court of Justice has to act with the minimum of delay[700]. These are significant challenges for

[698] See article 83 of the Treaty of Lisbon.
[699] See article 67 par. 3 of the Treaty of Lisbon.
[700] See article 267 of the Treaty of Lisbon.

both the Court and the Member States. It is left to be seen how these will be dealt with, in practice.

Chapter 4 *'The Impact of the EU Harmonized Substantive Criminal Laws on the Greek Criminal Legal Order'*

I. Introduction

Harmonization of criminal laws has been felt as one of the most sensitive, but at the same time controversial, issues which has raised serious debate and reactions in the Greek Jurisdiction. It is felt that harmonization is a necessary condition to further effective in developing criminal laws in Europe as well as judicial cooperation regarding criminal matters based on the principle of mutual recognition.

In this context, the purpose of this chapter is to explore the main issues regarding the impact of harmonization of EU criminal laws on domestic law, using Greece as a case study. In particular, three main areas will be discussed in detail: (a) the fight against terrorism; (b) the fight against organized crime and (c) the fight against money laundering. These areas of interest have been chosen on the basis that they constitute substantive EU harmonized criminal laws (for which a thorough analysis has been done in the previous chapter from the EU perspective), and which have significant importance and effect when implemented in domestic Greek law. It is also noteworthy that for these crimes the obstacle of double criminality has been overcome in the context of the principle of mutual recognition. Furthermore, these three areas of criminality are serious, have transnational and national relevance, and they have also had a very high security priority in the past two decades, not only in the European Community, but the Greek legal order too.

II. The Fight Against Terrorism in the Greek Legal Order

a. The 'big picture' of the Greek Legislation in combating terrorism

The main provision codifying terrorism in the Greek legislation is article 187A of the Greek Criminal Code, which was introduced by Statute 3251/2004 and will be thoroughly analyzed in this chapter. Prior to the adoption of the said Statute, terrorist acts were punishable under article 187 of the Criminal Code on criminal organizations[701], which encompassed both organized crime and terrorism, and were labelled the 'terror-law' by the media[702]. However, the inclusion of both types of criminal acts in the same provision was criticized. Academics noted that terrorist offences have special characteristics that required more focused legislation[703].

Greece has ratified a number of international treaties related to terrorism, notably the UN International Convention for the Suppression of the Financing of Terrorism of 1999 (ratified by Statute 3034/2002), and the European Convention on the Suppression of Terrorism of 1977 (ratified by Statute 1789/1988). It should be noted that Greece has signed, but has yet to ratify, the International Convention for the Suppression of Acts of Nuclear Terrorism of 2005, the Council of Europe Convention on the Prevention of Terrorism of 2005, and the 2003 Protocol to the European Convention of 1977. Finally, Greece will have to implement in the near future the new Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.

Very recently, on 20 September 2010, a number of provisions of Statute 3251/2004 and article 184A of the Criminal Code were amended by Statute 3875/2010. The amendments will be noted and briefly commented upon in the following analysis.

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[701] Art.187 of the Criminal Code, as amended by Statute 2928/2001, criminalises the establishment of or participation in a 'structured and continuously active group made of three or more persons (organisation)' which aims at the perpetration of a series of predicate offences. For a thorough analysis of the article see the following chapter on organised crime.

[702] See Eleftherotypia newspaper, *'Government satisfied with adoption of terror-law'* (in Greek), article of 8/6/2001, available online at: www.enet.gr.

[703] Milonopoulos, *'Statute 2928/2001 for the citizen's protection from crimes of criminal organizations'*, Poinikos Logos, 2001, p.794, (in Greek).

b. <u>The Greek Implementing Law (Statute 3251/2004)</u>

The Council Framework Decision of 13 June 2002 on combating terrorism was implemented as part of the Greek Law with Statute 3251/2004, the same Statute that implemented the Council Framework Decision on the European Arrest Warrant.

Apart from the arguments discussed in chapter two, in the parliamentary debate, one can add one more main argument regarding only terrorism: the definition of terrorism is *broad* and *vague*. Characteristic of this view is the statement made by the representative – at the time – of the PA.SO.K party, MP Papageorgiou, who argued *inter alia* that '*it is undoubted that any effort to define terrorism by definition is unfortunate*'[704]. At the same lines MP Fotis Kouvelis stressed that '*the broad terms used in the Bill with regard to terrorism create huge problems for fundaments rights as well as a broad framework for different interpretations of these terms*'[705]. However, the Minister of Justice argued that there was no issue of vagueness in the terms used in the Greek implementing law as it had used '*the same definition as in Council Framework Decision which is binding and gives no space for adopting different views*'[706]. As with the European Arrest Warrant, the implementing law eventually came into force on 9 July 2004.

The Council Framework Decision was implemented in art.40, 41, and 42, which comprise the second part of said Statute. Art.40 of Statute 3251/2004, the lengthiest of the three, implements the criminal law provisions of the Framework Decision; art.41 regulates the liability of legal persons; and finally art.42 refers to matters of criminal procedure. It should be noted that the Greek Legislator opted for the integration of the provisions of the Council Framework Decision into the relevant Greek codifying laws, when possible; thus, art.40 provides for the addition of a new article in and for further modifications to the Greek Criminal Code, while art.42 in par.1 to 4 amends the relevant articles of the Greek Criminal Procedure Code.

[704] See the Parliamentary Minutes of 24th June 2004, session 35th, p.1352.
[705] ibid, p.1354.
[706] ibid, p.1360.

Article 40 – 'Acts of terrorism'

The first paragraph of art.40 provides for the addition of a new art.187A in the Greek Criminal Code[707]. The new article enumerates the criminal offences for which the anti-terrorism provisions apply, implementing the respective provisions of art.1 par.1 of the Framework Decision. The list comprises of serious criminal offences against life, health, and property.

In order for these offences to be punished under the special anti-terrorism provisions, their perpetrator must have committed them in a manner that can seriously harm a country or an international organization, intending to harm or destroy their fundamental structures, to force them to perform or abstain from an act, or to intimidate the population. These conditions are copied almost verbatim from art.1 par.1 of the Framework Decision. However, a difference should be noted: the use of the term 'public authority' in art.187A par.1 (v) of the Criminal Code[708] (added by the implementing law) instead of the term 'Government' used in the Framework Decision[709]. One could argue that the first term is broader than the second, since apart from the 'Government' it can also refer to quasi-governmental or non-governmental agencies. The Greek implementing law seems to broaden the scope of the Framework Decision in that respect, allowing for a wider range of acts to be categorized as terrorist offences.

If one of the listed offences is perpetrated under the conditions already mentioned, then the offender is punished by heavier sentences, in accordance with art.5 par.2 of the Framework Decision. Thus, for an offence that is otherwise punishable by incarceration[710], the penalty cannot be less than ten years in prison under the implementing law. For offences otherwise punishable with imprisonment the penalty cannot be less than three years. Furthermore, the implementing law increases the statute-barring period to thirty years instead of twenty if the offence is punishable with life imprisonment, while if the latter is imposed, a conditional discharge is

[707] The old art.187A is renamed as art.187B.
[708] See Statute 3251/2004, art.40, par.1 (1).
[709] See Council Framework Decision on Combating Terrorism, art.1 par.1.
[710] Under the Greek Criminal Law system, criminal acts are categorised as felonies, misdemeanours and delicts (art.18 of the Criminal Code). Felonies are punished with incarceration (5-20 years in prison – art.52 of the Criminal Code), misdemeanours with imprisonment (10 days to 5 years in prison- art.53 of the Criminal Code), and delicts with detention (1 day to 1 month in prison – art.55 of the Criminal Code). The same terms are used in the officially translated legislation.

possible only after a sentence of twenty-five years is served[711]. The law provides for heavier sentences in the case of concurrent offences as well[712]. In all these respects, the implementing law seems to be stricter than the Framework Decision, which contains no corresponding provisions, apart from the general dictate for 'effective, proportionate and dissuasive criminal penalties'[713].

Par.1 (4), 1(5) and 1(6) of art.40 of the implementing law (equivalent to art.187A par.4-6 of the Criminal Code) refer to offences related to participation in and aid offered to a terrorist organization. The law defines a terrorist organization as a group that is: (a) structured; (b) of some duration; (c) having at least three members acting jointly; and (d) aiming to commit terrorist offences. It, therefore, copies the definition used in art.2 par.1 of the Framework Decision. It is contested whether a group formed with the purpose to commit only one terrorist offence can be classified as a terrorist group under art.40 par.1 (4) of the implementing law. The wording of the article points to a positive answer, since it uses the singular form, referring to 'the offence' of par.1[714]. It has been maintained, that the requirement for a 'continuous activity', combined with the plural form used in the Framework Decision, which speaks of '*terrorist crimes*'[715], indicates the opposite direction, and that the group must aim to commit multiple offences[716]. Art.187A par. 4 was amended by Statute 3875/2010 so that it contained a provision for reduced penalty for participation in a terrorist organisation that had as a purpose the perpetration of misdemeanours; however, there was no amendment or clarification regarding the application of the Statute to organisations that aim to commit only one offence.

Under the aforementioned paragraphs, the management of a terrorist organization is punished by incarceration for not less than ten years, and, after the recent amendment, with a reduced penalty if the organisation aims to commit

[711] Normally offences punished by life imprisonment are statute-barred after twenty years (art.111 of the Greek Criminal Code), and a convict under life imprisonment can be conditionally discharged after serving twenty years (art.104 of the Greek Criminal Code).
[712] Pursuant to the Greek Criminal Code, art.187A par.1 in fine, in the case of a terrorist act resulting in multiple deaths, then the overall sentence is imposed according to art.91 par.1 of the Criminal Code, which provides for concurrent offences perpetrated with *multiple* acts, instead of the less strict par.2 which would normally apply.
[713] See art.5 par.1 of the Framework Decision.
[714] See Kaiafa-Gbandi, *'The delimitation of the punishability of terrorism and the challenges for a criminal law under rule of law',* Poinika Chronika, 2005, p.874, (in Greek).
[715] See art.2 par.1 of the Framework Decision.
[716] Simeonidou-Kastanidou, *'The law on the EAW and the encounter of terrorism – the basic characteristics and a first interpretative approach*', Poiniki Dikaiosini, 2004, p.786, (in Greek).

misdemeanours[717]. The rest of the offences –participation, providing information or resources, funding– are punished by incarceration for not more than ten years. The penalty can be aggravated if the organization manufactures, procures or possesses weapons, explosives, and chemicals, and mitigated if no terrorist offence has been committed. It should be noted that the penalties imposed under the implementing law are stricter than those provided for in art.5 par.3 of the Framework Decision[718].

Other offences punishable under the implementing law are threatening to commit a terrorist crime[719], and offences perpetrated in preparation for the terrorist crime[720]. However, the Greek law does not provide for the offences contained in art.3 par.2 (a), (b), (c) of the Framework Decision, that is public provocation to commit a terrorist offence, recruitment and training for terrorism. Such acts are punished under the general provisions of the Criminal Code. The law also expands the application of art.187 par.2 of the Criminal Code, which criminalises obstruction of justice in prosecuting organized crimes, to terrorist offences[721].

The implementing law does not apply to offences that constitute high treason under art.134 of the Criminal Code[722]. While high treason is not often associated with terrorism, it is possible, in view of the definition of a terrorist offence adopted in the implementing law and presented above, that an act could be classified under both terms. The exception, not contained in the Framework Decision, is justified by the conceptualization of high treason as the foremost political crime. As such, it is tried by mixed jury courts, pursuant art.97 par.1 of the Greek Constitution, and therefore, could not come under the jurisdiction of the Court of Appeal, as is the case with the terrorist crimes[723].

Another exception was included in par.1 (8) of art.40 of the implementing law (art.187A par.8 of the Criminal Code), concerning acts that could be characterized as terrorist offences under the definition adopted in Statute 3251/2004, but which constitute a manifestation of basic rights and freedoms –as laid down in the Greek

[717] See art.187A par.5 as amended by Statute 3875/2010 art.2 par.3.
[718] For managing a terrorist group, the penalty under the Framework Decision can be no less than fifteen years; for the rest of the offences, no less than eight.
[719] Art.40 par.1(3) of the implementing law (art.187A par.3 of the Criminal Code), in accordance with art.1 par.1(i) of the Framework Decision.
[720] Namely theft, robbery, forgery and extortion. See art.40 par.1(7) of the implementing law (art.187A par.7 of the Criminal Code) and art.3 par.2(d),(e),(f) of the Framework Decision.
[721] See art.40 par.1(9) of the implementing law (art.187A par.9 of the Criminal Code).
[722] Art.187A par.2 of the Criminal Code (art.40 par.1(2) of the implementing law).
[723] See art.111 par.5 of the Greek Code of Criminal Procedure, as replaced by art.42 par.4 of Statute 3251/2004. Also, Simeonidou-Kastanidou, id. p.785.

Constitution and in the European Convention of Human Rights– or a defence of democratic principles. The extent of the exception was not fully clarified[724]; yet, its adoption seemed to be in accordance with both the Framework Decision, which underlines its respect for the fundamental principles of human rights and democracy in its Preamble[725] as well as in art.1 par.2[726], and the Greek Constitution. This exception and all the references of art.187A to it were removed by article 2 of the amending Statute 3875/2010.

The supply and reception of funds, assets, and information that facilitate a terrorist organisation is punishable under art.187A par.6 of the Criminal Code with incarceration of up to ten years, irrespective of the actual commission of any offence by the organisation.

Furthermore, art.40 par.2 of the implementing law provides for the mitigation or suspension of the penalty, and even its absolution, for terrorist offenders who cooperate with the authorities towards the prevention of a terrorist crime or the break up of the organization. These provisions, introduced in the Criminal Code for the first time by Statute 2928/2001[727] concerning organized crime, reflect the corresponding art.6 of the Framework Decision, which, however, provides only for a reduction of the penalty and not for its absolution.

Finally, art.40 par.3 of the implementing law provides for the extraterritorial jurisdiction of the Greek State over terrorist offences, irrespectively of the place where they were committed. This extension of the Greek jurisdiction surpasses by far the respective art.9 of the Framework Decision[728] and has been heavily criticized.

Articles 41-42 – 'Liability of Legal Person – Penalties'

Art.41 of Statute 3251/2004 introduces administrative penalties for legal persons that are connected to terrorist offences, implementing art.7 and 8 of the Framework

[724] See Simeonidou-Kastanidou, *'The terrorist crime: the provisions of Statute 3251/2004 and their implications in the framework of our criminal law system',* Nomiko Vima, 2005, p.625, (in Greek).
[725] See recital 10 of the Preamble of the Framework Decision.
[726] See Art.1 par.2 of the Framework Decision.
[727] Art.187A of the Criminal Code, renamed as art.187B by Statute 3251/2004.
[728] Which states in par.1(a) that 'Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State'.

Decision[729]. Art.42 provides for the application of special investigatory procedures to terrorist crimes[730], placing them under the jurisdiction of the Court of Appeal.

[729] It is noteworthy that the penalties became heavier after the recent amendments. See Statute 3875/2010 art.10.

[730] These procedures were introduced in the Code of Criminal Procedure by Statute 2928/2001 on organised crime, and will be analysed in the respective chapter. It should be noted that the Framework Decision does not deal with procedural matters.

c. The Academic Point of View

The anti-terrorist provisions of Statute 3251/2004 that implemented the Council Framework Decision of 13 June 2002 on combating terrorism have since their adoption been the object of severe criticism by Greek academics. The new art.187A of the Greek Criminal Code along with the extension of the application of special investigation practices[731] were seen by many as another proof of the shift of direction of criminal law towards the 'criminal law of the enemy'[732], a direction that cannot be easily reconciled with the traditional and liberal character of criminal law in a democratic society[733]. At a theoretical level, it is maintained that the new provisions tacitly presuppose a 'human right to security', the existence and desirability of which are debatable[734].

The implementing Statute has also been criticized for excessive adherence to the text of the Framework Decision to the detriment of its legal quality and compliance with the Greek Constitution. The choice of the Greek Legislator to copy the wording of the Framework Decision was condemned since it was argued that the Framework Decision 'suffered' from a democratic deficit and in any case is binding only as to the results at which it aims and not as to the actual measures that have to be adopted by Member States[735]. The Framework Decision itself, in the Preamble, calls for 'approximate', not identical definitions of terrorism in Member States[736]. On this basis it was maintained that the Legislator should adhere more to the principles of the Constitution, than to the text of the Framework Decision itself.

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[731] Introduced by Statute 2928/2001 on organized crime.

[732] See Kaiafa-Gbandi, id., pp.869-872, where the author criticizes the theories that propose the handling of criminals committing certain types of crimes not as persons entitled to protection of their basic human rights, but as enemies that must be eliminated for the benefit of society. See also Giannidis, *'The new legitimization of Criminal Law and the end of classic doctrines'*, Poinika Chronika, 2007, p. 773, (in Greek).

[733] Giannidis, id., pp. 770-775.

[734] Livos negates the existence of such a right, supporting the state interference through special legislation only when lack of security equals lack of effective judicial protection, when 'the security problem is transformed into a justice problem'. Livos, *'The security problem and security as a problem: The example of Criminal Law',* in *Honorary Volume for Ioannis Manoledakis I: Democracy, freedom, security*, Sakkoulas, 2004, p.200 (in Greek). Giannidis sees security as an "independent notion of international security' that serves as a new basis of legitimization of criminal law provisions (Giannidis, id. p.774]. See also Kaiafa-Gbanti, id., pp. 967-869.

[735] Kaiafa-Gbandi, *'The Law on European Arrest Warrant and terrorism and the declarations of allegiance to the Constitution',* Poiniki Dikaiosini, 2004, p.836 (in Greek); Simeonidou-Kastanidou, id., 2005, p.628.

[736] Preamble of the Council Framework Decision of 13 June 2002 on combating terrorism, point 6. See also Simeonidou-Kastanidou, id.

The arguments criticising Statute 3251/2004 can be summarized in four categories: 1. Vagueness and lack of certainty in the definitions; 2. Violations of the principle of proportionality; 3. Criminalization of beliefs; 4. Inconsistencies with the Criminal Code system and the Constitution.

1. Definitional Vagueness

The main criticism against the implementing anti-terrorist provisions of Statute 3251/2004 is that they lack the necessary certainty in the definition of what constitutes a terrorist crime. The problem was already pointed out in the Report of the Academic Committee of the Greek Parliament that accompanied the Bill at the time of its introduction. The accompanying Report remarked on the 'overwhelming use of vague terms'[737] in the definition adopted by the Council Framework Decision and its impact on the implementing Statute.

The vagueness of the Framework Decision is reflected on art.187A par.1 of the Criminal Code, introduced by the implementing Statute 3251/2004, which follows closely the definition of terrorist crime adopted in the former. In the literature, the definition is criticised for the use of terms such as 'seriously harming a country…', 'seriously intimidating…', 'forcing a country (…) to perform any act (…) or abstain there from…'[738]. It is not clear what the criminal law intends to protect with the reference to a 'country'. Subsequently, it is very difficult, if not impossible, for one to say what exactly constitutes 'serious harm' to a country[739]. Thus, the additional harm caused by a terrorist act, founded on the importance of the interests to be protected and affecting and justifying the increased penalties provided for in the law, remains elusive[740].

The uncertainty as to the meaning of the terms in the definition of the criminal act is viewed by some as resulting in the unconstitutionality of the provision. Critics argue that the vagueness of art.187A par.1, a criminal law provision, is a breach of art.7 par.1 of the Greek Constitution, which provides that all crimes must be

[737] Milonopoulos, *'Report on the Bill of the EAW'*, Poinika Chronika, p.1050, (in Greek).
[738] Art.187A par.1 of the Criminal Code.
[739] Simeonidou-Kastanidou, id., 2004, p.780; Kaiafa-Gbandi, id., 2005, p.873.
[740] Kaiafa-Gbandi, id., 2004, p.838.

'specified by law (…) defining the constitutive elements of the act'[741], and ultimately with the principle of legality[742].

The criminalisation of terrorism in such vague terms has significant procedural consequences. These include, among others[743], the application of the special investigatory procedures provided for in Statute 2928/2001 on organized crime, the possible intervention of Europol[744], the international jurisdiction of the Greek Courts for all terrorist offences regardless of the country where they were committed[745], and the imposition of heavier penalties. Given that many of the consequences aim at enabling police intervention and have, therefore, serious implications for the freedom of citizens and human rights[746] –in particular so in the case of the special interrogation procedures, which have been criticized themselves for the lack of a concrete legislative framework that would regulate their conduct[747]– the problem is, still, aggravated.

Finally, definitional vagueness affects not only the crime of art.187A par.1 of the Criminal Code, but also the rest of the acts criminalised in this provision, since they are in fact preparatory or participatory acts directly related to the main terrorist crime and its definition[748].

The main argument against these criticisms is based on the text of the Council Framework Decision itself, which is binding on the Greek Legislator. It has been argued that there was no option, but for the implementing law to follow closely the definition adopted in the Framework Decision; therefore, vagueness is primarily an issue with the Framework Decision and not a deliberate choice of the Greek Legislator[749]. Should each State freely modify the common definition, the object of a common front against terrorism could be defeated, since terrorists

[741] Art.7 par.1 of the Constitution is an expression of the principle '*nullum crimen nulla poena sine lege certa*'. See Androulakis, Criminal Law: General Part, Dikaio & Oikonomia, P.N. Sakkoulas, 2000, pp.131-135 (in Greek).
[742] Kaiafa-Gbandi, id.
[743] For a more detailed list of consequences see Simeonidou-Kastanidou, id., pp.782-784.
[744] Pursuant to art.2 of the Europol Convention, the objective of Europol is to promote effectiveness and cooperation in the fight against serious organised crime, including 'crimes committed or likely to be committed in the course of terrorist activities'.
[745] Art.8 of the Criminal Code as modified by art.40 par.3 of Statute 3251/2004.
[746] See Simeonidou-Kastanidou, id., 2005, p.626-628, where she notes a paradox: the international application entails that acts against totalitarian regimes and in favour of democracy could be prosecuted under Greek anti-terrorist laws. Kaiafa-Gbandi also notes that reservations about police activity have been expressed in other countries even when there are no issues of definitional vagueness, as in the case of organized crime. See Kaiafa-Gbandi, id., 2005, p.873.
[747] Simeonidou-Kastanidou, id., p.627.
[748] Simeonidou-Kastanidou, id., p.625.
[749] Milonopoulos, id., 2004, p.1050.

could take advantage of the differentiations among jurisdictions so as to attain the minimum penalty or to even remain unpunished[750]. Nevertheless, one should note that the Framework Decision, a legislative tool of the third pillar of the European Union, leaves some leeway to Member States as to the manner of implementation, provided that its objective is met; in any case, the text of the Decision calls for 'approximate', not, thus, identical definitions of terrorism in Member States[751].

A second counter-argument was based on the former provision of art.187A par.8, which exempted from the scope of criminalisation acts that aimed at the establishment of democracy or at the exercise of a fundamental right or freedom from being characterized as terrorist acts and falling into the definition of art.187A par.1. It was argued that the provision, limiting the application of art.187A par.1, could act as a counter-balance to the vagueness of the latter and the broad definition of terrorism[752]. Nevertheless, the provision of art.187A par.8 had been itself criticised for using vague terms[753], and such a use of unclear drafting towards the delimitation of the scope of another vague provision appeared problematic. However, the exception previously contained in par.8 was removed in the recent amendments, a development that has been viewed as an abolition of an important 'safety valve' of the law[754]. Yet, the aforementioned argument maintains its significance to the extent that such a delimitating interpretation could be based directly on the relevant provision of the Constitution and the European Convention on Human Rights.

Finally, it has been suggested that the problem of vagueness and the resulting extremely broad punishability can be countered by the application of the appropriate interpretative method, more specifically through the teleological interpretation of the provision by the judge[755]. While the necessity of an interpretative intervention by the courts has been acknowledged by the academics[756], concerns have been raised as to the implications of such a broad dependence on interpretation by the Courts,

[750] Kioupis, *'Statute 3251/2004 – a brief presentation of its basic points'*, Poinikos Logos, 2004, p.976, (in Greek).
[751] Preamble of the Council Framework Decision of 13 June 2002 on combating terrorism, point 6.
[752] Milonopoulos, id., p.1050.
[753] Simeonidou-Kastanidou, id., 2004, p.781; Milonopoulos, id.
[754] See Eleftherotypia newspaper, *'Terrorist activity and demonstrations'* (in Greek), article of 22/9/2010, available online at: www.enet.gr
[755] Milonopoulos, id.
[756] See Simeonidou-Kastanidou, id., 2005, p.629.

instead of legislative clarity for the observance of the principle of legality expressed in art.7 par.1 of the Constitution[757].

2. The principle of proportionality

The objection of the academics that touches on the issue of the observance of the principle of proportionality is connected to the definition of the terrorist crime found in article 187A para. 1 of the Criminal Code, and the Legislator's choice to include in it offences perpetrated by one person alone, the so-called 'individual terrorist'. Critics argue that the security of a country is threatened not so much by the acts of a single perpetrator, but by the activity of a terrorist group, which is the main form under which international terrorism operates[758]. Under the principle of proportionality[759], the increased penalties imposed on terrorist crimes compared to common ones can be justified only by a respectively increased harm caused by the act. This harm, as something over and above the act itself, which would be punishable in any case, can be found, according to the exponents of this argument, in the special characteristics of a terrorist group: the existence of a structure that increases the threat to a country and facilitates its endurance over time[760]. It has been argued, for instance, that terrorist crimes perpetrated by a person acting alone cannot pose a sufficiently greater threat to a country than common offences. The heavier penalties imposed by the anti-terrorist provisions, thus, are said to fall foul of the principle of proportionality[761].

Contrary arguments to this view, favouring the inclusion of acts with a single perpetrator in the definition of the terrorist crime, invoke real-life examples of serious terrorist crimes that have been committed by individual terrorists, like the cases of

[757] Simeonidou-Kastanidou, id., 2004, p.781.
[758] Ibid., p.784.
[759] On the notion of the principle of proportionality in the Greek criminal law, see Nikolaos Androulakis, '*Criminal Law – General Part*', Sakkoulas, 2006, pp.50-68 and 75; Christos Milonopoulos, '*Criminal Law – General Part*', Sakkoulas, 2007, pp. 14-15 and 66-69; Konstantintos Vathiotis, '*Issues of Criminal Law*', Nomiki Vivliothiki, 2007, pp. 01-10, 107, 116 and Nikolaos Androulakis, '*Fundamental Notions of Criminal Trial*', Sakkoulas, 2007, pp19-21,467-475, all references in Greek.
[760] Livos, *'Organized crime: Meaning and procedural means for its encounter',* in Greek Association of Criminal Law, *Organized crime from a criminal law aspect),* 2000, p.48 (in Greek); Simeonidou-Kastanidou, *'Statute 2928/2001 'for the citizens' protection from crimes of criminal organizations'*, Poiniki Dikaiosini, 2001, p.694, (in Greek).
[761] Simeonidou-Kastanidou, id., 2005, p.630; Kaiafa-Gbandi, id., 2005, p.872.

Unabomber and Timothy McVeigh[762]. The proponents of the criminalisation of terrorism in these terms, correctly note that the seriousness and dangerousness of a terrorist threat or act depend not only on the existence of a structured organization, but also on the technological means available to terrorists: an individual terrorist who is well equipped with the latest technological weapons can constitute a more serious threat to security than an organization that uses less sophisticated methods, and this fact was rightly not overlooked in the anti-terrorist provisions[763]. One could add onto this argument the recent developments in Union Law: the new Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism specifically mentions individual terrorism[764] and adopts provisions against individual acts without requiring any type of connection with a terrorist organisation[765], in what has been described as a 'total shift towards individual terrorism[766]'.

The objections concerning the inclusion of single-person offences in the definition of terrorist crime are also reflected in the criticism against the provision of art.187A par.4 that punishes with increased penalties the formation of or membership at a terrorist organization with the purpose of committing one or multiple terrorist crimes. It has been argued that if the participant in the organization aims at committing only one terrorist offence, then his actions cause no additional harm, as they do not contribute towards the actual source of the threat to security and public order, which is the structure and duration of a terrorist group that enables the perpetration of terrorist crimes over time[767]. Therefore, in this case, the increased penalty is unjustified and disproportionate.

The rest of the offences included in art.187A of the Criminal Code have also attracted criticism as to the proportionality of the imposed penalties. It has been noted that, pursuant to art.187A par.3 of the Criminal Code, the threat of committing a terrorist crime can attract heavier penalties than the actual attempt to commit

[762] See Milonopoulos, id., p.1050; See also Milonopoulos, id., 2001, p.794, where the author criticises the law regulating terrorist crimes before the adoption of Statute 3251/2004 for the non inclusion of acts of individual terrorists.
[763] Kioupis, id., .976.
[764] See paragraphs (3) and (4) of the Preamble of the Framework Decision of 28 November 2008.
[765] See for instance the definitions of the crimes of 'public provocation to commit a terrorist offence' and of 'recruitment for terrorism' in art.1 of the Council Framework Decision of 28 November 2008 amending art.3 of the Council Framework Decision of 13 June 2002.
[766] Kaiafa-Gbandi, *'The prevention of terrorism and the criminal law of pre-preemptive suppression: New criminal acts for the encounter of terrorism in E.U'*, Poinika Chronika, 2009, p.387, (in Greek).
[767] Kaiafa-Gbandi, id., 2005, p.874.

a terrorist crime[768], even though the latter can cause greater harm to the public order than the former[769]. Apart from violating the principle of proportionality, this provision has been criticized for being paradoxical and inconsistent with the penalty system of the Criminal Code, as well as for dissociating the harm of the preparation of a crime from the harm of the crime itself[770].Similarly, it had been noted that the participation in a terrorist group aiming at committing terrorist misdemeanours constituted a crime punishable by incarceration, while the completed terrorist misdemeanour is punishable like all misdemeanours by imprisonment; after the recent amendments, however, a reduced penalty is imposed in such a case.

3. Criminalization of thought

The third major criticism against the anti-terrorist provisions of Statute 3251/2004 concerns what is regarded as an imposition of heavier penalties on the basis not of concrete acts, but of a certain mentality of the perpetrator, who is ultimately criminalised for his beliefs rather than his acts. An example of this is the provision of art.187A par.7 of the Criminal Code, which imposes more rigorous penalties on certain crimes already punished under the Code if they are committed as a preparation for the terrorist crime[771]. The aggravating circumstance in this case is not some action, but some future intent of the offender which is extremely difficult to establish with any certainty. A common robbery, punishable in any case, has the same external manifestation as a robbery committed in preparation for a terrorist crime, the only differentiation being the motive of the perpetrator. It is argued that the additional factor justifying the heavier penalties is connected to the motive alone, and that the provision is actually criminalising the beliefs of the offender[772].

Similar objections have been raised in relation to art.187A par.6 of the Criminal Code, which criminalises acts facilitating the formation of or participation in a terrorist organisation. The provision does not demand, expressly in its amended form, that the formation of or accession to the organisation has actually taken place;

[768] This is true in the case of misdemeanours: The attempt of a terrorist misdemeanour is punishable by imprisonment from 10 days to 5 years (art.187A par.1(iii) and 42 of the Criminal Code), while the threat of committing the same misdemeanour is punishable by imprisonment from 2 to 5 years (art.187A par.3).
[769] Kaiafa-Gbandi, id., p.877.
[770] Kaiafa-Gbandi, id., p.875; Milonopoulos, id., 2004, p.1050.
[771] The amended par. 7 refers to 'a purpose to commit' rather than 'a preparation' of the terrorist offence. Despite the different wording, the meaning of the provision seems to remain in essence the same.
[772] Kaiafa-Gbandi, id.; Simeonidou-Kastanidou, id., 2005, p.635.

without such a dependency, it is argued, the provision criminalizes a neutral action on the basis of the motive alone, rendering it furthermore a crime[773].

Apart from these two cases where the issue of the criminalisation of motives and beliefs is most evident, critics note the overall prominence of subjective factors[774], based on the intention of the perpetrator and often dependent on uncertain and future circumstances, in the description of the offences and the subsequent difficulty for the judge to establish their occurrence with the required certainty[775]. More significantly, this feature has been attributed not only to the Greek implementing law, but also to the very concept of special legislation for terrorist crimes, on the basis that the difference between a terrorist and a common criminal lies precisely in their aims and motives[776]. This argument implies that the criminalisation of beliefs in any anti-terrorist legislation is inevitable. Such a conclusion can also support an opposing set of arguments that depart from the acknowledgement that the new types of legislation, among which are the anti-terrorist laws, cannot be accommodated by the existing principles of criminal and constitutional law. As a result, the two possible options are either the repeal of the legislation or the introduction of new legal paradigms that can legitimize it, any attempt towards reconciliation being ultimately meaningless[777].

Relevant to the criticism concerning the criminalisation of beliefs is the debate on whether terrorist offences are in fact political offences and, therefore, subject to special provisions under the Greek Constitution. This connection is precluded in the Preamble of the Framework Decision[778]; however, academics have noted that terrorism can have strong political elements that cannot be ignored[779]. However, the predominant view is that terrorist offences are not political offences when the harm they cause is disproportionate to their political motive, as in the case of murders and other serious crimes of the Criminal Code[780].

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[773] Kaiafa-Gbandi, id., p.877; Simeonidou-Kastanidou, id., 2004, p.786.
[774] See art.187 A par. 1 of the Criminal Code.
[775] Kaiafa-Gbandi, id., p.875.
[776] See Manoledakis, *'State security or freedom?'*, in Manitakis, Takis (eds.), *Terrorism and rights: from state security to law insecurity*, Savvalas, 2005, pp.29-30, (in Greek).
[777] For this argument see Giannidis, id., pp. 769-775.
[778] The Preamble of the Framework Decision mentions the Convention on the Suppression of Terrorism of 27 January 1977, which 'does not regard terrorist offences as political offences or as offences inspired by political motives'.
[779] Kyritsis, *'Terrorism and political crime: proposals for a classification'*, Poinika Chronika, 2005, pp.490-499 (in Greek); Belandis , *'The trials of the cases of 17 Noemvri and ELA. The anti-terrorist laws in practice',* Dikaiomata tou Anthropou, 2007, Pp. 1156-1157, (in Greek).
[780] See Manoledakis, id., pp.37-38. It has also been maintained that terrorist offences are political when they are widely supported in society. See Stathopoulos, *'Political crime and the organization '17*

4. Inconsistencies within the Criminal Code system

The final argument against the anti-terrorist articles of Statute 3251/2004 is that it poses a threat to the internal coherence of the Criminal Code. Some of the inconsistencies between Statute 3251/2004 and the Criminal Code have already been mentioned in the previous paragraphs in relation to other objections against the law: the imposition of the penalty of incarceration for participation in a terrorist organization aiming at committing misdemeanours, which was recently amended, as well as the imposition of a heavier penalty on the threat of committing a terrorist act than the actual attempt of committing one. Apart from these, art.187A has been criticized for the provision of par.6, which typifies as autonomous crimes a series of acts that would normally be considered as participatory acts to the principal crime and be linked to it in accordance with the general rules of crime participation contained in the Criminal Code. This criminalisation of assisting acts independently of the existence of a principal criminal offence has been considered a departure from the participation scheme of the Criminal Code, and a simultaneous extension of punishability towards the very early stages of the preparation of a not yet existing crime[781].

It has been suggested that the drafting of the provision was due to a legislative omission, and that the courts should interpret the article in the light of the provision of art.2 par.2 (b) of the Framework Decision of 13 June 2002 which refers to participation *in the activities of a terrorist group*, and require the existence of a terrorist organisation in order for the assisting acts to be punishable[782]. While such an interpretation is possible, it should be noted that the more recent Framework Decision of 28 November 2008 is abandoning the above requirement, criminalizing assisting acts such as the recruitment and training for terrorism regardless of the existence of a terrorist group or and commitment of a terrorist offence[783].

Finally, there have been concerns about the relationship of art.187A of the Criminal Code on terrorism with art.187 on organized crime, which regulated terrorist crimes until the adoption of Statute 3251/2004. In view of the criticism by academics,

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Noemvri', Some more general thoughts on freedom and its limits', Elliniki Dikaiosini, 2003, pp.896-897, (in Greek).

[781] Kaiafa-Gbandi, id., p.877.

[782] Simeonidou-Kastanidou, id., p.786.

[783] See art.3 of the Council Framework Decision on 13 June 2002 as amended by art.1 of the Council Framework Decision of 28 November 2008. For a criticism of the new provisions see Kaiafa-Gbandi, id., 2009, p.385-400.

who noted that terrorism and organized crime have different aims and characteristics and called for different criminal law provisions[784], the specific legislation concerning terrorist crimes was welcome; however, it has not been accompanied by a corresponding amendment of art.187, which has maintained its broad phrasing that encompasses both terrorist and criminal organizations. The parallel application of the two provisions on terrorism can be resolved through an interpretative approach, in particular through the *lex specialis* doctrine; still, it has been argued that art.187 should be amended to regulate only organized crime, so that there would be no overlap between the two articles[785].

[784] Milonopoulos, id., 2001, p.794; Kioupis, id., p.975.
[785] Ch. Milonopoulos (Χ. Μυλωνόπουλος), id., 2004, p.1051.

d. Final Remarks

The adoption of a special Statute concerning terrorist offences, instead of the application of the provisions of Statute 2928/2001 on organised crime, seems to be a positive step, as it results in more a focused legislation that can address more effectively the particular traits of each type of criminal offence. However, Statute 3251/2004 on combating terrorism does not lack drawbacks. It was adopted almost a year and a half after the deadline for the implementation of the Council Framework Decision of 13 June 2002, under pressure in view of both the expired deadline and the security issues raised by the approaching Athens Olympics[786]. The hasty adoption, along with the uncritical and often verbatim copying of the text of the Framework Decision, have resulted in vague terms and provisions that are often difficult to reconcile with the rest of the Criminal Code. The recent amendments by Statute 3875/2010 addressed some of these issues, especially those related to the perpetration of terrorist misdemeanours, but in other aspects, such as the removal of the exception to art.187A par.8, seem to be prone to draw more harsh criticism.

A careful interpretation by the Courts, in consistency with the Criminal Code system, can provide answers to the criticism raised against the Statute. However, a significant aspect is that Statute 3251/2005 has not been applied by the Greek courts till today. The major terrorist trials of '*17 Noemvri'* and '*ELA'* were conducted under the previous Statute 2928/2001, and have dealt mostly with issues raised by that Statute. In view of the recent intense activities of new terrorist groups in Greece, and the arrests of some of their members, the anti-terrorist legislation is due to be tested before the Greek courts soon, and their answers to the issues presented in this chapter will be of great interest.

[786] Mitsilegas V., '*The Impact of the European Union on the Greek Criminal Justice System'*, in L. Cheliotis and S. Xenakis (Eds), 'Crime and punishment in contemporary Greece', Peter Lang Publishers, Forthcoming.

III. The Fight Against Organized Crime in the Greek Legal Order

a. The 'big picture' of the Greek Legislation

The first attempts towards the adoption of legislation against organised crime in Greece are dated in the early 1990's, with the introduction of Statute 1916/1990 'for the protection of society from organised crime'. Despite its reference to organised crime, the Statute was mainly intended to be a response to a series of terrorist attacks by the terrorist group '*17 Noemvri*'. Its provisions were seen as a threat to freedom of the press and personal freedoms, and were attacked heavily by the mass media and the Opposition. The Statute was finally revoked three years later, by Statute 2172/1993[787].

In view of the heavy criticism against the above Statute, no similar legislation was introduced in Greece in the following years. However, international developments in the field of the fight against organised crime, namely the Council Joint Action 98/733/JHA of 21 December 1998 and the adoption of the United Nations Convention against Transnational Organised Crime (Palermo Convention) on 15 November 2000, combined with the growth of criminal organisations inside Greece[788], necessitated the adoption of special legislation targeted against organised crime. Therefore, on 27 June 2001, Statute 2928/2001 was adopted. The Statute, entitled '*Modification of provisions of the Criminal Code and the Code of Criminal Procedure and other provisions for the citizens*' *protection from crimes of criminal organisations*', was introduced in view of the adoption of the Palermo Convention and the Council Joint Action[789]. It remains the main Greek legislation against organised crime. As is evident from its title, the Greek Government opted for the amendment of a series of provisions of the Criminal Code and the Code of Criminal Procedure that were related to organised crime activities and the methods of fighting them, rather than the introduction of a special criminal Statute that would apply only to the acts of criminal organisations.

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[787] For more details about Statute 1916/1990 and the debate concerning it see Livos, *Organised Crime and Special Investigative Techniques. Vol.1: Doctrine of Organised Crime. Issue A: The criminological-doctrinal phenotype of organised crime*, Dikaio & Oikonomia, P.N. Sakkoulas, 2007, pp.55-64, (in Greek).

[788] See Explanatory Report on the Bill on 'Modifications of provisions of the Criminal Code and the Code of Criminal Procedure and other provisions for the citizens' protection from crimes of criminal organizations', Poinika Chronika, 2001, p.1007, (in Greek).

[789] Ibid.

Since the adoption of Statute 2928/2001 there have been a number of developments concerning it. Firstly, Statute 3251/2004 was adopted, which regulated terrorist activities prosecuted up to then under Statute 2928/2001, and which introduced some minor amendments to its provisions. Secondly, the Council of the European Union adopted the Council Framework Decision 2008/841/JHA of 25 October 2008 on the fight against organised crime, the deadline for its implementation by Member States being 11 May 2010. A competent Special Law Drafting Committee has been set up in the Greek Ministry of Justice, for the purpose of transposing the above mentioned FD into the Greek legislation, but has not yet completed its work[790]. Lastly, Statute 3785/2010, adopted on 20 September 2010, finally incorporated the text of the Palermo Convention into the Greek legal order and amended a number of provisions of art.187 of the Criminal Code and Statute 2928/2001.

[790] Interview with X official of the Greek Ministry of Justice, Transparency and Human Rights, 21/06/10.

b. The Provisions of Statute 2928/2001

As noted above, Statute 2928/2001 took into consideration the Palermo Convention (eventually ratified on 20 September 2010 by Statute 3875/2010) and Council Joint Action 98/733/JHA of 21 December 1998[791]. It consists of 14 articles, 10 of which are relevant to the fight against organised crime. Articles1 to 3 of the Statute amend the Greek Criminal Code, while articles 4, 5, and 6 amend the Code of Criminal Procedure. Art.7 regulates the completion of the investigative procedure. Art.8 refers to the liability of legal persons and companies. Finally, articles 9 and 10 introduce measures for the protection of witnesses and other persons related to the criminal procedure. The articles of Statute 2928/2001 will be presented in the following paragraphs, with the focus being on those relevant to European and international legislation.

Article 1 – 'Criminal Organization'

Art.1 par.1 of Statute 2928/2001 substitutes art.187 of the Criminal Code, formerly entitled '*Conspiracy and association to commit offences*', with a new article entitled '*Criminal organisation*', providing for the main criminal offences related to organised crime.

Pursuant to the first paragraph of the new art.187, whoever forms or becomes a member of a criminal organisation that aims at the perpetration of a series of felonies, is punished by imprisonment of up to ten years. The organisation should be structured[792], have a continuous activity and be comprised of three or more persons; therefore, mere association for the perpetration of a single crime, even a serious one, is not punished under this provision. The wording of the paragraph reflects the notion that it is the structure and the continuous readiness of the group to commit offences rather than the perpetration of the offences themselves that creates an increased danger to society and should be criminalised accordingly[793]. Furthermore, the actual

[791] Explanatory Report, id.
[792] The Statute, similarly to the Council Joint Action, does not provide a definition of the term. A definition can be found in art.2(c) of the Palermo Convention: '*structured*' is a group 'that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure'.
[793] Manoledakis, '*Security and Freedom (interpretation of Statute 2928/2001 on organised crime and relevant texts)'*, Sakkoulas, 2002, p.106, (in Greek).

perpetration of any crime is irrelevant, the law aiming at a stage before the commitment of a traditional crime.

The limitation of the predicate offences to felonies only, that is to offences punishable with imprisonment for at least five and at most twenty years[794], deviates from the Joint Action and the Convention[795], which provide for predicate offences punishable by deprivation of liberty of a maximum of at least four years[796]. However, crimes that would be predicate offences under the Joint Action and the Convention and that are not included in the definition or par.1 can be punished under par.3 of art.187.

Art.187 par.1 of the Criminal Code omits a main component of organised crime according to theory, that of the aim of financial or material benefit.[797]. It, therefore, seems to regulate all types of criminal groups, and not only the ones that could be labelled as 'organised crime', following apparently Council Joint Action, which, in article 1, states that the predicate offences must be 'an end in themselves or a means of obtaining material benefits'.

Statute 3875/2010 introduced the new paragraphs 2 and 3 in art.187 of the Criminal Code. The amended par.2 refers to the provision of information and material to a criminal organisation, punishable by incarceration of ten years at the most. Par.3 punishes the management of a criminal organisation by incarceration of at least ten years.

The forth (former second) paragraph of art.187 of the Criminal Code targets the corruption often associated with organised crime, as well as attempts towards the intimidation of the judiciary[798]. This provision is linked to art.8 and art.23 of the Palermo Convention[799], but, contrary to them, it criminalises only the offering of

[794] Art.18 of the Criminal Code.
[795] Art.1 of the Council Joint Action; Art.2(b) of the Palermo Convention.
[796] Kaiafa-Gbandi criticizes this definition on the basis of the imposed penalties, arguing that it is not sufficient for the affirmation of the seriousness of the offence; she offers the example of the Greek criminal legislation, pursuant to which penalties of up to five years are often provided for lesser crimes and can be converted to pecuniary penalties or be suspended. See Kaiafa-Gbandi, *'Towards a new delimitation of the punishability of organized crime in E.U. – Its implications for our national legal order'*, Poiniki Dikaiosini, 2005, p.1438, (in Greek).
[797] See Livos, *'Organised Crime: Definition and procedural means for its confrontation' in* Greek Society of Criminal Law, *Organised crime under the criminal law viewpoint. Proceedings of the VII Panhellenic convention*, Dikaio & Oikonomia, P.N. Sakkoulas, 2000, p.32, (in Greek).
[798] Pursuant to the provision, the use of bribery, threats, or violence against judicial officials in an attempt to avert the prosecution of the criminal organisation is criminalised by imprisonment of at least a year.
[799] The Council Joint Action only refers to the purported crimes as 'a means of improperly influencing the operation of public authorities', making no further reference to any specific activities.

bribes, and not their acceptance. The omission, of course, does not prevent the prosecution of the acceptance of bribery under other relevant provisions of the criminal legislation.

Par.5 (former par.3) of art.187 of the Criminal Code criminalises groups that do not fall under par.1. Since it does not strictly provide against organised crime, it seems to exceed the scope of the relevant international and European legislation. It has been argued, however, that the element of 'structure' must be required under this provision as well, so that simple agreements of two persons are not criminalized[800].

Aggravating[801] and mitigating[802] circumstances are contained in par.6 (former par.4) of art.187 of the Criminal Code. It should be noted that the aggravating circumstance of the pursuit of financial benefit is in fact one of the key elements of organised crime, and, therefore, it will normally apply in the majority of cases. It has even been labelled 'stupid' in relation to the offence of par.3, since it duplicates one of the conditions already contained in that paragraph[803].

Par.7 of the amended art.187 of the Criminal Code provides for the international application of its provisions to offences committed by or against a Greek subject or against the Greek State, even if they are not considered crimes according to the laws of the State in whose territory they were committed. In providing thus, art.187 makes full use of the relevant discretion contained in the Palermo Convention[804]. The Council Joint Action provides for the liability of members of a criminal organisation irrelevantly of the State where the organisation is based or pursues its activities[805].

The final par.8, introduced by Statute 3875/2010, provides for the confiscation of the fortune acquired through the perpetration of the crimes of paras.1-4, according to art.238 of the Criminal Code.

[800] Manoledakis, id., p.135.
[801] The manufacture and possession of weapons, explosives and chemicals and the pursuing of financial or material benefit.
[802] The non-commitment of any of the crimes at which the organization aimed.
[803] Manoledakis, id., p.138.
[804] See art.15 par.2 of the Palermo Convention.
[805] See art.4 par.1 of the Council Joint Action.

Article 2 – 'Leniency Measures'

Art.2 of Statute 2928/2001 introduces a new art.187A in the Criminal Code, entitled 'Leniency Measures'. This article has already been renamed as art.187B by Statute 2251/2004[806], and will be referred to in the following paragraphs.

The leniency measures of this article are related to three categories of persons:

1. Members of a criminal organisation or group as described in par.1 and 3 of art.187 of the Criminal Code who denounce it to the authorities, contributing to the prevention of the intended crimes and the breaking up of the group. These members are not prosecuted for their participation, and the penalty for the predicate committed offences, is reduced or suspended.[807].

2. Victims of a criminal organisation that are themselves prosecuted under the legislation concerning aliens or prostitution. If such persons file a well-founded denouncement of the organisation, then the public prosecutor abstains from indicting them[808].

3. Illegal aliens that are to be deported. If the alien denounces crimes committed by a criminal organisation, his extradition can be suspended[809].

The above measures implement art.26 of the Palermo Convention. The Council Framework Decision contains respective provisions as well in art.4; however, art.4 of the Framework Decision provides for the mitigation of or exemption from penalty only of cooperating members of the criminal organisation, and not of persons prosecuted under other, irrelevant criminal provisions, as is the case with par.3 and 4 of art.187B of the Criminal Code.

Article 3 – 'Offences related to explosives'

Art.3 of Statute 2928/2001 amends art.272 of the Criminal Code on offences related to explosives and abolishes art.272A of the Criminal Code. It is one of the few provisions of Statute 2928/2001 that introduces more lenient legislation than the preceding one: it punishes the manufacturing, supply, or possession of explosives with the purpose of using them by imprisonment (deprivation of liberty from five to twenty years), whereas the previous provision punished the same offences by life imprisonment or imprisonment for at least ten years.

[806] Statute 2251/2004, art.40 par.1.
[807] Art.187B par.1 and 2 of the Criminal Code.
[808] Art.187B par.3 of the Criminal Code.
[809] Art.187B par.4 of the Criminal Code.

Article 4 – 'Special Jurisdiction of the Court of Appeal'

Art.4 of Statute 2928/2001 amends art.111 par.5 of the Code of Criminal Procedure, and adds the offences of par.1 of art.187 of the Criminal Code as well as the offences related to them to the crimes judged by the Court of Appeal and not a mixed jury[810]. The article follows a general tendency towards the limitation of the list of cases judged by a jury, despite the constitutional provision that appoints the mixed jury courts as the primary criminal courts[811].

Article 5 – 'D.N.A Analysis'

Art.200A was added to the Code of Criminal Procedure by art.5 of Statute 2928/2001. The new article provides for a compulsory D.N.A analysis for the identification, among others, of members of criminal organisations within the meaning of art.187 par.1 of the Criminal Code. The compulsion should be regarded as involving sanctions in case of a refusal by the accused to be subjected to an analysis, rather than authorising the use of violence for the obtaining of the genetic material[812].

Article 6 – 'Interrogatory acts on criminal organizations'

Art.6 of Statute 2928/2001 introduces a number of special investigative techniques to the Code of Criminal Procedure, adding the new art.253A. These techniques are: (a) investigative penetration, also known as undercover police operations; (b) controlled delivery; (c) lifting of confidentiality; (d) recording of activities, and (e) correlation of personal data. Art.253A of the Code of Criminal Procedure corresponds with art.20 of the Palermo Convention, which provides for the use of appropriate investigative techniques, specially naming controlled delivery, electronic surveillance and undercover operations.

The article is noted for its unusual structure: the Legislator, in view of the criticism for dangerous restriction of liberties, attempted to manifest that these techniques were not new and were already practiced by the police[813]. Thus, the aforementioned techniques are not described in the Code of Criminal

[810] Mixed jury courts, comprising of four jurors and three judges, have the general jurisdiction for felonies and political crimes, pursuant to art.97 of the Greek Constitution. Felonies can come under the jurisdiction of Courts of Appeal, comprising of judges only, by special law.
[811] See art.97 par.1 and 2 of the Greek Constitution.
[812] Manoledakis, id., pp.157-158.
[813] Th. Samios, *'Investigative techniques for criminal organizations',* Poinika Chronika, 2001, p.1035, (in Greek).

Procedure; on the contrary, the Code refers to previous special legislation containing them.

The use of special investigative techniques contained in art.253A is restricted to the offences of art.187 par.1 and 2 of the Criminal Code, and is furthermore strictly regulated, in view of the danger of possible abuses.

Article 7 – 'Completion of the Interrogation'

Art.7 of Statute 2928/2001 abridges the preliminary procedure for the felonies of art.187 of the Criminal Code by rendering the ruling of the Council of Appeal on the indictment of the accused irrevocable[814].

Article 8 – 'Liability of legal entities and enterprises'

Legal persons financially benefiting from organised crime are held liable under art.8 of Statute 2928/2001. Liability of legal persons is provided for in both the Council Joint Action, and the Palermo Convention[815]. The Greek Statute demands that the legal entity simply benefits from and not that it participates in the act, being thus broader in scope[816]. It should be noted that the fines and sanctions imposed on legal persons are of an administrative nature, as under the Greek legal system legal persons cannot be held criminally liable[817].

Articles 9 and 10 – 'Protection of Witnesses and Other Persons'

Articles 9 and 10 of Statute 2928/2001 provide measures for the protection of witnesses and other persons related to the prosecuting procedure. This protection appears imperative if one takes into account the usual retaliation by criminal organisations against those who break the code of silence[818]. A similar provision is

[814] Pursuant to art.482 of the Code of Criminal Procedure, the accused can appeal in cassation against the ruling if he is indicted for a crime.

[815] Art.3 of the Council Joint Action; Art.5 and 6 of the Council Framework Decision of 25 October 2008; Art.10 of the Palermo Convention.

[816] Contrast art.10 par. 1 of the Palermo Convention ('…liability of legal persons for participation in serious crimes involving an organized criminal group…') and art.3 of the Council Joint Action ('…legal persons may be held (…) liable for offences (…) committed by that legal person…') While a person's action as an organ of the legal person could equal an action of the latter, the same is not true if that person acts privately.

[817] See Androulakis, *Criminal Law: General Part,* Dikaio & Oikonomia, P.N. Sakkoulas, 2000, pp.147-150, (in Greek).

[818] Zachariadis, *'Witness protection and leniency measures in the prosecution of organized crime (Remarks on articles 9 of Statute 2928/2001 and 187B of the Criminal Code)'* , in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, 2007, p.769, (in Greek).

included in the Palermo Convention in art.24; however, it refers only to the protection of witnesses.

The protection of anonymity provided to witnesses is limited under par.4 (former par.3, amended by Statute 3875/2010), since the witness' identity can be revealed if requested by one of the litigants or the public prosecutor. This exception can endanger the witness and is not included in the Palermo Convention; nevertheless, it is essential for the protection of the rights of the accused and the requirements of a fair trial.

c. The Academic point of view

The threats posed to society by the rise of organised crime, as well as the necessity for its effective confrontation on a legislative level has been acknowledged by Greek academics, who have pointed out its corruptive effects on political, social and economic institutions[819] that can lead even to the substitution of the lawful authorities by the criminal organisation itself[820], and have classified it as an offence against public order[821]. However, Statute 2928/2001 'for the citizen's protection from crimes of criminal organisations' has been criticised as both over-reaching and under-reaching, while some have argued that it is redundant and that the existing legislation for the confrontation of organised crime is sufficient[822].

Academics have argued against the substantive provisions of the Statute as well as the procedural ones. The main point of criticism for the former centres on the drafting of the scope of offences, especially the one of art.187 par.1 of the Criminal Code, as amended by the Statute. The proportionality of the new regulations and their compatibility with the rule of law has also been contested, while critics have pointed out a number of inconsistencies within the criminal law system.

The inclusion of special investigative techniques has drawn the most criticism with regard to the procedural provisions of the Statute. The techniques have been regarded by many academics as a threat to constitutional rights and liberties and as a departure from the liberal character of criminal law.

1. Definitional issues

Despite its title and the references to the Palermo Convention and the Council Joint Action of 21 December 1998 in its Explanatory Report[823], Statute 2928/2001 was introduced as a response not only to organised crime, but also to terrorism[824]. This legislative choice was met with criticism by the academics, who have pointed out

[819] Simeonidou-Kastanidou, *'Statute 2928/2001 for the citizen's protection from crimes of criminal organizations'. Basic characteristics and a first interpretative approach'*, Poiniki Dikaiosini, 2001, p.694 (in Greek) ; N. Livos id., p.17.
[820] Livos, id., 2007, p.4.
[821] Manoledakis, id., p.105.
[822] Greek Society of Criminal Law, '*Findings* in *Organised crime under the criminal law viewpoint. Proceedings of the VII Panhellenic convention'*, Dikaio & Oikonomia, P.N. Sakkoulas, 2000, p.245 (in Greek).
[823] Explanatory Report, id., p.1007.
[824] The Explanatory Report acknowledges the intention of the Statute to include terrorist activities, while arguing that they represent 'but a small part of its field of applicability'. See Explanatory Report, id., p.1008.

the fundamental differences between the two types of criminal activity[825] and have remarked on the necessity to confront the two types of activities with different provisions[826]. This 'deliberate confusion'[827] led to accusations for hypocrisy and falsehood[828], while the media were not slow in labelling the Statute as the 'terror-law'[829].

The main consequence of this attempt to include both types of crimes in the same definition was the much-criticised broadness in the description of the offence of art.187 par.1 of the Criminal Code. While the definition of the 'criminal organisation' in this article contains some fundamental characteristics of organised crime, such as the structure, the duration and the participation of more than two members in the organisation, it does not mention a crucial element, included in both the Palermo Convention and the subsequent Council Framework Decision: the pursuit of financial gain. This omission enabled the inclusion of terrorists, who normally do not aim at profit, but at political intimidation, in the scope of Statute 2928/2001 and art.187 par.1 of the Criminal Code. The business-like operation of organised crime, and the subsequent perpetration of 'market-based offences' was totally omitted from the definition[830]; similarly neglected were the differences among various criminal organisations that emanate from the way they define themselves[831]. These omissions remained even after the adoption of Statute 3251/2004 on combating terrorism and the subsequent prosecution of terrorist activities under the special provision of art.187A of the Criminal Code.

The link of the criminal organisation to a type of financial criminal activity cannot be deduced from the list of offences at the perpetration of which the organisation has to aim either, as they are diverse and do not have the pursuit of profit as a common

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[825] Livos, id., 2007, p.6; Papacharalampous, *'The Bill of the Ministry of Justice on Organised Crime: 'aberratio ictus' with inestimable 'collateral damage',* Poiniki Dikaiosini, 2001, pp.285-286, (in Greek).

[826] Milonopoulos, *'Statute 2928/2001 for the citizen's protection from crimes of criminal organizations',* Poinikos Logos, 2001, p.794, (in Greek).

[827] Pavlou, *'Transboundary crime and the gradual adaptation of Greek criminal legislation towards its more effective confrontation',* Poinika Chronika, 2002, p.780, (in Greek).

[828] Papacharalampous, id., p.289.

[829] See Eleftherotypia newspaper, *'Government satisfied with adoption of terror-law',* article of 8/6/2001 available online at: www.enet.gr (in Greek); see also Kathimerini newspaper, *'Opening for the terror-law'*, article of 3/8/2001 by Eva Karamanoli , available online at: www.kathimerini.gr (in Greek).

[830] Livos, id., p.6. See also Simeonidou-Kastanidou, id., p.694, where she notes that the provision does not mention the basic characteristic of a terrorist organization ether, namely the possession of weapons.

[831] Ibid., p.84.

characteristic[832]. The resulting inclusion of almost all types of criminal groups in the provision has led to arguments that the new article cannot achieve its purpose, namely the confrontation of the special characteristics of organised crime[833]. Furthermore, critics argue that the broad phrasing utilised will not assist in the prosecution of dangerous criminal groups; rather, it will result in the stricter criminalisation of offences of less significance and demerit[834].

The definition of the main criminal offence in art.187 par.1 of the Criminal Code has also drawn criticism with regard to the list of crimes at which the criminal organisation should be aiming. The list has been criticised as being too extensive and including offences that cannot logically be attributed to a criminal organisation, such as manslaughter and incest[835]. On the other hand, it has been also criticised as lacking: there is, for example, no mention of felonies committed by public officials. This omission, combined with the similar absence of the receipt of bribes as an offence in art.187 par.4, indicates according to critics the Legislator's insufficient realization of the corruptive power of organised crime, whose existence requires the collaboration of public officials[836].

Another point of criticism raised by the academics is the absence of a definition of the term 'structured', used in the definition of the criminal organisation[837]. It has been argued, however, that this definition could be drawn from the Palermo Convention[838]. Finally, it has been noted that art.187 par.1 wrongly attributes the pursuance of the mentioned felonies to the member of the criminal organisation and not to the organisation itself[839].

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[832] Tzannetis, *'The meaning of criminal organization under the new article 187 of the Criminal Code',* Poinika Chronika, 2001, p.1016, (in Greek).
[833] Kritharas, *'Conceptualization of organized crime'*, Poiniki Dikaiosini, 2005, p.899, (in Greek).
[834] Simeonidou-Kastanidou, id., p.694.
[835] Anagnostopoulos, *'The bill on organized crime: Modernization or disintegration of liberal criminal law?',* in *Proceedings of the academic event of the Law Society of Northern Greece and the Association of Greek Criminal Lawyers with subject: 'The bill on the confrontation of organized crime' (later Statute 2928/2001),* Sakkoulas, 2002, p.38, (in Greek).
[836] Manoledakis, , id., pp.111, 123. On the relation between organized crime and corruption see Livos, id., 2000pp.53-54.
[837] As noted above, the Council Joint Action does not contain such a definition ether. It has been argued, however, that the omission contributes towards the vagueness of the Statute.
[838] According to the Palermo Convention, a 'structured group' is 'a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure' (art.2(c) of the Convention). See Kritharas, id., p.897.
[839] Kaiafa-Gbandi, id., 2005, p.1445.

The procedural provisions of Statute 2928/2001, introducing the obligatory DNA analysis and the special investigative techniques of art.200A and 253A of the Code of Criminal Procedure respectively have also been criticised for definitional vagueness and deficiencies. Academics attribute these shortcomings to the unusual structure of art.253A of the Criminal Code: the article simply mentions the techniques and refers for the particulars to a number of other Statutes that had introduced and regulated them. The result was, as critics correctly note, that a number of provisions targeted towards specific offences were accorded a much wider area of applicability without any kind of systematic adaptation to these new requirements, creating problems with their interpretation and implementation[840]. Furthermore, the Legislator has been accused for missing the opportunity for a more thorough and systematic regulation of said techniques in view of their upgraded role in the criminal procedure[841].

Critics also, correctly, note a number of omissions and unclear points in the procedural provisions, such as the persons against whom they can be ordered, the exact scope of the actions of the investigative officials, the right of the suspect to be eventually informed about the findings of the investigation, and the protection of third parties[842]. The omissions render it necessary for one to resort to the clarifying statements of the Minister of Justice, another indication of the poor quality of the provisions[843]. However, it has been, unconvincingly, argued that the deficiencies and the interpretative issues arising from the procedural provisions of Statute 2928/2001 can be confronted through an appropriate application of a number of principles of law, such as the principle of proportionality and of non-violation of the core of personal rights, as well as through the consideration of the purpose of the investigative techniques and the requirements for their ordering that can be found in the respective provisions[844].

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[840] See *'Report on the Bill 'Modification of provisions of the Criminal Code and the Code of Criminal Procedure and other provisions for the citizens' protection from crimes of criminal organizations',* Poinika Chronika, 2001, p.1014. See also Samios, id., pp.1035-1036, (in Greek).

[841] Dalakouras), *'The special investigatory techniques of article 6 of Statute 2928/2001',* Poinika Chronika, 2001, p.1024, (in Greek).

[842] Ibid., pp.1026-1027.

[843] Simeonidou-Kastanidou, for instance, discussing the persons against whom the techniques can be ordered, references two such ministerial statements. See Simeonidou-Kastanidou id., pp.697-698.

[844] See Papadamakis, '*Undercover operations and lifting of confidentiality as investigative techniques against organised crime'*, in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, p.954 (in Greek); Spyrakos, *'The correlation and combination of personal data for the suppression of organized crime',* Poinika Chronika, 2001, p.1031, (in Greek).

2. The principles of proportionality and equality

The observance of the principle of proportionality by the provisions of Statute 2928/2001 has been contested. A first criticism is related to the criminalisation of the very early stages of the preparation of an offence with heavy penalties equal to those imposed on many serious felonies[845]. The lack of proportionality in the penalties has also been linked to the defects in the definition of the offence of art.187 par.1 of the Criminal Code: since the demerit of the act is not based on the increased threat to society that defines organised crime, the high penalties are unjustified[846]. The application of the stricter substantive and procedural provisions of Statute 2928/2001 over lesser offences, contrary to all concerns for proportionality, has been noticed and criticised in the literature[847].

However, the answer to these criticisms has been based on the nature of organised crime: the threat originates not so much from the external manifestation of a committed crime, but in the continuous readiness of the organisation to pursue criminal behaviour, on the basis of a criminal structure[848]. Thus, acts previously considered as peripheral take centre stage. Moreover, the high penalties can be justified through expediency-based considerations, since they aim at raising the 'cost' of organised crime, thus, rendering it unprofitable[849].

Concerns related to the principle of equality have been raised in view of art.7 of Statute 2928/2001, which provides for the early completion of the investigative procedure by rendering the relevant decree of the Judicial Council irrevocable. Since the appeal in cassation against such a decree is permissible for the same offences when they are committed outside of the framework of a criminal organisation, the law seems to introduce an exceptional and unequal provision[850]. It should be noted, however, that academics have proposed the general expansion of this measure, as a desirable abridgement of the investigative procedure[851].

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[845] Tzannetis, id., pp.1021-1022.
[846] Papacharalampous, id., p.289.
[847] Simeonidou-Kastanidou , *'Towards a new definition of organized crime in European Union',* Poinika Chronika, 2006, p.870, (in Greek).
[848] Livos, id., 2007, p.7.
[849] Ibid., p.8.
[850] Simeonidou-Kastanidou, id., 2001, p.699.
[851] Manoledakis, id., p.176.

3. Threats to constitutional rights and freedoms and the rule of law

Statute 2928/2001 has been heavily criticised as a departure from the liberal character of the Greek criminal law system and the observance of the principle of legality[852]. It has been argued that art.253A of the Code of Criminal Procedure marks a 'semantic expansion' of the institution of criminal investigation[853]. The provision, authorizing a number of 'invasive' and, more importantly, secret investigative techniques, and broadening in effect the circle of persons affected by them, seems to indicate the development of a repressive, police-oriented criminal law[854], while some have expressed concerns for a future escalation of the use of these techniques[855].

This possible invasion in the lives of a non-defined number of persons, unrelated even to the crime, and under a state of secrecy, has raised concerns as to the constitutionality of the provisions, which have been regarded by most of the academics as a threat to personal rights and freedoms[856]. It has been argued that the balance between security and freedom was totally in favour of the former[857], and even that the restriction of personal rights was the Legislator's ulterior intention[858].

The main counter-argument to the above objections has been, correctly, the indispensability of the special investigatory techniques in view of the methods employed by organised crime: secretive and conspiratorial criminal organisations can only be countered through the use of similar means, so that they lose their 'advantage in information'[859]. The effectiveness of methods like DNA analysis has also been praised[860]. Their introduction in the criminal legislation has, furthermore, been presented as a preferable alternative to the adoption of more rigorous substantive criminal legislation that would treat offenders not as persons, but as 'enemies' of society, always with regard to an effective protection of social security[861].

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[852] Kaiafa-Gbandi, *'Interposition in the presentations of Mr. N. Livos and Mr. Al. Kostaras'* in Greek Society of Criminal Law, *Organised crime under the criminal law viewpoint. Proceedings of the VII Panhellenic convention*, Dikaio & Oikonomia, P.N. Sakkoulas, 2000, p.196, (in Greek).
[853] Manoledakis, id., p.163.
[854] Livos, id., p.9.
[855] Padapamakis, id., p.950.
[856] Livos, id., 2000, p.56.
[857] Dalakouras, id., p.1026.
[858] Simeonidou-Kastanidou, id., p.694.
[859] Livos, *'The problem of security and security as a problem: The example of Criminal Law',* in *Honorary Volume for Ioannis Manoledakis I: Democracy-Freedom-Security*, Sakkoulas, 2005, p.204, (in Greek).
[860] See Pollatou, *'DNA analysis and new horizons in crime investigation'*, Poiniki Dikaiosini, 2001, p.1179-1183, (in Greek).
[861] Livos, id., 2005, p.202-203.

One should note that the desirable protection of personal rights can be achieved through the strict observance of the requirements for the authorization of the special techniques that are stated in the respective provisions[862]. The terms used in the provision must be interpreted narrowly and in favour of the personal liberties[863]. In this way the violations of personal rights can be minimized. In any event, the legislative introduction of these techniques and their regulation is more preferable and less dangerous than their unofficial and uncontrolled use, outside of a legislative framework[864].

4. The rights of the defendant

The secret character of the special investigative techniques provided for in article 253A of the Code of Criminal Procedure, as well as the non-mentioning of the witness' identity under art.9 par.4 of statute 2928/2001 have been challenged in view of the right of the defendant to effectively defend himself, to know the person accusing him, and not to incriminate himself[865]. Therefore, the disclosure of the witness' name in court following a relevant request by a litigant, although compromising the witness' protection, was deemed necessary for the safeguarding of these rights[866]. It should be noted that this disclosure, previously obligatory, is left to the discretion of the court under the new wording of art.9 par.4. Concerns have also been raised in relation to the mandatory analysis of the defendant's DNA for the ascertaining of his guilt, provided for in art.200A of the Code of Criminal Procedure, as academics have maintained that it equals an enforced confession of guilt, prohibited under art.14 par.3(7) of the UN Covenant on Civil and Political Rights[867].

5. Introduction of expediency concerns

The Greek criminal law system does not recognise the principle of expediency in the confrontation of criminal activities[868]. However, Statute 2928/2001 seems to have introduced expediency concerns, especially in art.187B of the Criminal Code[869]

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[862] Dalakouras, id., pp.1024-1025.
[863] Manoledakis, id., p.161.
[864] Livos, id., 2000, p.59; Dalakouras, id., p.1022.
[865] Dalakouras, id., p.1023.
[866] Zachariadis, id., p.771; Vathiotis, *'Witness protection under article 9 of Statute 2928/2001'*, Poinika Chronika, 2001, p.1053, (in Greek).
[867] Ratified by Statute 2642/1997. See Simeonidou-Kastanidou, id., p.697.
[868] Livos, id., 2000, p.58.
[869] Previously 197A (Statute 2928/2001). Renamed as 198 B by art.1 of Statute 3251/2004.

entitled 'Leniency Measures'. As mentioned in the previous chapter, the article determines that the prosecutor/judge should abstain from indicting/imposing a penalty on certain categories of persons, if they contribute to the breaking up of a criminal organisation.

The first of these categories refers to members of the criminal organisation. Academics have classified this provision as a type of 'active repentance', a mitigating circumstance already included in the Criminal Code[870]. Although labelled as doctrinally problematic, the provision has been defended as necessary, since the cooperation of members of the organisation will usually be the only means for its effective confrontation[871]. It has also been noted that members of an organisation can often be themselves its victims, living under constant fear and threats[872].

However, the remaining two paragraphs of the article have raised more objections. The non-indictment of persons prosecuted under the legislation on aliens and prostitution in exchange for information concerning organised crime has been criticised by academics as 'morally exposed'[873] and taking advantage of vulnerable groups of persons such as illegal immigrants facing deportation[874]. Critics are also concerned about the possible encouragement of false denunciations[875]. On the other hand, the provision has been viewed positively for enabling trafficked women to denounce the trafficking circuit without being in danger of deportation or conviction under prostitution laws[876].

6. Inconsistencies within the criminal law system

Academics have noted a number of inconsistencies in Statute 2928/2001. Such is the case of art.187 par.4 of the Criminal Code, which was introduced with the intention to criminalise acts perverting the course of justice and to impose stricter penalties on similar acts already provided for in the Criminal Code[877]. It has been remarked by critics that, despite its intention, this provision results in some cases in

[870] Zachariadis, id., p.773; See also art.44, 79 and 84 of the Criminal Code.
[871] Zachariadis, id., p.774.
[872] Livos, id., 2007, p.86.
[873] Manoledakis, id., p.145.
[874] Simeonidou-Kastanidou, id., p.696; Zachariadis, id., p.775.
[875] Zachariadis, id.
[876] Manoledakis, id., p.147.
[877] See Explanatory Report, id., p.1009, (in Greek).

a more lenient penalty[878]. Similar is the case with the aggravating circumstances of art.187 par.6 of the Criminal Code: the possession of explosives by a member of a criminal organisation is punished with a lower penalty under this article than under art.272 of the Criminal Code, which would apply to non-members of a criminal organisation[879]. It has been proposed that this paradox could be avoided through a suitable interpretation and application of the rules of congruence by the prosecutor and the judge[880].

The other aggravating circumstance of art.187 par.6 has also been criticised as superfluous, since the mentioned 'pursuit of financial or other material benefit' is a fundamental characteristic of organised crime, and will occur in almost all criminal organisations[881].

Finally, the new par.2 of art.187 seems to raise similar issues as the corresponding par.6 of art.187A referring to terrorism, regarding the criminalisation of participatory acts as main offences and the criminalisation of beliefs[882].

[878] For instance, an armed person that threatens a judge in a case concerning organized crime is punished with imprisonment for at least one year under art.187 par.2, but would be punished with imprisonment for at lest two years under the pre-existing art.167 par.2 of the Criminal Code. See Simeonidou-Kastanidou, id., p.695.
[879] It is worth noticing that both articles were modified in their present form by Statute 2928/2001.
[880] Manoledakis, id., pp.149-150.
[881] Ibid., p.120.
[882] See page 195 of this thesis.

d. The Case Law on organized crime

Although Statute 2928/2001 formally refers to 'the citizens' protection from crimes of criminal organisations', it has famously been linked to terrorism through its application in a number of much-publicized and discussed trials of Greek terrorist groups, namely the '*17 November*' and '*ELA*' (Revolutionary People's Struggle) terrorist organisations. The impact of the trials has led to the labelling of the Statute as a 'terror-law', as mentioned in the previous chapter. The introduction of Statute 2928/2001 was followed, furthermore, by the adoption of a number of other Statutes regulating procedural matters in view of the terrorist trials, and has, thus, led to accusations of an *ad hoc* interference by the legislature in the rendering of Justice[883].

The connection between Statute 2928/2001 and anti-terrorism legislation, much commented on and criticised by academics, has also been acknowledged by the courts. In the '*17 November*' judgement, the Court stated that 'a purpose of profit, habitual in the notional structure of criminal organisations, is not required; therefore, this article also includes the 'ideological' criminal organisations, an expression of which is the 'terrorist' ones'[884]. In addition to this, a series of cases concerning criminal organisations mention that the provision of art.187 par.1 'was initially adopted for the protection of society from terrorist organisations, but is applicable to all forms of collective criminal activity that targets organised society and legal order'[885]. However, it should be noted that after the introduction of Statute 3251/2004 on combating terrorism, the importance of Statute 2928/2001 on terrorism cases has been limited to its procedural provisions, which still apply to terrorist activities.

Apart from the terrorism trials, Statute 2928/2001 has, since its adoption, been applied or mentioned by courts in many cases concerning criminal groups and organisations. Through this application, the courts have been able to address and clarify a number of issues related to the Statute, though not always in a consistent manner. A review of the relevant case law highlights the most frequent questions that the courts have been called to answer: Firstly, the elements and characteristics of a

[883] Margaritis, *'17 November Trial: The objections were overruled, but the standards of our legal culture have been downgraded',* Poiniki Dikaiosini, 2003, p.302, (in Greek).
[884] Athens Court of Appeal judgements **No. 699, 780, 809, 3244/2003** (17 November case), Poinika Chronika, 2004, p.1012, (in Greek).
[885] See among others Thessaloniki Council of Appeal, decision **No.221/2007**, Poiniki Dikaiosini, 2008, p.1286; Thessaloniki Council of Appeal, decision **No. 1093/2008**, NOMOS legal database; Thessaloniki Council of Appeal, decision **No.250/2009**, NOMOS legal database, (in Greek).

criminal organisation; secondly, the differentiation of the criminal organisation (art.187 par.1 of the Criminal Code) from the simple criminal group (art.187 par.5 of the Criminal Code); and thirdly, issues arising from the application of art.7 of Statute 2928/2001 concerning the completion of the investigative procedure through an irrevocable decree of the Council of Appeal.

1. The Characteristics of a Criminal Organisation

When applying art.187 par.1 of the Criminal Code, introduced by art.1 of Statute 2928/2001, courts have frequently referred to the elements of a criminal group as they can be discerned in the aforementioned provision. Courts mention a number of characteristics in a more or less standardised form that has been repeated in most of the cases. Courts discern between two groups of characteristics, the objective and subjective. According to courts, the objective characteristics contain three elements, one temporal, one quantitative, and one qualitative[886]:

The *temporal* element is the duration of the activity of the criminal organisation. Art.187 par.1 does not provide for a specific duration. It has been accepted by courts that the temporal element is satisfied if the organisation is designated to act indefinitely or for an extended, if not specifically pre-determined, time period[887].

The *quantitative* element refers to the provision of art.187 par.1 of the criminal code for the participation of at least three members in the criminal organisation. According to courts, a person is a member in a criminal organisation if he 'subjects his will to the organisation, without the necessity of a personal participation of the member in the separate acts of the organisation'[888]. However, this participation should not be occasional, and nor does the simple support and endorsement of the goals of the organisation render one a member[889]. The members should, moreover, have a common goal and feel as part of a united group[890].

The *qualitative* element is the one that has been most analysed by the courts. It refers to the requirement of the provision for a 'structured' group. According to the

[886] See Athens Council of Appeal decision **No. 30/2005**, NOMOS legal database; Aegean Council of Appeal, decision **No.35/2005**, NOMOS legal database, (in Greek).
[887] Athens Council of Appeal, decision **No. 1270/2003**, Poinikos Logos , 2003, p.1285; Aegean Council of Appeal, id. (in Greek).
[888] See Athens Court of Appeal, id.; Thessaloniki Council of Appeal, decision **No.93/2006**, Poiniki Dikaiosini, 2006, p.413, (in Greek).
[889] Athens Court of Appeal, id.; Thessaloniki Council of Appeal decision **No. 221/2007**, Poiniki Dikaiosini, 2008, p.1286, (in Greek).
[890] Thessaloniki Court of Appeal judgement **No.93/2006**, id, (in Greek).

courts, 'structured' is the organisation that is not formed for the occasional perpetration of a crime. However, it is not necessary for the members to have determined roles or continuous membership or for the group to have a clear hierarchy[891]. Similarly, the decision-making process can vary a lot[892]. Courts have also pointed out the '*in rem*' basis of organisation, compared to the '*in personam*' character of the common criminal groups[893].

In addition to the above, courts have held that the constitution of or participation in a criminal organisation requires something more than a simple agreement for the perpetration of certain crimes, since such an interpretation would call for the application of art.187 par.1 of the Criminal Code in all cases of complicity[894]. On the other hand, the communication among members is not required, as long as each member carries out his allotted duties[895]. Nor is the perpetration of the crimes mentioned in the provision required; the proof of a serious purpose for their perpetration is enough[896].

Appeal judgement **No.2993/2004** contains some interesting remarks about the elements of the criminal organisation. According to the Council, 'the main interest shifts towards the structure of a system of operation of the organisation, usually through the establishment of a hierarchical framework, the allocation of duties and functions among the members and the co-ordinated activity of the members, which is governed by the will of the totality of them towards the realization of its goals, a will which is binding for each member, while the participation of all the members in the planning of the crimes is not required, provided that each member knows that he contributes to the realization of its goals through the carrying out of the duties allotted to him'[897].

The subjective characteristics refer to the intent of the members of the group. Courts have noted that members should have the purpose of perpetrating more than

[891] Athens Court of Appeal, id.; Athens Council of Appeal decision **No. 1152/2005**, Poinika Chronica, 2006, p.550; Thessaloniki Council of Appeal decision **No.93/2006**, id, (in Greek).
[892] See for example Athens Court of Appeal, id., where it is mentioned that 'it is irrelevant if the decisions of the group are made in a democratic way or not, according to the principle of plurality or unanimity or because of an established relationship of order and obeisance, as long as the decision is considered the will of the group'.
[893] Ibid.
[894] Thrace Council of Appeal decision **No.101/2008**, Poinika Chronika, 2009, p.658; Thessaloniki Council of Appeal decision **No. 27/2009**, NOMOS legal database, (in Greek).
[895] Ibid.; See also the Supreme Court judgement **No. 83/2006** (NOMOS legal database), which states that 'the constitution of such a [criminal] organisation can be attained through other ways of contact and communication, and not only through meetings, discussions and direct contacts' (in Greek).
[896] Thessaloniki Council of Appeal decision **No. 27/2009**, id. (in Greek).
[897] Athens Council of Appeal decision **No. 2993/2004**, Poinika Chronica, 2005, p.931, (in Greek).

one of the crimes mentioned in art.187 par.1 of the Criminal Code. This purpose alone is enough, and it is not necessary that the group has proceeded to any kind of activity or even started planning a crime. Furthermore, this purpose is not required to be the sole or primary one of the group[898]. However, the special intent provided for in the Statute and referring to the commission of these crimes should exist at the time of the constitution or the organisation, since the courts have held that 'it is not enough that the group was initially formed for the perpetration of a specific crime and then decided the continuation of its activity for the preservation of its loot'[899].

2. Differentiation between criminal organisation and criminal group (article 187 paragraphs 1 & 5 of the Criminal Code) [900].

Courts have not agreed on a common denominator over which groups are classified as 'criminal organisations' prosecuted under art.187 par.1 and which as simple 'criminal groups' prosecuted under the more lenient art.187 par.3 Often, the criteria of the courts have been limited to those explicitly mentioned in the law, an approach that has resulted in a broad interpretation of the notion of the criminal organisation, and the prosecution under art.187 par.1 of the Criminal Code of many groups of limited infrastructure and corruptive power, that posed no great additional threat to society[901].The above mentioned concerns of academics about the definition of a '*criminal organisation*' in the provision have, thus, often been proven right. There are cases, however, in which the courts have adopted a purpose-based interpretation. In the Athens Council of Appeal decision **No.2993/2004** the prosecutor argued that it is the existence of a material and technical infrastructure not available to common groups that renders criminal organisation extremely dangerous for society; otherwise, the notion of organised crime would eventually encompass all types of common groups, a result that was apparently not the purpose of the Legislator[902]. Although the prosecutor's proposal was not accepted in that case, this argument has

[898] Athens Court of Appeal id., p.1013; Athens Council of Appeal decision **No.2993/2004**, id.; Athens Council of Appeal decision **No. 1152/2005**, id.
[899] Thessaloniki Council of Appeal decision **No.93/2006**, id.
[900] Par.5 is referred to in the relevant case law with its old numbering, as par.3
[901] Athens Council of Appeal decision **No.2993/2004**, id.; Athens Council of Appeal decision **No.1152/2005**, id.; Aegean Council of Appeal decision **No.35/2005**, id.; Dodekanisa Council of Appeal decision **No. 24/2005**, NOMOS legal database; Athens Council of Appeal decision **No. 3028/2003**, Poinika Chronika, 2005, p.165; Thessaloniki Council of Appeal decision **No.250/2009**, NOMOS legal database.
[902] Athens Council of Appeal decision **No. 2993/2004**, id., pp.935-936.

gained favour with the courts in subsequent decisions[903]. Another interesting purpose-based interpretation can be found in the Thessaloniki Council of Appeal decision **No.289/2005**, which mentions 'the control over regions or markets, the infiltration of economic life, the allocation of labour, the links to public administration, justice, the media, and the dominant figures in economic and political life, as well as the elimination of state opposition through intimidation and corruption'[904]. In limiting the range of application of the provision to activities which can better accommodate the notion of 'organised crime', these approaches to art.187 par.1 seem to reconcile the broad wording of the provision with the purpose of the relevant EU legislation[905].

3. Article 7 of Statute 2928/2001

The compatibility of the provisions of art.7 of Statute 2928/2001, pursuant to which the investigative procedure for the felonies of art.187 of the Criminal Code is completed by an irrevocable decision of the Council of Appeal, with both the Greek Constitution and the European Convention of Human Rights, has been contested. However, the Supreme Court has repeatedly held that there is no question of incompatibility, and has refused to grant permission to the accused to appeal against the decision of the Council of Appeal. More specifically, the Supreme Court has held that the provision:

- is not contrary to art.6 of the European Convention of Human Rights, since the right of the accused to have access to a court is satisfied through his access to the Council of Appeal;
- is not contrary to art.2 of the 7th Additional Protocol of the European Convention of Human Rights and art.14 par.5 of the International Covenant of Civil and Political Rights, since they refer to convicting decisions;
- is not contrary to the constitutional principle of equality in view of the prosecutor's right, under certain conditions, to appeal against the decision of the Council of Appeal, since the prosecutor acts in his role as a public officer and the

[903] See for instance Thessaloniki Council of Appeal decision **No.93/2006**, id., p.414, which directly mentions the prosecutor's proposal in decision **No. 2993/2004**; see also Thessaloniki Council of Appeal decision **No. 221/2007**, id., pp.288-289

[904] Thessaloniki Council of Appeal decision **No.289/2005**, NOMOS legal database.

[905] See the Preamble of Council Joint action 98/733/JHA of 21 December 1998, which makes direct reference to organised crime.

accused can, in any case, respond, and since the European Committee of Human Rights has held so in the similar cases 22324/1993 and 22843/1993[906].

Another issue that has been addressed in court is the question of the irrevocability of the decision of the Council of Appeal if the accused is released of the accusation for the crimes of art.187 of the Criminal Code, and indicted for other crimes in the Criminal Code. The Supreme Court has held that the decision of the Council of Appeal ceases to be irrevocable, and the accused can appeal against it to the extent it indicts him for other crimes, since in such cases the reason for which the provision was introduced, namely the quick indictment of the crimes of art.187 of the Criminal Code, ceases to exist. The opposite view would surpass the purpose of the Legislator and would result in the limitation of the appeal rights of the accused only because of his incorrect indictment for the crimes of art.187[907].

Finally, the Supreme Court, in its decision in Council **No. 4/2005**, has held that the procedure of art.7 of Statute 2928/2001 is applicable not only for the 'relevant' crimes, as mentioned therein, but also for participatory crimes, since the law does not differentiate between them and since cases of participation are even more closely linked to the main act than simply relevant crimes[908].

[906] See among others Supreme Court in council decisions **No: 109/2010**, **194/2007**, **592/2006**, **766/2006**, **177/2005**, **654/2005**, **464/2003**, all in NOMOS legal database.
[907] Supreme Court in council decision **No.402/2004**, Poiniki Dikaiosini, 2005, pp.46-47; Supreme Court in council decision **No.565/2009**, NOMOS legal database.
[908] Supreme Court in council decision **No. 4/2005**, NOMOS legal database.

e. Final Remarks

As with most European legislation, Greece was late to implement Council Joint Action 98/733/JHA[909]. The implementing Statute 2928/2001, however, differs from other implementing legislation in that it was adopted in view of not only the Council Joint Action, but also the Palermo Convention, a document more extensive and detailed than the Joint Action. As a result, Statute 2928/2001 regulates issues that were outside of the scope of the Joint Action, or that were addressed in it only briefly. It should be noted that Greece incorporated the text of the Palermo Convention into its national legislation only on 20 September 2010, and has not implemented on time the latest Framework Decision 2008/841/JHA of 25 October 2008 on organised crime either, the deadline having been 11 May 2010.

Statute 2928/2001 presents the same negative traits as other implementing Statutes: vagueness, lack of consideration for the domestic system of Criminal Law, and blind copying of the European legislation. The Greek Legislator should focus more on the smooth integration of European legislation into the domestic legal order. Still, the Statute was an important step towards the confrontation of organised crime in Greece and the effective implementation of the relevant European legislation.

At the same time, the vagueness in the provisions of Statute 2928/2001 has resulted in inconsistent court judgements. The lack of an effective definition of organised crime in the law has led courts to often adopt a broad interpretation, heavily penalising low-level criminal groups that did not in fact present any of the characteristics of organised crime. More recent decisions seem to follow a different approach, referring to criteria outside the text of the Statute in an attempt to restrict its application. An elaboration of these criteria together with an interpretation of the Statute based on its purpose, namely the confrontation of serious organised criminality, could lead the courts to overcome the drawbacks of the Statute and reduce the negative effects of its vague and disproportionate provisions.

[909] Pursuant to art. 6 and 7 of the Council Joint Action, the deadline for its implementation was 31st December 1999.

IV. The Fight Against Money Laundering in the Greek Legal Order

a. The 'big picture' in the Greek Legislation in combating money laundering

In contrast to the fields of organised crime and terrorism, money laundering has been the object of many legislative initiatives in Greece, but, has not been seen, until recently, as an urgent priority[910]. The first regulation concerning money laundering was Statute 2145/1993, which added a relevant article in the Criminal Code, namely art.394A[911]. The article, however, was short-lived, as in 1995 it was abolished by Statute 2331/1995 on the prevention and suppression of money laundering, which was adopted in view of the first money laundering Directive (Directive 91/308/EEC), and the 1990 version of the 40 Recommendations of the Financial Action Task Force on Money Laundering (FATF). As Helen Xanthaki and Constantin Stefanou note, this new law was the result of EU pressure for the final compliance of Greece with EC legislation in this area and also seemed to reflect the increasing realisation that money laundering is an offence that might well affect the Greek legal order; a belief which previously did not exist[912].

Statute 2331/1995 has been amended numerous times[913]. The most important of these amendments was through Statute 3424/2005, which aimed at adapting the Greek legislation to Directive 2001/97/EC[914], to the Council Framework Decision 2001/500/JHA[915], and to the special recommendations of FATF on the prevention of money laundering and combating the financing of terrorism[916]. For the purposes of this chapter it is important to note that FATF has played a very significant role and has had a great impact on the development of Greek anti-money laundering

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[910] See Helen Xanthaki and Constantin Stefanou, '*Greece: Money Laundering*', Journal of Money Laundering Control, 1999, p.161.

[911] About the former art.392A of the Criminal Code see Vassilakopoulos, *'Money laundering. Critical remarks on the criminal provisions of Statute 2331/1995',* Poinika Chronika, 1996, pp.1361-1362, (in Greek). See also Helen Xanthaki, ibid, p. 162.

[912] See Helen Xanthaki and Constantin Stefanou, ibid, p. 163.

[913] The amending Statutes prior to Statute 3424/2005 were: Statutes 2515/1997, 2479/1997, 2655/1998, 2656/1998, 2733/1999, 2803/2000, 2928/2001, 3028/2002, and 3148/2003.

[914] Drective 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, and adopting certain reviewed Recommendations of the Financial Action Task Force.

[915] Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

[916] See *'Report on Bill 'Amendment, completion and replacement of provisions of Statute 2331/1995 and adaptation of Greek legislation to Directive 2001/97/EC of the European Parliament and the Council on the prevention of the use of the financial system with the purpose of money laundering and other provisions'* , Poinika Chronika, 2006, p.340, (in Greek).

legislation, as Greece has changed its law on money laundering not only in order to adapt Greek legislation to the EU Directives, but also in order to adopt certain reviewed Recommendations of FATF -the reality is because of the pressure by FATF given its negative reports on Greece- and hence to comply with the FATF standards[917].

Finally, in 2008, Statute 3691/2008 on the prevention and suppression of money laundering and financing of terrorism was adopted. This last Statute implemented the third Directive on money laundering, Directive 2005/60/EC, and wholly replaced Statute 2331/1995, abolishing its provisions[918].

While neither Statute 2331/1995 nor its amending Statute 3424/2005 is any longer in force, their provisions highlight the development of Greek legislation against money laundering and the implementing process of the relevant Directives. For these reasons, the presentation of the present Statute 3691/2008 will contain references to the previous Statutes.

- ***Statute 3691/2008***

Statute 3691/2008 is entitled '*Prevention and suppression of money laundering and financing of terrorism and other provisions*' and incorporated the third Directive on money laundering, Directive 2005/60/EC[919]. The Statute mentions explicitly in article 1 that it substitutes the relevant provisions of Statute 2331/1995; therefore, the latter Statute ceased to be in force upon the publication of the former, on 5 August 2008[920].

Consisting of 58 articles in total, Statute 3691/2008 is significantly longer than the previous anti-money laundering laws. While it contains some important criminal provisions, most of its articles refer to the identifying, monitoring and reporting obligations of financial institutions and other persons, which take, thus, centre stage in the fight against money laundering. In this respect, the Statute seems to be in line with the Directives, focusing on the extent of these obligations and on procedural issues, while issues of criminal liability are addressed briefly, and mostly in relation to the

[917] See for example the '*Third Mutual Evaluation Report of FATF*', in June 2007, as well as the '*7th Interim FATF Follow up Report*' in 19/02/2010 and article 1 of Statute 3424/2005 where a clear reference to FATF's impact is made.
[918] See art.1 of Statute 3691/2008.
[919] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
[920] See Governmental Gazette A' no.166 of 5 August 2008.

issue of predicate offences. It is characteristic that Statute 3691/2008 is the first anti-money laundering legislation where the non-criminal provisions appear before the criminal ones.

While Statute 3691/2008 replaced the previous anti-money laundering legislation, many of its provisions bear great similarities to the provisions of the previous Statute, or are constructed in a similar framework; this is the case especially with the non-criminal provisions of the Statute.

Article 2 – 'Acts constituting money laundering'

Art.2 of Statute 3691/2008 defines the acts that can constitute the offence of money laundering. The list of criminal acts is, for most of its part, identical to both the third Directive and the relevant provision of Statute 2331/1995[921]. It also contains two activities not included in the Directive: the use of financial and credit institutions in order to make the product of crimes appear legal, and the establishment of or the participation in a group of at least two people that has as a purpose the perpetration of one of the offences included in the list[922]. On the other hand, it does not provide explicitly for participatory acts and the attempt to commit a money laundering offence. However, these acts are punished under the general provisions of the Criminal Code regarding participation and attempt[923].

Par.3 refers to the international jurisdiction of the Greek courts, and differs from the respective provision of the previous legislation, since it requires the criminal activity that took place in another State to be punishable under the legislation of that State, a requirement not included in Statute 2331/1995[924].

Finally, in par.5, the law mentions for the first time that the 'knowledge, intent or purpose required as an element of the offences mentioned in paragraphs 2 and 3 may be inferred from factual circumstances', a provision repeated in all three money laundering Directives[925], but not in the previous Greek legislation.

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[921] See art.2 par.3 of Directive 2005/60/EC. The original art.1 of Statute 2331/1995 did not contain a definition of 'money laundering'. The definition was introduced by the amending Statute 3424/2005 and copied almost verbatim the second Directive. See art.1(b) of Statute 2331/1995 and art.1 par.1(C) of Council Directive 2001/97/EC.

[922] Art.2 par.2 (d) and (e) of Statute 3691/2008.

[923] See art.1 par.2(d) of Council Directive 2005/60/EC. The previous Statute 2331/1995, as amended by Statute 3424/2005, criminalized the participatory acts explicitly, in art.1(b).

[924] See art.2 par.4 of Statute 2331/1995. See also FATF Recommendation 1 (2003 version).

[925] Art.1(5) of Council Directive 2006/60/EC; Art.1 par.1(c) of Council Directive 2001/97/EC; Art.1 of Council Directive 91/308/EEC.

Article 3 – 'List of the predicate offences'

Art.3 contains the list of activities that constitute a '*criminal activity*', that is the predicate offences. The list is comprised of two parts, one mentioning specific crimes and one general. The specific crimes mentioned are related to terrorism, organised crime, drugs, as well as other criminal activities, in accordance with art. 3 (5) of the Council Directive 2005/60/EC and FATF Recommendation 1 (2003 version); curiously, while fraud is specifically mentioned in art. 3 (5) (d) of the Directive, and was also mentioned in the previous Statute 2331/1995[926], the new Statute 3691/2008 mentions only fraud committed with a computer.

The general part of the list adopts a threshold approach, introduced for the first time by Statute 3424/2005 amending Statute 2331/1995. Under this threshold provision, a predicate offence can be 'any other offence punishable by deprivation of liberty for a minimum of over six months and resulting in a profit'[927]. The provision does not include the previous requirement for a profit of at least 15,000 Euros[928]. The provision incorporates art.3 par.5 of the third Directive defining 'serious crimes'; however, the requirement of profit is not included in the Directive. Also relevant is the FATF Recommendation 1 (2003 version), which calls for a wide range of predicate offences and provides for the minimum penalty of six months as a necessary element of the threshold approach.

[926] Art.1(A) of Statute 2331/1995.
[927] Art.3 (r) of Statute 3691/2008.
[928] Art.1 (A) (q) of Statute 2331/1995 as amended by Statute 3424/2005. the 15.000 Euros threshold reflected the definition of criminal activities in the second Directive, which included all the offences 'which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the Criminal law of the Member State' (see art.1 par.1(E) of Council Directive 2001/97/EC), as well as the interpretative note to FATF Recommendation 4 (1996 version), which stated that 'countries should consider introducing an offence of money laundering based on all serious offences and/or on all offences that generate a significant amount of proceeds'. Under the previous Statute, academics had argued that only those offences for which the law mentioned specifically the amount of profit when providing for a penalty were included in the second part of the definition. See among others Dimitrainas, *'The expansion (?) of the meaning of the 'predicate' criminal activity in the crime of money laundering'*, in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, 2007, p.245 (in Greek); Pavlou, *'Money laundering. From Statute 2331/1995 to Statute 3424/2005: the evolution and expansion of a doctrinal and penal deviation'*, Poinika Chronika, 2006, p.347, (in Greek).

Articles 4 & 5 – 'Definitions and Persons assigned the monitoring and reporting obligations'

Art.4 contains a series of definitions of the terms used in the Statute, again after the model of the Directive and the FATF Recommendations[929]. Most notably, the article defines the meaning of '*property*', as well as of '*credit institution*' and '*financial organisation*', to which the obligations of the following articles are imposed. All terms are defined broadly, so as to encompass all possible activities. Furthermore, art.5 enlists the persons that are assigned the monitoring and reporting obligations under the Statute. The list is similar to the one of the respective art.2a of Statute 2331/1995[930] and includes not only financial institutions, but also individual professionals, such as notaries, lawyers, and merchants of goods of high value.

Articles 7-44 – 'Regulating authorities and obligations to financial organisations'

These provisions refer to the regulating authorities, and the obligations of financial organisations and other reporting persons. A Committee is established, with the duty of collection of all information regarding possible money laundering activities, investigating and appraising them, to which end it is given extensive investigatory authorities. The Committee corresponds to the Committee/Authority of article 7 of Statute 2331/1995.

The obligations of the credit and financial institutions and the other persons mentioned in the Statute are presented in a detailed way. The relevant articles present the required level of diligence, and provide for the obligation of reporting suspicious cases to the authorities, of not communicating the relevant information to the customer and of keeping the relevant archives available for a period of time. Finally, the Statute makes special reference to the co-operation among authorities and the exchange of information and data. Art.31 contains a criminal provision, pursuant to which whoever breaks his duty of confidence is punished with imprisonment of at least three months and a monetary penalty.

[929] Art.3 of Directive 2005/60/EC; FATF Recommendation 5 (2003 version).
[930] Implementing art.2a of Council Directive 91/308/EEC, added by Council Directive 2001/97/EC.

Article 45 – 'Criminal Provisions'

Art.45 contains the main criminal provisions of Statute 3691/2008. It should be noted that neither the third Council Directive, nor the FATF Recommendations impose the adoption of criminal provisions against money laundering; rather, they speak of 'effective, proportionate and dissuasive' sanctions of a civil, administrative or criminal nature[931].

The perpetrator of the crime of money laundering is punished with incarceration of up to ten years and a fine amounting from 20.000 to 1.000.000 Euros[932]. It is notable that for the first time the law provides for different penalties, according to the severity of the offence. Therefore, the employees of the legal persons under obligations pursuant to the Statute, the perpetrators of bribery, and persons committing the crime as a profession or repeatedly or in the framework of a criminal or terrorist organisation, receive a heavier penalty[933]; on the other hand, if the predicate offence is a misdemeanour, a smaller penalty is imposed[934]. In any event, the Statute repeats the provision of Statute 2331/1995 under which the penalty imposed for money laundering cannot exceed the penalty that has been imposed for the predicate offence[935].

Criminal penalties are also provided for the persons under an obligation to report suspicious activities that fail to report such activities on purpose or present false information[936]. Very interestingly, the Greek Legislator has chosen to treat non-reporting of suspicious transaction as a criminal offence, and thus, imposes criminal sanctions.

The Statute states explicitly that the perpetrator of the criminal activity can be indicted for the offence of money laundering, adding the requirement that the two offences have been perpetrated by different acts[937]. This provision was first introduced in the previous Statute 2331/1995 by Statute 3424/2005, with the Legislator deciding thus on the relevant academic debate[938]. It should be noted that

[931] Art.39 of Council Directive 2005/60/EC; FATF Recommendation 17 (2003 version).
[932] Art.45 par.1(a) of Statute 3691/2008. The previous Statute 2331/1995 did not provide for a monetary penalty.
[933] Art.45 par.1(b) & (c) of Statute 3691/2008.
[934] Art.45 par.1(f) & (i) of Statute 3691/2008.
[935] Art.45 par.1(g) of Statute 3691/2008; Art.2 par.1 of Statute 2331/1995 as amended by art.3 of statute 3424/2005.
[936] Art.45 (d) of Statute 3691/2008.
[937] Art.45 par.1(e) of Statute 3691/2008.
[938] Original art.2 of Statute 2331/1005; Art.3 par.1(d) of Statute 3424/2005.

neither the Directive nor the FATF Recommendations impose such a provision[939]. Another interesting provision is the punishment of the offender if he is closely related to the perpetrator of the predicate crime and has not taken part in it with a reduced penalty[940].

Finally, the Statute states for the first time in relevant legislation that the indictment or conviction of the criminal activity is not a prerequisite for the indictment or conviction for the crime of money laundering[941].

Articles 46-48 – 'Seizure and Confiscation of the property – Freezing of accounts'

The seizure and confiscation of the property that constitutes a product of the criminal activity, the civil compensation of the State and the freezing of the accounts and assets of the accused are regulated in these articles almost identically to the relevant articles of Statute 2331/1995. The above provisions correspond to FATF Recommendation 3 (2003 version); in the latest FATF report, it is noted that the level of compliance with Recommendation 3 is satisfactory, but effectiveness has not been proved yet[942].

Note should be taken of a couple of important differences from the previous legislation: Firstly, art.46 of Statute 3691/2008 mentions that the property that is the product not only of the criminal activity, but also of the activities of money laundering[943], is to be confiscated. Secondly, the provision of the previous Statute pursuant to which all property of the accused acquired in a five-year period before his indictment was presumed to be a product of criminal activity is omitted from Statute 3691/2008[944].

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[939] Pursuant to FATF Recommendation no.1 (2003 version) the indictment of the predicate offender for the crime of money laundering is left in the discretion of each country. See however FATF 7th follow-up report on Greece of 19 February 2010, p.7 par.17, which seems to expect such an indictment.

[940] Art.45 par.1(f) of Statute 3691/2008.

[941] Art.45 par.2 of Statute 3691/2008.

[942] See FATF 7th follow-up report on Greece of 19 February 2010, p.5

[943] Compare to art.2 par.6 of Statute 2331/1995, which refers to property in relation to a criminal activity, that is a predicate offence.

[944] Therefore, the Greek legislator did not adopt this time the propositions of FATF Recommendation 3, par.3 (2003 version), pursuant to which 'Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law'. See art.3 par.1 of Statute 2331/1005 and art.47 par.1 of Statute 3691/2008.

Article 51 – 'Liability of Legal Persons'

Art.51 regulates the liability of legal persons. The provision contains a list of sanctions, all of them of an administrative nature, since criminal liability of legal persons is not accepted in the Greek Criminal Law system. Administrative sanctions are mentioned in the FATF Recommendation 3 (2003 version) as an alternative to criminal liability; however, there has been pressure from the FATF for the introduction of criminal law provisions in relation to legal persons[945]. Art.51 was amended recently by art.9 of Statute 3875/2010, which introduced stricter penalties for legal persons, still of an administrative nature.

[945] See FATF 7th follow-up report on Greece of 19 February 2010, p.8 par.24, where it is stated that 'it seems that the current situation is the result of a legal tradition and policy in Greece, and that there are no fundamental or constitutional principles of domestic law prohibiting holding corporations criminally liable'.

b. The Academic point of view on money laundering

Both Statute 3691/2008 and the previously standing Statute 2331/1995 have been the target of harsh criticism: Academics have characterised it as 'pointedly repressive, leading to curtailment of rights and collapse of the guarantees of criminal doctrine'[946], 'an 'anti-code' in the Criminal Code' resulting in the 'deviation from a modern criminal law'[947]. Issues as the legal right that is protected by the provisions, the connection between money laundering and organised crime, the failings of the regulatory techniques of the Statutes and their accordance with the Greek Constitution and the doctrines of the criminal law system have been much debated and commented upon; these debates will be presented, in summary, in the following paragraphs.

1. The legally protected interest

Since the adoption of the first anti-money laundering Statute, academics have proposed a number of legally protected interests that lie at the core of the anti-money laundering provisions. The relevant debate, while apparently mostly theoretical, can have important implications on many practical questions related to the application of the law.

Such interests that have been proposed as being protected by the provisions are the non-obstruction of Justice[948], the smooth function of the financial system that is disrupted by acts of money laundering[949], the general public interest through the connection of money laundering to organized crime[950], and the legally protected interest that is attacked by the predicate offence[951]. The first and second of these

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[946] Pavlou, '*(Previous) 'criminal activity': tautology or evolution? Another contribution to the doctrinal understanding of Statute 2331/1995 (on money laundering) in the light of recent regulations of Statutes 3424/2005 and 3472/2006',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, p.135, (in Greek).

[947] Pavlou, *'Persecutory deviations in the application of Statute 2331/1995 on money laundering and the required rationalization of its application'*, Poinika Chronika, 2003, p.199, (in Greek).

[948] Dionysopoulou, *'Money laundering and receiving products of crime. A contribution to the issue of the legally protected right of article 2 par.1 of Statute 2331/1995',* Poinika Chronika, 1999, p.991 (in Greek); Katsios, *'Mundus vult decipi'. The course of Directive 91/308/EEC on money laundering and the non-application of Statute 2331/1995',* Poiniki Dikaiosini, 2000, p.397, (in Greek).

[949] Nikoloudis, *'Money Laundering (article 2 of Statute 2331/1995)',* Poinika Chronika, 2000, p.771, (in Greek).

[950] Simeonidou-Kastanidou, *'Money laundering'*, in Bemmann & Spinellis (eds.), *Criminal Law – Freedom – Rule of Law. Honorary Volume for G.A. Magkakis*, Sakkoulas, 1999, p.389, (in Greek).

[951] Vassilakopoulos, id., 1996, p.1365; Pavlou, id., 2003. pp.193-194; Tzannetis, *'The confiscation of laundered products of criminal activity',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, pp.251-253, (in Greek).

propositions have been criticised with the arguments that, firstly, Justice can only be obstructed at the point when the offence has reached the courts[952], and that the financial system is not really harmed by money laundering, which, on the contrary, reinforces its liquidity[953]. Finally, in view of the persistence of the Legislator in the disassociation of money laundering offences from organised crime, even after the amendments to Statute 2331/1995 and the introduction of Statute 3691/2008, the third of the above propositions does not seem supportable[954].

As a result, the argument most supported by academics, especially in view of the recent legislative provisions, seems to be the protection by anti-money laundering legislation of the legal right attacked by the previous criminal activity[955]. The adoption of this view, moreover, implies that the law recognises a connection between these two activities that should be taken into account in the analysis and interpretation of its provisions[956].

2. The non-correspondence of the text of the Statute to its purpose

The purpose of Statute 3691/2008 is stated in art.1, as well as in its accompanying Explanatory Report, as the prevention and suppression of money laundering, that is of legitimisation of revenues from criminal activities[957]. Its provisions, nevertheless, do not always seem to be in accordance with this stated purpose, and the Statute has even been called '*pseudepigraph*'[958].

The essence of the crime of money laundering, according to academics, is that illegal revenues acquire a 'legitimate title': their illegal source is obscured and

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[952] Vassilakopoulos, ibid.; Simeonidou-Kastanidou, id., 1999, p.388; Dimitrainas, *'The perpetrator of the crime of money laundering',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas , 2007, pp.155-156, (in Greek).

[953] Simeonidou-Kastanidou, id., 1999, p.385.

[954] See the relevant critique in Dimitrainas, id., 2007, pp.160-161.

[955] Dimitrainas, id., 2007, pp.161-162; Pavlou, *'Statute 3691/2008 on prevention and suppression of money laundering and financing of terrorism. The finalization of a historical doctrinal deviation and the consolidation of suppressive arbitrariness',* Poinika Chronika, 2008, p.932, (in Greek).

[956] For a detailed analysis of the different views on the question of the legally protected right, see Tsiridis, *The new Statute on money laundering (Statute 3691/2008)*, Nomiki Vivliothiki, 2009, pp.47-54, and Kamperou-Ntalta, *Statute 3691/2008 on money laundering. Interpretative approach of the Statute and international criminal framework,* Dikaio & Oikonomia, P.N. Sakkoulas, 2009, pp.60-64, (in Greek).

[957] Explanatory Report on the Bill 'Prevention and suppression of money laundering and the financing of terrorism' , Poinika Chronika, 2008, p.908, (in Greek).

[958] Argyropoulos, *'The fair penalty as a cultural asset'*, in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?)*, Sakkoulas, 2007, p.33 (in Greek); Tsiridis, id., 2009, p.65.

another, seemingly legal, source appears outwardly[959]. Thus, it has been maintained that only acts that can accommodate the above notion of the legitimization of the product of previous criminal activities should be prosecuted under anti-money laundering legislation[960].

However, one should note that Statute 3691/2008, as well as previous legislation, moves in an opposite direction, formulating the crime of money laundering in such a way, that it encompasses common acts of receiving and handling stolen goods or even neutral ones. Thus, money laundering seems to have ended up as a possible accompanying provision to almost all offences of the Criminal Code[961]. This is most evident in the provision of art.3(s), which includes in the definition of 'criminal activity' all offences punishable with imprisonment over six months[962], as well as the provision of art.2(d) defining as 'money laundering' the placement and transfer of property through financial and credit institutions[963].

Another objection towards the content of the anti-money laundering provisions is the inclusion of crimes that cannot easily accommodate the notion of profit in the list of predicate offences, as is the case with the establishment and participation in

[959] Pavlou, id., 2006, p.343; Simeonidou-Kastanidou, *'The crime of money laundering – Problems from the application of Statute 2331/1995 up to now'*, Poiniki Dikaiosini, 2002, pp.390-391, (in Greek).

[960] Pavlou, id., 2008, p.927; Simeonidou-Kastanidou, *'The crime of money laundering after Statute 3424/2005: interpretative remarks'*, in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, pp.170-171, (in Greek); Simeonidou-Kastanidou, id., 1999, p.390; Dimitrainas , *'Money laundering: views of the case law on special issues of the application of Statute 2331/1995 (on the occasion of the Order of Larissa Council of Appeal no.50/2004)'* , Poiniki Dikaiosini, 2004, p.589, (in Greek); Pavlou, *'Money laundering' (article 2 of Statute 2331/1995), especially its delimitation from 'receiving and handling products of crime' (article 394 of the Criminal Code)',* Yperaspisi, 2000, p.644, (in Greek).

[961] Pavlou, id., 2008, p.924; Pavlou, id., 2006, 346; Simeonidou-Kastanidou, id., 2007, p.168.

[962] In the previous version of this provision (art.1(a)(ii) of Statute 2331/1995) there was the additional requirement of a resulting property of at least 15.000 Euros. Academics had argued that this amount of resulting property should be provided for in the article criminalizing the predicate offence, so that the crime would be serious enough to be connected to money laundering. See Pavlou, id., 2006, p.347; Pavlou, id., 2007, pp.131-132; Dimitrainas, id., in *Honorary Volume for Ioannis Manoledakis II*, 2007, p.242, (in Greek). On the other hand, while acknowledging the seriousness of the related arguments, Simeonidou-Kastanidou had maintained that this interpretation could not have been accommodated by the provision and that, in any case, did not preserve its constitutionality. See Simeonidou-Kastanidou, id., 2007, pp.177-178.

[963] Academics note that activities included in this definition, as the deposit of money in a bank account in the true name of the depositor, are neutral actions that do not provide any kind of legitimate title to the property in question, and even facilitates the tracking of suspicious property. See Kaiafa-Gbandi , *'Penalization of money laundering: Basic characteristics of Statute 3691/2008 and the limits of the rule of law'*, Poinika Chronika, 2008, p.918, (in Greek) ; and Pavlou, id., 2008, p.928; Tsiridis, *'Remarks and propositions on the bill concerning the implementation in our legislation of the third Council Directive (2005/60/EC) on money laundering and the Directive 2006/70/EC',* Poiniki Dikaiosini, 2008, p.625, (in Greek).

a criminal organisation and the terrorist activities[964]. It has been, correctly, argued that the offences included in the list should be considered as 'predicate offences' only when they result in some kind of property, in a product with a 'clear financial value', in an immediate and causative way[965].

It has also, correctly, been remarked that the law confuses 'dirty' money, obtained through the previous commitment of a crime, with 'black' money, that is the non-taxed product of any activity, since all offences related to tax evasion and debts to the State can be predicate offences under the general provision of art.3(s) of Statute 3691/2008[966]; this provision connects the Statute even more with everyday offences with a small financial product[967]. Finally, in relation to art.2 (e) of Statute 3691/2008 it has been noted that the establishment of a criminal organisation for the perpetration of money laundering offences does not constitute in itself money laundering activity, and its inclusion in the definition is illogical[968].

3. Vagueness and failings in the phrasing of the provisions

The provision of art.3(s) of Statute 3691/2008 rendering as predicate offences all crimes that result in the acquisition of property and are punished by imprisonment for at least six months, (as well as the corresponding art.1 (a) (ii) of Statute 2331/1995) has been criticized for vagueness in the description of the criminal activity. Academics argue that this general description based on the minimum imposed penalty does not satisfy the precision of criminal provisions required by rule of law, so that everyone can know beforehand if a certain activity is a crime or not, and thus, the constitutionality of the provision is contested[969].

Another provision that has been accused of vagueness is the provision of art.13 of Statute 3691/2008, citing the measures of due diligence that should be followed by persons under an obligation to inform the authorities about suspicious transactions.

[964] Pavlou, id., 2007, p.128; Dimitrainas, id., in *Honorary Volume for I.Manoledakis* , 2007, p.244, (in Greek).
[965] Pavlou, id., 2007, pp.127-128.
[966] Pavlou, id., 2008, p.926; Pavlou, id., 2006, p.348; Tsiridis, id., 2008, p.626. It should be noted that Statute 3472/2006 had introduced art.2(e) in Statute 2331/1995, according to which the product of tax evasion and non-payment of debts to the state did not consist a predicate offence; Statute 3691/2008 did not include a similar provision.
[967] See Tsiridis, id., 2009, p.260.
[968] Kaiafa-Gbandi, id., 2008, p.919. The provision should have been added instead in the definition of a criminal organization in art.187 of the Criminal Code. See criticism for this omission in Livos, *'Money laundering' and its tracing'*, in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, p.377 (in Greek), and Tsiridis, id., 2009, pp.63-64.
[969] Kaiafa-Gbandi, id., 2008, p.920; Simeonidou-Kastanidou, id., 2007, p.179; Dimitrainas, id., in *Honorary Volume for I.Manoledakis*, p.240, (in Greek).

It has been, correctly, remarked that the law does not specify the types of information that are to be collected, nor the manner in which they should be collected[970]. Moreover, the law associates the obligation to inform the authorities and take measures of diligence with the perception of the persons under the obligation, since they are to judge when there is an increased danger or when a transaction is suspicious. While the inclusion of the definitions of 'suspicious' and 'unnatural' transactions in the new law is a step forward in comparison with their total absence in the previous Statute 2331/1995[971], the reality is that the definitions are based on subjective elements, and thus, the issue of vagueness has not been addressed satisfactorily[972].

Another point of vagueness in the legislation concerns the relation between the predicate offence and the money laundering. On the basis of the dependence of the penalty of the money laundering activity on the penalty imposed for the predicate offence, academics have argued that money laundering is a 'post-participatory' act[973], and a corollary of the predicate offence[974]. At the same time, however, it has been noted that there is a tendency towards the autonomy of money laundering, most evident in the course often followed in the investigation of the crimes, since the indications of activities suspicious for money-laundering can eventually lead to investigations about the predicate offence[975].

Finally, both art.2 par.5 and art.45 par.1 (e) of Statute 3691/2005 have been accused of being poor in drafting. The first because the provision that 'knowledge, intent or purpose (…) may be inferred from objective factual circumstances', although copied almost verbatim from art.1 par.5 of Directive 2005/60/EC, is superfluous as self-evident under the general provisions of criminal law[976]. The second, to the extent

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[970] Simeonidou-Kastanidou, *'Lawyers: Obligations of assistance n the confrontation of money laundering and the financing of terrorism and criminal liability',* Poinika Chronika, 2008, p.934, (in Greek).

[971] An absence that had raised accusations of unconstitutionality. See Livos, id., 2007, p.363.

[972] Simeonidou-Kastanidou, id., 2008, p.936. See also Simeonidou-Kastanidou, *'Legal professional privilege and money laundering',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, 2007, pp.660-661, (in Greek).

[973] Livos, id., 2007, p.4.

[974] Simeonidou-Kastanidou, id., 2007, p.187; Dimitrainas, id., in *Honorary Volume for I.Manoledakis (Τιμητικός τόμος για τον Ι. Μανωλεδάκη)*, 2007, p.234.

[975] Livos, id., 2007, p.362; Papakyriakou, *'The criminal legislation on the suppression of money laundering as a fundamental axis of a new model of criminal policy',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, 2007, p.526, (in Greek).

[976] Petropoulos, *'Issues of intent in the crime of money laundering (article 2 par.5 of Statute 3691/2008)'*, Poinika Chronika, 2008, p.958, (in Greek).

that it provides for the liability of the predicate offender for the crime of money laundering as well 'if the elements of the acts of money laundering are different from these of the criminal activity': given that money laundering is committed through separate acts taking place after the predicate offence, these elements will always be different[977]. However, it has been noted that under the latter provision acts that essentially complete the predicate offence cannot constitute money laundering acts[978].

4. The principle of proportionality

The severe penalties introduced by anti-money laundering legislation have raised concerns about their proportionality. Academics have often remarked on the relation of money laundering to organised crime: the legitimization of the profits of organised crime consolidates the power of the latter and its infiltration of society[979]. It is this serious threat to social peace and security that can only justify the penalties provided for money laundering offences. Thus, a limiting interpretation of the law, excluding all acts not related to organised crime from the definition of money laundering, has been proposed as an alternative that respects the principle of proportionality[980]. Moreover, it has been maintained that not only the predicate offence, but also the money laundering acts must be committed in the framework of a criminal organisation[981]. As mentioned above, however, the Legislator's repeated refusal to include a similar connection in the law seems according to some authors to preclude such an interpretation, a view reinforced by the broadness and diversity of the predicate offences enlisted in the law[982].

The principle of proportionality is further compromised by the omission of the requirement of a resulting property of at least 15.000 Euros in the provisions of the

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[977] Kaiafa-Gbandi, id., 2008, p.921; Pavlou, id., 2008, p.929.
[978] Dimitrainas, id., 2007, pp.149-150.
[979] Pavlou, id., 2008, p.924; Pavlou, id., 2007, p.120; Dimitrainas, id., 2007, p.159; Simeonidou-Kastanidou, id, 1999, pp.382-384; Vassilakopoulos, id., 1996, p.1363.
[980] Kaiafa-Gbandi, id., 2008, pp.921-922; Tsiridis, id., 2008, p.624; Kaiafa-Gbandi, *'The criminal confrontation of money laundering: Among international, European, and national legislation',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?)'*, Sakkoulas , 2007, pp.65, 97-98 (in Greek) ; Simeonidou-Kastanidou, id., 2007, p.193.
[981] Pavlou, id., 2003, p.196; Pavlou, id., 2000, p.644; Dimitrainas, id., 2004, p.588.
[982] Dionysopoulou, *'Felonies in Statute 2331/1995: The only choice of the legislator?', in* Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, p.438-439 (in Greek); Papakyriakou, id., pp.489-490; Dionysopoulou, *'When does an element of property originate in criminal activity? Contribution in the definition of the circle of objects fit to money laundering'*, Poinika Chronika, 2006, p.362, (in Greek); Nikoloudis, *'Money laundering' (article 2 of Statute 2331/1995 – on the occasion of the recent case law'*, Poinika Chronika, 2000, pp.771-772, (in Greek).

new Statute 3691/2008. Thus, heavy penalties are imposed without even this minimum guarantee of a certain severity of the criminal activity[983]. Another objection is related to the aforementioned provision of art.2 par.1 (e) of Statute 3691/2008: the article renders a felony punished by incarceration the establishment of a group of two people for the perpetration of money laundering offences. Thus, criminal groups normally punished by imprisonment (six months to five years), are criminalised with incarceration (five to ten years) especially in the case of money laundering. The proportionality of this exceptional provision is, also, dubious[984].

Issues of proportionality are also raised by the provisions concerning confiscation. More specifically, the obligatory confiscation mentioned in art.46 of Statute 3691/2008 has been criticised as an obligatory additional penalty, contrary to the principle of proportionality of the penalty to the offence, as well as the right to property and the principle of culpability[985]. However, according to the contrary correct argument, the provision is justified to the extent it refers to the immediate product of criminal activity, since the maintenance of such a property by the offender cannot be accepted under the rule of law, therefore should not be left to the discretionary power of the judge[986]. The absence of a provision regulating the confiscation of property that has been acquired by partly illegal and partly legal revenues in a proportionate way has been deemed problematic as well[987].

Another important issue is the possible criminalisation of the perpetrators of money laundering offences with heavier penalties than the perpetrators of predicate offences[988]. Art.45 par.1 (g) of Statute 3691/2008 lays the penalty imposed on the predicate offence as a limit to the criminalisation of the money laundering activities only when the perpetrator of the latter is the predicate offender or a member of his family[989], while the relevant provision of Statute 2331/1995 was applicable to all third

[983] Kaiafa-Gbandi, id., 2008, p.920; Tsiridis, id., 2008, p.624; Tsiridis, id., 2009, pp.43-45.
[984] Kaiafa-Gbandi, id., 2008, p.919.
[985] Dimitrainas, *'Money laundering: The investigatory provisions concerning the freezing and the prohibition of disposal of the property of the accused in the light of the provisions concerning the seizure and special confiscation of the property under question (from Statute 2331/1995 to Statute 3691/2008)',* Poinika Chronika, 2008, p.947, (in Greek).
[986] Tzannetis, id., 2007, p.293.
[987] See relevant criticism and proposed solutions in Dimitrainas, id., 2008, p.946; Dionysopoulou, id., 2006, p.366; Tzannetis, id., 2007, pp.279-281.
[988] Tsiridis, id., 2008, p.628.
[989] The provision has also been criticised for violation of the principle of equality. See Kaiafa-Gbandi, id., 2008, p.922; Tsiridis, id., 2009, p.268.

persons[990]. It has been maintained that the heavier punishment of money laundering can be justified under the principle of proportionality only with the acknowledgement that the relevant provisions protect not only the legal rights protected by the criminalisation of the predicate offence, but also some further, more general legal rights[991].

On the other hand, academics have noted some progress concerning the principle of proportionality. The omission of any mention to participatory acts has been deemed positively, as they are punished in any case under the general provisions of the Criminal Code, and their previous punishment with the same penalties as the main criminal offence was disproportionate[992]. Another well-received amendment is art.45 par.1 (f), according to which money laundering activities perpetrated by family members of the predicate offender are misdemeanours and not felonies[993]. Moreover, a greater diversity of the imposed penalties can be observed[994], a progress that had been regarded by academics as necessary for the observance of proportionality in view of the diversity of the previous criminal activities[995], and that can also reduce the instances in which money laundering will attract a heavier penalty than the predicate offence.

5. Other doctrinal and constitutional issues

Art.45 par.1(g) of Statute 3691/2008, as well as its predecessor, art.2 par.1(d) of Statute 2331/1995, introducing the dependency of the money laundering penalty on the penalty of the predicate offence under certain circumstances, have been the object of much criticism by academics. The provisions have been criticized for unconstitutionality and for violating all accepted principles that apply to the determination of sentence. It has been remarked that the provisions mark 'a different, unknown up to now, criminal law, since every notion of determination of sentence is

[990] Art.2 par.1(d) of Statute 2331/1995, introduced by Statute 3424/2005. In its original version, Statute 2331/1995 included no relevant provision and had been heavily criticized. See Androulakis, *'Criminal doctrine and its effect in practice 50 years later (a paradigm)*, Poinika Chronika, 2002, p.291, (in Greek).

[991] Vassilakopoulos , *'On money laundering: Logical-systematic interpretation and entropy of Statute 2331/1995'*, in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas, 2007, pp.230-231, (in Greek).

[992] Kaiafa-Gbandi, id., 2008, p.919. For a critique to the provision previously standing, see Papacharalampous, *'Socially neutral activities and money laundering',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?*, Sakkoulas , 2007, pp.214-215 (in Greek); Papakyriakou, id., pp.511-512.

[993] Tsiridis, id., 2008, p.628.

[994] Compare art.45 of Statute 3691/2008 to art.2 of Statute 2331/1995.

[995] Papakyriakou, id., p.507.

broken down; the principle of proportionality traversing this determination is downright violated; the legally provided resilience of the threatened penalty in view of extenuating circumstances is cancelled; and finally, implicit penalties for *in concreto* circumstances are introduced'[996]. The scope of penalty is, thus, determined by the sentence imposed for a different crime by a different judge at a different trial, and not by elements intrinsic to the specific money laundering activity[997]. It has also been observed that this limitation to the imposed penalty depends on the previous conviction of the perpetrator of the criminal activity; if there is no conviction, the scope of the penalty remains unlimited[998]. The provisions violate furthermore the principle of equality: two identical money laundering acts can be punished differently on the basis of the different criminalisation of their predicate offences[999].

Another issue is related to the liability of the perpetrator of the criminal activity for money laundering acts as well, a liability explicitly recognised in art.45 paragraph 1(e) of Statute 3691/2008 (self-laundering). However, one should note that the predicate offender laundering the product of his crimes tries to avoid self-incrimination, and his acts should remain unpunished under the principle of the non-criminalisation of self-aiding and abetting[1000]. Under a partly different, but also correct view, such a liability is possible only if the perpetrator launders money for a criminal organisation, since in this case he is aiding not only himself, but also the activities of organised crime, and the demerit of his activities is increased[1001]. It has been suggested, furthermore, that self-laundering can be criminalised if the prosecution of the offender for the criminal activity is not possible, since in this way the impunity of the offender is avoided[1002]. The adoption of the relevant provisions has also been criticised for totally ignoring the aforementioned explicit academic

[996] Pavlou, id., 2008, p.931; Pavlou, id., 2006, p.348. This view is also adopted by Dimitrainas, id., 2007, p.153.
[997] Simeonidou-Kastanidou, id., 2007, pp.186-187.
[998] Papakyriakou, id., p.515.
[999] Daniil, *'Thoughts and speculations regarding the provisions of Statute 3424/2005 amending Statute 2331/1995 that are procedurally interesting',* Poiniki Dikaiosini , 2008, pp.477-478, (in Greek).
[1000] Androulakis, id., p.293; Pavlou, id., 2003, pp.194-195; Dimitrainas, id., 2007, p.163; Argyropoulos, id., 2007, p.33; Daniil, id., p.481; Tsiridis, id., 2008, p.628. The opposite point of view has been supported by Nikoloudis, id., 2000, p.772.
[1001] Simeonidou-Kastanidou, id., 2007, p.197; Simeonidou-Kastanidou, id., 1999, 391; Androulakis, id., p.295; Daniil, ibid.; Vassilakopoulos, id., 2007, p.230.
[1002] Kamperou-Ntalta, id., pp.153-154.

objections and for serving utility purposes, as the avowed purpose of the Legislator was an increase in the number of convictions for the crime of money laundering[1003].

Serious considerations of constitutionality have been raised with regard to the Committee of art.7 of Statute 3691/2008 and the previous Authority of art.7 of Statute 2331/1995. The Committee is authorised to perform a number of actions, such as to conduct a preliminary examination, to interrogate witnesses and suspects, to conduct investigatory acts, to collect evidence and data, even from court officials, to issue its findings etc. Academics note that these actions pertain to the judiciary, and not an administrative committee; the relevant provisions violate a number of constitutional principles, namely art.96 par.1[1004] on criminal justice and art.26[1005] on the separation of powers[1006]. Furthermore, the Committee's power to ask for information regarding the prosecution of an offence has been accused of violating the principle of the secrecy of criminal preliminary proceedings[1007], while the provision permitting the members of the Committee that had conducted the investigation to be examined in the court as witnesses is contrary to art.211 of the Code of Criminal Procedure[1008] and the principle of non-prejudice[1009]. On the other hand, one can argue that the Committee has in its disposal a specialised technology and organisation that can facilitate the investigations and that pose it in a more advantageous position to effectively confront money laundering activities than the public prosecutor[1010].

[1003] See the Explanatory Report on the Bill 3424/2005, which first introduced the relevant provision, on the question of the liability of the perpetrator of the criminal activity for money laundering acts. (Explanatory Report, id., p.337). For a criticism of this analysis, see Dimitrainas, id., 2007, pp.143-144; Dimitrainas, *'The identity of the perpetrator of the crime of money laundering: a contribution to the confrontation of special issues of diachronic law'*, Poiniki Dikaiosini, 2009, p.73, (in Greek).

[1004] Art.96: 1. The punishment of crimes and the reception of all measures provided by criminal laws, belongs to the jurisdiction of regular criminal courts.

[1005] Art.26: 1. The legislative powers shall be exercised by the Parliament and the Presidents of the Republic. 2. The executive powers shall be exercised by the President of the Republic and the Government. 3. The judicial powers shall be exercised by courts of law, the decisions of which shall be executed in the name of the Greek People.

[1006] Argyropoulos, *'The preliminary examination of Statute 3691/2008. The Committee and the new procedural deviation'*, Poinika Chronika, 2008, pp.941-942 (in Greek); Pavlou, id., 2006, p.349; Livos , *'Much ado about nothing? The investigatory powers of the National Authority for the Confrontation of Money Laundering',* Poinika Chronika, 2006, pp.381-382(in Greek); G. Daniil, id., pp.473-476.

[1007] Argyropoulos, id., 2008, p.942.

[1008] Stating that 'Under the penalty of invalidity of the procedure, the following cannot be examined as witnesses in the court: a) those who have exercised prosecuting or investigatory duties or duties of the secretary of investigation in the same case (…)'.

[1009] See Livos, id., 2006, p.384, who also accuses the provision of 'verbalizing' the obligatory written investigative procedure. See also Daniil, id., p.477.

[1010] Daniil, id., p.476.

Art.47 of Statute 3691/2008 (and the respective art.3 of Statute 2331/1995) has been criticised for disguising the confiscation as 'compensation' and transferring criminal cases to civil courts, thus, violating the principle of the legitimate judge expressed in the aforementioned art.96 par.1 of the Greek Constitution[1011]. On the other hand, a number of changes in the new provision compared with the previous one have been commended by academics: the omission of the provision of art.3 par.1 of Statute 2331/1995 that considered all property acquired in the five years preceding the commitment of the offence as product of criminal activity[1012], the omission of the indicator of culpability that reversed the principle of innocence of the accused[1013], and the inclusion of the requirement that the property is a product of criminal activity[1014].

The rest of the provisions regarding confiscation have also been the object of criticism. Apart from the question of the proportionality of the obligatory character of the imposed confiscation that has been analysed above, issues of constitutionality are raised by the provision of art.46 par.1 of Statute 3691/2008 permitting the confiscation of the property of third persons that is a product of criminal activity, if the person was in knowledge of the criminal activity. It has been noted that the provision is unconstitutional, since the assumption of knowledge of the origin of the property from the knowledge of the criminal activity violates the principle of culpability[1015]. Therefore, knowledge of the origin of the property should also be required, in which case the provision appears to be superfluous, as the third person would have committed the crime of money laundering him[1016]. Regarding the provision of art.46 par.3, pursuant to which confiscation is imposed even if no-one was prosecuted or the prosecution was held inadmissible, it has been argued that the dissociation of the confiscation from any conviction in relation to the absence of any

[1011] Kaiafa-Gbandi calls it a 'criminal confiscation in a civil dress'. See Kaiafa-Gbandi, id., 2007, pp.90-92; also Papakyriakou, id., p.524; Tsiridis, id., 2008, p.629; Tzannetis, id., 2007, p.298.
[1012] Essentially a case of general confiscation, prohibited by the Constitution (art.7 par.3).
[1013] For a critique of this provision see Argyropoulos, id., 2007, pp.36-37; Kaiafa-Gbandi, id., 2007, p.91.
[1014] Tsiridis, id., 2009, pp.284-285.
[1015] Tzannetis, id., 2007, pp.293-294.
[1016] Dimitrainas, id., 2008, p.947. It has been maintained that in this case no confiscation can be imposed on the third person without his previous conviction for the crime of money laundering. See Papakyrakou, id., pp.521-522; Tzannetis, id., 2007, pp.294-295.

threat for social order imposed by the property in question leads to the unconstitutionality of the provision[1017].

As to the imposition of obligations on legal persons and individuals, it has been maintained that the relevant provisions cannot easily accommodate the notions of professional freedom and secrecy, especially the legal professional privilege[1018].

Finally, an argument in favour of the constitutionality of anti-money laundering legislation should be mentioned: it has been maintained that the adoption of severe and even borderline constitutional provisions is necessary in view of the seriousness of the threats posed to society by money laundering activities, which often give the impression of regular financial activities that constitute an expression of personal and financial freedom[1019]. However, one should note that a detailed law is sufficient in order to effective fight money laundering without being necessary to have particular constitutional provisions for that purpose. Constitution is the fundamental underlying framework of a nation and a State, which regulates more generally both the government's power, and the fundamental rights belonging to all people residing within its borders. Therefore, particular threats to a democratic society, like money laundering or terrorism, can be dealt with efficiently through detailed and contemporary laws.

[1017] Tsiridis, id., 2008, p.280; Dimitrainas, id., 2008, p.948; Tzannetis, id., 2007, p.295; Dimitrainas, *Money laundering. Isuues of applicaton of Statute 2331/2995*, Nomiki Vivliothiki, 2002, p.219, (in Greek) ; Dionysopoulou, *'The confiscation of the products of criminal activity. Remarks and de lege ferenda proposals to the provisions of Statute 2331/1995',* Yperaspisi, 2000, p.802, (in Greek).

[1018] Tsiridis, id., 2009, pp.304-305; Kaiafa-Gbandi, id., 2007, p.88; Papakyriakou, id., p.499; Daniil, id., p.479; Argyropoulos, id., 2007, p.35; Tsiridis , *'Money laundering and the vocation of the attorney (obligations and responsibilities)',* in Greek Criminal Attorneys Association, *Money Laundering. 'Clean' or free society?)*, Sakkoulas, 2007, pp.354-355, (in Greek).

[1019] Rigos, *'Money laundering. A first approach to the provisions of articles 1-9 of Statute 2331/1995',* Elliniki Dikaiosini, 1996, p.366, (in Greek).

c. Review of the Greek case law on money laundering

Courts have addressed many issues raised by academics in relation to money laundering legislation, though not always in a constant manner. Relevant judgements vary from the analytical, which attempt to interpret the obscure provisions of the legislation, to the more superficial, adopting a mostly textual interpretation. Apart from the vagueness of certain provisions, interpretation and application of the law is furthermore perplexed by the many amendments, as well as certain legislative interventions that moved in the opposite direction from court decisions.

Since Statute 3691/2008 has not been tested in the courts due to its recent adoption, many of the issues addressed in the application of the previously standing Statute 2331/1995 in the case law, before and after its amendment by Statute 3424/2005, remain relevant, given that the provisions of the new legislation bear many similarities to their predecessors. The analysis of the case law on Statute 2331/1995 will be focused on the five main issues that have been addressed by the courts: The activities that can constitute a money laundering offence; the previous criminal activity and its relationship to money laundering; the connection of money laundering to organised crime; the possibility of self-laundering; and the constitutionality of certain procedural provisions.

It should be noted that the proportionality of the provision has not been contested or addressed by the courts, although academics have extensively commented on it. In addition to that, an overview of the case law leads to the conclusion that anti-money laundering legislation has mostly been applied in relation to small-scale criminal activity, that bears little resemblance to organised crime and networks that provide legitimate titles for criminal revenues on a big scale.

1. Which acts constitute money laundering activities?

Focusing on the text of the law, which defines money laundering as, among others, the acquisition, possession, transfer, and concealment of property, courts have accepted as money laundering a number of acts which, according to academics, should be considered as simple acts of receiving stolen property[1020]. The possession of money[1021] or bicycles[1022] that are the product of a fraud, the purchase of stolen

[1020] See Simeonidou-Kastanidou, id., 2007, p.168.
[1021] Council of Appeal of Athens decision **No. 2741/2000**, reversed by Supreme Court decision in council **No.372/2002**, Poiniki Dikaiosini, 2002, p.1013.

jewellery[1023], the purchase of cars[1024] and of real estate[1025] with the revenues of the previous criminal activity, the deposit of a sum of 10.500 Euros in the bank account of a third person[1026], have all been held to constitute laundering of money. Case law has also accepted in the majority of cases that the simple deposit of the product of crime in a bank account in the true name of the depositor equals a 'concealment' of this product, thus, the offence of money laundering is committed[1027]. As stated in the Supreme Court decision **No. 791/2009**, 'the deposit of the money in the bank has as a consequence that this money lose their independent status, are mixed with the money of the bank and, in this way, their true origin is concealed'[1028].

However, a number of decisions have adopted a different interpretation, underlining the element of legitimization as an essential characteristic of any money laundering activity: money and other products of criminal activity should acquire a legitimate title through the laundering process. Thus, regarding the deposit of money in a bank account, courts have stated that it 'constitutes an act of concealment, but this act on its own does not offer him [the perpetrator] any 'legal title' to his illegal revenues, as would be the case if, through a series of bank transactions and the interjection of third persons, he managed to give the impression that the illegal money were not deposited by him, but have a different origin'[1029].

While this latter interpretation is supported by both relevant legislation, which mentions 'legitimization of revenues' in its title, and by academics, it has not been widely accepted by the courts. Characteristically, the recent Supreme Court decision **No. 991/2009** states that 'money laundering is nothing more than a distinguished case of receiving stolen property that is a felony even if the product proceeds from a misdemeanour'[1030]

[1022] Athens Council of Appeal decision **No.1161/2000**, Poiniki Dikaiosini, 2001, p.136.
[1023] Thessaloniki Council of Appeal decision **No. 51/2000**, Yperaspisi, 2000, p.1037.
[1024] Supreme Court decision **No.721/2004**, Poiniki Dikaiosini, 2004, p.900.
[1025] Supreme Court decision **No.1231/2004**, Poiniki Dikaiosini, 2005, p.33; Supreme Court decision **No. 924/2009**, NOMOS legal database.
[1026] Supreme Court decision **No. 1025/2008**, NOMOS legal database.
[1027] Supreme Court decision **No. 570/2006**, NOMOS legal database; Supreme Court decision **No. 791/2009**, NOMOS legal database; Supreme Court decision **No. 924/2009**, id.; Supreme Court decision **No.1148/2008**, NOMOS legal database; Supreme Court decision **No. 1231/2004**, id.
[1028] See Supreme Court decision **No. 791/2009**, id.
[1029] Larissa Council of Appeal decision **No. 50/2004**, Poiniki Dikaiosini, 2004, p.531; Athens Council of Misdemeanours decision **No. 2593/2006**, Poinika Chronika, 2007, p.79. See also Athens Council of Misdemeanours decision **No.2171/2005**, Poiniki Dikaiosini, 2005, p.1146.
[1030] See Supreme Court decision **No.991/2009**, NOMOS legal database.

2. The relation between money laundering and the predicate offences

Money laundering legislation requires that the laundered property is the product of one of the predicate offences mentioned in the law. Courts are obliged to connect the money laundering to a previous criminal activity, but they do not require the existence of any convicting decision for the predicate offence. Both the commission of such an offence and its perpetrators should ensue clearly from the evidence and not be speculative[1031]. A general reference to previous criminal activities and their product is not enough; on the contrary, the court should mention the specific acts and incidents that constitute one of the predicate offences[1032]. However, there has been an unsuccessful attempt to bring about the reversal of this case law by the assistant prosecutor of the Supreme Court, who maintained that, the aforementioned view '*leads to an impermissible restriction of the provisions that criminalise money laundering*'[1033].

It has been held by courts that the relation between the predicate offence and the money laundering is that of a main and ensuing act. Money laundering remains, however, an offence with autonomous demerit that cannot be absorbed by the predicate offence. Courts have based this view on the possible punishment of money laundering as a felony even when the predicate offence is a misdemeanour[1034]. The Supreme Court held in case **No. 1611/2007** that the criminal punishment for the main offence does not exclude the punishment of the criminal also for the offence of money laundering. In this context, the main offence and the ensuing offence are concurrent punishable offences and they do not constitute non punishable following acts[1035]. The same approach was followed in the most recent case **No. 2035/09** where the Supreme Court reaffirmed its position saying that the main and the ensuing act are different offences with different demerits to each of them[1036]. In this framework, and very interestingly, the Supreme Court in case **No.1379/2008** held that it is possible to prosecute for money laundering without prosecuting the predicate offence in cases

[1031] Supreme Court decision **No. 372/2002**, id.; Supreme Court decision **No. 351/2003**, Poiniki Dikaiosini, 2004, p.526; Supreme Court decision **No. 402/2004**, Poiniki Dikaiosini, 2005, p.45; Supreme Court decision **No.721/2004**, id.; Supreme Court decision **No. 924/2009**, id.
[1032] Supreme Court decision **No.372/2002**, id.
[1033] Supreme Court decision **No.1611/2007**, unpublished.
[1034] Supreme Court decision **No.570/2006**, id.; Supreme Court decision **No.924/2009**, id.
[1035] Supreme Court decision **No.1161/2007**, Poinika Chronika, 2008, p. 527, in Greek.
[1036] Supreme Court decision **No. 2035/2009**, Poinika Chronika, 2010, in Greek.

where there is evidence of the guilt of the offender for the main crime, showing once again the autonomous demerit of money laundering[1037].

3. Money laundering and organised crime

The connection of money laundering to organised crime is not mentioned in most court decisions. There are, however, a number of decisions where this connection has been carefully analysed. The Thrace Council of Appeal decision **No.85/2002** accepted that laundering should concern the property of a criminal organisation that is the product of its illegal activities, and should aim to assist the infiltration of society by the organization. Moreover, the Council held that the laundering itself should take place inside the organization and according to its rules of operation[1038]. The Council of Appeal[1039] proceeded to accept the commission of money laundering by the accused, who had attempted to drive out of Greece a car stolen in England with forged papers, as it held that he was a member of an international multi-member organization that traded in stolen automobiles.

The opposite view was adopted by the Larissa Council of Appeal in decision **No.50/2004**. The Council addressed two issues: if the money laundering should be committed by a criminal organisation and if the laundered property should have been acquired through the activities of a criminal organization. In connection to the first issue, the Council, while accepting that a successful act of money laundering would usually require the participation of a criminal organisation, held that such participation is not required by the law. As to the second issue, the Council observed that the Legislator refrained from including any similar condition in the Statute, and maintained that the addition of such a requirement through judicial interpretation would only introduce uncertainty as to the content of the provision and hinder its application. According to the Council, the demerit of the acts of money laundering lies not in their connection to organised crime, but in their special '*modus operandi*', that permits the legitimization of illegal revenues[1040].

[1037] Supreme Court decision **No.1379/2008**, Poinika Chronika, 2009, p. 459, in Greek.

[1038] See Thrace Council of Appeal decision **No.85/2002**, Poiniki Dikaiosini, 2003, p.259. Similar are the Alexandroupolis Council of Misdemeanours decision **No. 19/1999**, Poiniki Dikaiosini, 2001, p.1245, the Dodekanisa Council of Appeal decision **No. 85/2005**, NOMOS legal database, and the Athens Council of Misdemeanours decision **No.2171/2005**, id.

[1039] Under the Greek Code of Criminal Procedure, the Council of Appeal is a Committee consisted of judges deciding on a series of procedural matters, most importantly about the indictment or non-indictment of the accused.

[1040] See Larissa Council of Appeal decision **No. 50/2004**, id.

4. The punishment of the perpetrator of the predicate offence for the crime of money laundering

Under the original version of Statute 2331/1995, which included no specific relevant provision, the majority of the courts had accepted that the perpetrator of the predicate offence could not be punished for money laundering as well. It had been characteristically stated that money laundering presupposed 'the existence of the provided criminal activity a third person, other than the perpetrator of the money laundering' and that 'in case of concurrence of the two perpetrators the offence is not committed'[1041]. It had also been maintained that, contrary to what was accepted for the main offender, the accessory to the predicate crime could be punished as the perpetrator of the money laundering[1042].

A number of justifications had been offered for this exception: it was a case of unpunishable self-aiding[1043]; this interpretation was arguably consistent with Directive 91/308/EEC, which required that the launderer had knowledge of the source of the laundered property, indicating thus that he was a different person[1044]; finally, that the contrary would lead to a prohibited double punishment of the same act[1045].

However, this case law was reversed by Supreme Court decision **No. 1231/2004**[1046], which held that the law, while not differentiating, should not be interpreted restrictively and, thus, self-laundering should be held to be possible. As noted by the prosecutor, the opposite view implies that the later action of money laundering is absorbed by the former, which is not the case, given that the two offences are committed through separate acts, and each one has its own demerit. The prosecutor moreover maintained that 'it is out of the purpose of the Legislator to

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[1041] Supreme Court decision **No.402/2004**, id. See similar decisions: Supreme Court decision **No. 721/2004**, id.; Supreme Court decision **No.351/2003**, id.; Supreme Court decision **No. 372/2002**, id.; Larissa Council of Appeal decision **No.50/2004**, id.; Athens Council of Appeal decision **No. 1571/2003**, Poinika Chronika, 2003, p.1007; Athens Council of Appeal decision **No.1270/2003**, Poiniki Dikaiosini, 2003, p.1075; Piraeus Council of Appeal decision **No.109/2003**, Poiniki Dikaiosini, 2003, p.515; Athens Council of Misdemeanours decision **No. 3648/2003**, Poinika Chronika, 2004, p.64.

[1042] See the prosecutor's proposal in Supreme Court decision **No. 721/2004**, id.

[1043] Dodekanisa Council of Appeal decision **No. 85/2005**, id.; Thrace Council of Appeal **No. 85/2002**, id.

[1044] Nafplio Council of Appeal decision **No. 459/2004**, Poinika Chronika, 2007, p.73; Larissa Council of Appeal decision **No.50/2004**, id.

[1045] Athens Council of Misdemeanours decision **No. 2171/2005**, id.

[1046] It is noteworthy that previous case law was reversed in the midst of, and possibly because of, a big judicial scandal, when a number of judges were found to have repeatedly accepted bribes. With this reversal, the accused judges were prosecuted not only for the predicate offence of passive bribery, but also for money laundering, since the deposit of the money they had received in bank accounts was considered a case of concealment punishable under Statute 2331/1995. See for instance the Supreme Court decisions **No. 570/2006** and **No.924/2009**.

introduce a special category of felonies (art.2 of Statute 2331/1995) and then to accept the impunity of these felonies because the offender was also the perpetrator of a misdemeanour from those mentioned in art.1 of Statute 2331/1995. Such a supposition constitutes an absurd relaxation in the suppression of serious felonies and is unknown to the theoretical rules of the true congruence of crimes'[1047].

The debate was terminated by the Legislature, which amended Statute 2331/1995 with Statute 3424/2005, explicitly providing for the criminalisation of self-laundering. However, it should be noted that some courts have continued to deny such a possibility when the original provision of Statute 2331/1995 is applicable, maintaining that, pursuant to the original provision, the perpetrator of the predicate offence could not be held liable for the money laundering activities as well[1048].

5. The constitutionality of procedural provisions

The procedural provision of Statute 2331/2005 most addressed by the courts was the irrevocability of the decision of the Council of Appeal which rejected the petition for withdrawal of the freeze placed on accounts of the accused, pursuant to article 5 of the Statute. The Supreme Court held that the above provision did not violate any national or international legislation. According to the Supreme Court, the right of the accused to access a court was secured, since he was able to address the judicial council and submit his arguments; neither the European Convention of Human Rights nor the International Covenant on Civil and Political Rights obliged the Legislator to provide the accused with a second instance procedure in all cases[1049]. It should be noted that the new Statute 3691/2008 amended the provision in question, granting the accused the right to appeal against the rejecting decision of the Council[1050].

Related to procedural provisions is the Opinion of the Prosecutor of the Supreme Court **No. 12/2007**, which referred to the rights and obligations of the Authority of art.7 of Statute 2331/1995 and was issued in view of the drawing of the findings of the Authority by its Chairman alone and not by its total body.

[1047] Supreme Court decision **No. 1231/2004**, id. The same view is adopted in Supreme Court decision 570/2006, id.; Supreme Court decision **No. 1025/2008**, id.; Supreme Court decision **No. 924/2009**, id.; Athens Court of Appeal decision **No.2944/2008**, Archeio Nomologias, 2009, p.634.

[1048] See Athens Council of Appeal decision **No.347/2008**, Poiniki Dikaiosini, 2009, p.36. A similar example is the Athens Council of Misdemeanours decision **No.2171/2005**, which accepts the criminalisation of self-laundering on the basis of the previous case law of the Supreme Court, but states the objections to it expressed by academics and in older cases.

[1049] Supreme Court decision **No. 1988/2005**, NOMOS legal database.

[1050] See art.47 par.4 of Statute 3691/2008.

The prosecutor of the Supreme Court examined the investigatory duties of the Authority. He did not contest their constitutionality, but he noted that the Authority operates under the supervision of the public prosecutor, since the contrary would violate the constitutional provisions on the separation of powers. He also noted that the material collected by the Authority is examined by the prosecutor and the rest of the judicial authorities, who are the only authorities responsible for the administration of justice under the Constitution. Finally, he held that the Chairman of the Authority could not surpass his authorisations according to the law, and issue the findings of the Authority on his own. The prosecutor maintained that the Authority, in this instance, should act as a body; therefore, the findings of the Chairman could only be regarded as a simple conveyance that could be freely examined and valued by the investigatory officers[1051].

[1051] Opinion of the Prosecutor of the Supreme Court **No.12/2007**, Poiniki Dikaiosini, 2008, p.38.

d. Final Remarks

A common characteristic of all three anti-money laundering Statutes is their late adoption, after the expiry of the deadline imposed by the implemented Directives and after strong international pressure. The first Directive was implemented with a delay of two and a half years, the second with a delay of one and a half year, and the third with a delay of almost eight months. It is characteristic that Statute 3424/2005 implementing the second Directive was adopted almost two months *after* the adoption of the third Directive 2005/60/EC. The Greek Legislator has, thus, kept little contact with the developments in European legislation, implementing Directives that had already been substituted by more recent legislation.

An overview of the Greek anti-money laundering legislation and the relevant debate leads to the conclusion that the Legislator has ignored most of the critical remarks of the academics, although he has had the opportunity to address them in the subsequent Statutes. Issues of vagueness, proportionality, and constitutionality persist through all three anti-money laundering statutes. It has been noted that, fifteen years after the adoption of the first Statute 2331/1995, 'the Greek legal system appears to be struggling with very basic elements of the EU and global regime'[1052]. However, it should be acknowledged that the third Statute3691/2008 is generally in line with both the third Directive and the FATF Recommendations; in the most recent FATF evaluation report of 19 February 2010 it is noted that 'the adoption of the new AML Law (2008) has resulted in significant progress with regard to Greece's compliance with the FATF standards'[1053]. It is also noteworthy that even if Greece was placed in '*enhanced follow up*' since the Plenary meeting in October 2009, only few months ago, on 20 October 2010, Greece was moved back to '*regular follow up*' since it has made 'significant progress and has continued to improve its system'. According to the FATF, Greece is now 'required to fully comply with special Recommendation III regarding a comprehensive system of freezing assets of suspected terrorists'[1054]. Nevertheless, once should not ignore the fact that Greece succeed in this because it

[1052] Mitsilegas V., '*The Impact of the European Union on the Greek Criminal Justice System'*, in L. Cheliotis and S. Xenakis (Eds), 'Crime and punishment in contemporary Greece', Peter Lang Publishers, Forthcoming.
[1053] See FATF Mutual Evaluation Interim Follow-up Report of 19 February 2010, par.7; in the following par.8 it is furthermore stated that 'Greece has reached a good level of compliance with most of the core recommendations'.
[1054] See FATF/PLEAN 2010 (55) of 30 September 2010.

followed the Recommendations by FATF and changed its law accordingly. The FATF, thus, has played a very significant role in the adoption of the Greek anti-money laundering legislation.

The application of the anti-money laundering provisions by courts appears to be –so some extent- problematic. An overview of the case-law showcases the broad application of the relevant legislation which sometimes leads to abuse of the relevant legislation, in particular with regard to common criminal activities that fall out of the scope of the European legislation and the FATF Recommendations. As has been noted[1055], and this seems to be the reality, Greek judges often use the anti-money legislation as the 'easiest solution' for the characterization of a criminal act. Thus, a stricter interpretation of the Statute and a better perception of the nature and meaning of money laundering as well as training seminars for the judges in the money laundering legislation, should lead Greek courts towards a more meaningful interpretation of Statute 3691/2008.

[1055] Interview with X official of the Greek Ministry of Justice, Transparency and Human Rights, 26/07/10.

V. Conclusion

The contact of the Greek legal order with European criminal law has not always produced a fortunate outcome. Implementing legislation has usually been met with harsh criticism by academics, who have regularly pronounced it vague, disproportionate, and unconstitutional. Critics speak of the formation of a new, repressive criminal law, which moves further from its liberal roots, and of the triumph of expediency over legality and the rule of law[1056]. It is telling that the dilemma between 'security and freedom' features prominently in a number of studies on the new criminal provisions[1057].

On the other hand, the application of the new provisions in the case law has not been very encouraging. Apart from a few high profile cases concerning Greek terrorist organisations and a trial-fixing ring, legislation about organized crime and money laundering has been mostly applied against low-level criminal activities, already satisfactorily punished under the Criminal Code. The resulting excessive penalization of common offences reinforced the expressed objections. Characteristically, given the way the respective legislation is often applied by the courts, a member of a group of three persons that commits distinguished frauds, who subsequently deposits the ensuing money in a bank account, could face three separate sentences of incarceration from five to ten years[1058].

The failings of the implementing legislation, however, do not necessarily entail respective failings in the implemented legal documents. Indeed, the Council Directives and Framework Decisions are specifically targeted against big-scale criminals that, due to their high level of organisation, and advanced technical and financial means, pose a significant threat to social peace and security. The development of international criminal networks in these areas of crime, moreover, underlines the necessity of more uniform criminal provisions in Member States and closer cooperation, goals that are advanced through the European legislation.

[1056] See among others Simeonidou-Kastanidou, *'The initiatives of the European Union for the confrontation of terrorism and of organized crime',* Poiniki Dikaiosini, 2000, p.195, (in Greek).

[1057] Examples include Manoledakis, '*Security and Freedom (Interpretation of Statute 2928/2001 on organised crime and relevant texts)*, Sakkoulas, 2002; Manoledakis, *"State security or freedom?'*, in Manitakis, Takis (eds.), *Terrorism and rights: from state security to law insecurity*, Savvalas, 2005, pp.23-31, (in Greek); Kaiafa-Gbandi, *'The notion of organised crime in E.U. – The criminal law between the citizens' security and freedom'*, Poiniki Dikaiosini, 2003, pp.538-552, (in Greek).

[1058] Based on art.386 par.3 of the Criminal Code (fraud), art.187 par.1 of the Criminal Code (criminal organization), and art.45 par.1 of Statute 3691/2008 (money laundering).

The role, thus, of EU legislation in the effective fight against modern criminal networks is, undoubtedly, important. Inevitably, the relevant European provisions are broad and sometimes even vague, as they attempt to encompass a range of more or less different legal orders. For this reason the national Legislator should, at the stage of their implementation, use the discretionary power granted to him so as to adjust and reconcile them with his domestic legal order.

The Greek Legislator did almost nothing of the kind. On the contrary, he often repeated the European provision word for word in the implementing law and that because of international pressure and because they were overdue. The verbatim translation of an EU Directive as a method of transposal into national law tends to be a task of doubtful benefit in most cases. In the case of Greece, the result was a problematic, often poor implementation, characterised by inconsistencies, vagueness and absurdities, that ignored and fragmented the pre-existing structure of the Greek criminal law system and its differences from other European systems[1059]. In addition to that, it has been noted that many contested provisions were not imposed by European legislation, but were introduced by the Greek Legislator alone[1060]. Thus, the domestic Legislator seems to be more interested in appearing in conformity with the European provisions, than in adopting an effective, high-quality body of legislation[1061].

The possible poor quality of Greek implementing Statutes, thus, should not reflect on the relevant European provisions, nor should it be attributed to them. Community law is an important tool towards the effective confrontation of a series of dangerous cross-border criminal activities. It is the duty of the Greek Legislator to ensure that, in the future, implementation of such law will focus on a substantial rather than a superficial approach to its provisions, always in the light of the rest of the domestic criminal law system.

[1059] Kaiafa-Gbandi gives as an example of uncritical implementation the provision of the last paragraph of art.3 of Statute 3691/2008, which renders a predicate offence all crimes punished with imprisonment for more than six months. While the above minimum limit is placed by the Directive 2005/60/EC, she notes that it was explicitly adopted as an indicator of a serious crime, which is true in most European legal orders. However, the Greek Criminal Code imposes on the whole heavier sentences. Therefore, the limitation in question should be modified with a view to the requirement of the severity of the offence, so as to better accommodate the Greek legal reality. See Kaiafa-Gbandi, *'Penalization of money laundering: Basic characteristics of Statute 3691/2008 and the limits of the rule of law'*, Poinika Chronika, 2008, p.920, (in Greek).

[1060] Papakyriakou, *'The criminal legislation on the suppression of money laundering as a fundamental axis of a new model of criminal policy',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime*, Sakkoulas, p.517, (in Greek).

[1061] Pavlou, *'Criminal Law and the 'Framework Decisions' of E.U. Another (dangerous) point of entrance of the European criminal law in the Greek one'*, Poinika Chronika, 2004, p.977, (in Greek).

Chapter 5

Conclusion

'What has been the impact of EU criminal law on the Greek legal order?'

European Criminal Law seems to have come of age and to now play the role in the European law previously reserved to commercial law, banking, finance law and private law. It is undoubtedly a rapidly growing area of Law as well as one of most contested areas of EU action, whose impact on national law is already clear and will be more significant in years. The development of European Criminal Law is, indisputably, very much connected with national sovereignty seriously affecting the relationship between the individual and the State as well as fundamental rights which must be equally protected while finding a balance between, on the one hand, the overriding interests of public security and, on the other hand, the rights of the individual. Member States have chosen in a number of fields of common interest to transfer the power of criminal law from their national field to the European. However, this –in principle- political consensus has, often, been challenged by the national Constitutional Courts leading to very significant changes in the national (often Constitutional) laws of various Member States, and hence, to a rethinking of national sovereignty and territoriality.

As to the two systems of law-making in the European Union in the field of criminal law, namely harmonization and mutual recognition, while the political focus has been largely on mutual recognition, European integration in the field of criminal law has been progressing, in fact, via the *symbiotic* relationship between these two different systems.

However, the Treaty of Lisbon suggests that the model of integration in the field of criminal law should be seen, firstly, in the light of mutual recognition, rather than through substantive harmonization. Even if it is common sense that combating serious and international crime needs cooperation between Member States, the latter are more reluctant towards the harmonization of criminal law, while instead it seems that mutual recognition is less harmful to their national sovereignty, even if it does not involve commonly negotiated standards. This happens because mutual recognition requires fewer changes to national criminal laws in order to implement Union law, and thus, is preferable. This further suggests that the cooperation of Member States in the sensitive field of criminal law is based mainly on two key concepts: *mutual trust* and *automaticity*.

On the other hand, it seems that mutual recognition can better serve its purposes through a minimum harmonization. It may well be that full harmonization of criminal laws is something unrealistic at this stage due to lack of consensus between Member States, but, this should not –and in fact, cannot- mean that mutual recognition can smoothly operate in the long term only on the basis of mutual trust, without any degree of minimum -at least- harmonization. In this light, harmonization should be seen, not as an alternative, but as complementary to the mutual recognition principle and its purpose to create a common European area of Freedom, Security, and Justice. However, both avenues of EU action have created considerable obligations for Member States towards implementing the EU *acquis* in the field of criminal law.

Greece is a good example in demonstrating that the implementation of EU criminal law has not been an easy task. It is not the case, like other European countries, having Constitutional conflicts in its domestic legal order while implementing the EU criminal law instruments into the Greek jurisdiction. On contrast, apart from the expressed controversial debate that has taken place regarding the various EU criminal law instruments and their legality, Greece is the case that has showed very slow implementation, most of the times under international pressure as the implementation was overdue after the expiry date of implementation, and also with a large number of instruments being not, yet, implemented due to various reasons. This, however, at least suggests that Greece (at least as far as the politicians are concerned), despite the willingness to support the effort for a common European judicial area in the field of criminal law, it has practically, rather, showed a limited degree of interest to fully comply with the EU requirements and efforts in order to combat serious types of crimes. On the other hand, this should also concern the European Union itself and its future, as such attitudes without any consequence for the Member State that breaches its obligations to fully comply -on time- with EU requirements, may jeopardize the efforts of Europe towards the creation of European Criminal law and its determination to fight against serious crimes that threaten its values and goals.

This is of greater consideration given the expressed concerns that have arisen in respect of the protection of fundamental rights since the European Union has introduced instruments that endanger human rights as established in the various international and national Human Rights Charters. The case study of Greece has proved that the protection of fundamental rights is very much linked to the Greek

national sovereignty and, thus, plays a key role in the development of the implementation of EU criminal law in Greece. It may well be that in the effort of the European Union to create a genuine area of Freedom, Security and Justice, the current focus, from the EU perspective, is on '*Security*', but from the Greek's perspective, it seems that the main priority is on '*Freedom*'. It this context, it is clear that as far as Greece is concerned, any instrument or principle which is related to the field of criminal law, will have its boundaries in the guarantee that these measures are accompanied by the effective protection of human rights. If this is not sufficiently guaranteed, then, Greece will raise its serious objections.

The way that the Greek Legislator has implemented EU requirements has also been, most of the times, in the wrong line, often criticized by the European Commission, as Greece has chosen to simply copy EU standards without any further modification of the national criminal and criminal procedure codes, leading to many contradictions to the domestic national criminal law, to excessive criminalization of common offences and, sometimes, the judges to a blind alley. However, one should note that in the case of Greece it is, in fact, the majority of Judges (and not the politicians) who try to find in these –often- poor quality implementing laws explanatory ways in order to adjust EU requirements into the Greek legal order and overcome various –even Constitutional- fears and concerns and, thus, to accommodate the operation of these EU standards.

However, one should note that this overcriminalization is due to the uncritical and copied implementation of EU law into the Greek legal order, and not because of EU law itself. As discussed throughout this thesis, EU law (in particular Framework Decisions and post-Lisbon Directives) dictates the objective to be achieved, but leave Member States the means through which to best implement EU law and fully adjust EU requirements into the national legal order. However, the Greek implementation of substantive criminal law on the one hand and of the European Arrest Warrant on the other, suggest that there is a differentiation while implementing them. The case study of the EAW has shown that the Legislator and the Judges have taken more care to adjust it to the domestic constitutional reality, than in the case of the substantive crimes where legislation has been mostly applied to low-level criminal activities, already satisfactorily being punished under the Criminal Code.

However, despite these obstacles, the reality is that Greece has succeed in creating, in response to EU requirements in the criminal justice field, a legislative and operational framework of action in combating serious types of crimes, which previously did not exist to such an extent. The truth is that Greece in the 1970s went through a seven year dictatorship where terrorism was thought to be something 'foreign' being outside of the Greek borders. However, Greece has shifted its perception and now has introduced specific offences regarding terrorism. Also, a few years ago there was a perception in Greece that (mainly for political reasons) organized crime did not exist in the country in a significant manner, minimizing in that way the importance of the demerit of organised crime. However, Greece has, now, introduced specific offences that previously did not exist in this field. Further, in previous years, Greece was the case that allowed (in fact implicitly) laundered money to get in its financial system. Nonetheless, the country has also now a detailed framework in order to combat money laundering. Also, it has implemented the Framework Decision on the European Arrest Warrant which is now successfully operating in the Greek jurisdiction. Thus, answering the question put forward in the introduction of the thesis, this is, in fact, the added value and the ultimate impact of EU criminal law and policy on the Greek criminal justice system, as all the above instruments would not be part of the Greek legal order, at least to such an extent, if European Union did not focus its interest in the field of criminal law. In other words, all these instruments are the result of EU action in criminal matters. Its significance on the Greek jurisdiction is, thus, clear.

Despite the fact that there is not sufficient and systematic scientific legal research on the overall impact of the implementation of the EU criminal law on the Greek legal order, the reality is that in almost all the separate studies and publications regarding different issues of criminal law, one will now find references to the EU developments in the field and its impact on the Greek jurisdiction. This constitutes, undoubtedly, evidence of the importance that Greek jurisprudence attaches to EU criminal law, as this has happened only in the last few years. On the contrary, in the past, EU criminal law seemed to be something '*foreign*' and '*unknown*', with the Greek law perceived to be superior law to the European. This shift is a sign of maturity regarding not only the academics, but also the judges and, to some extent, the politicians.

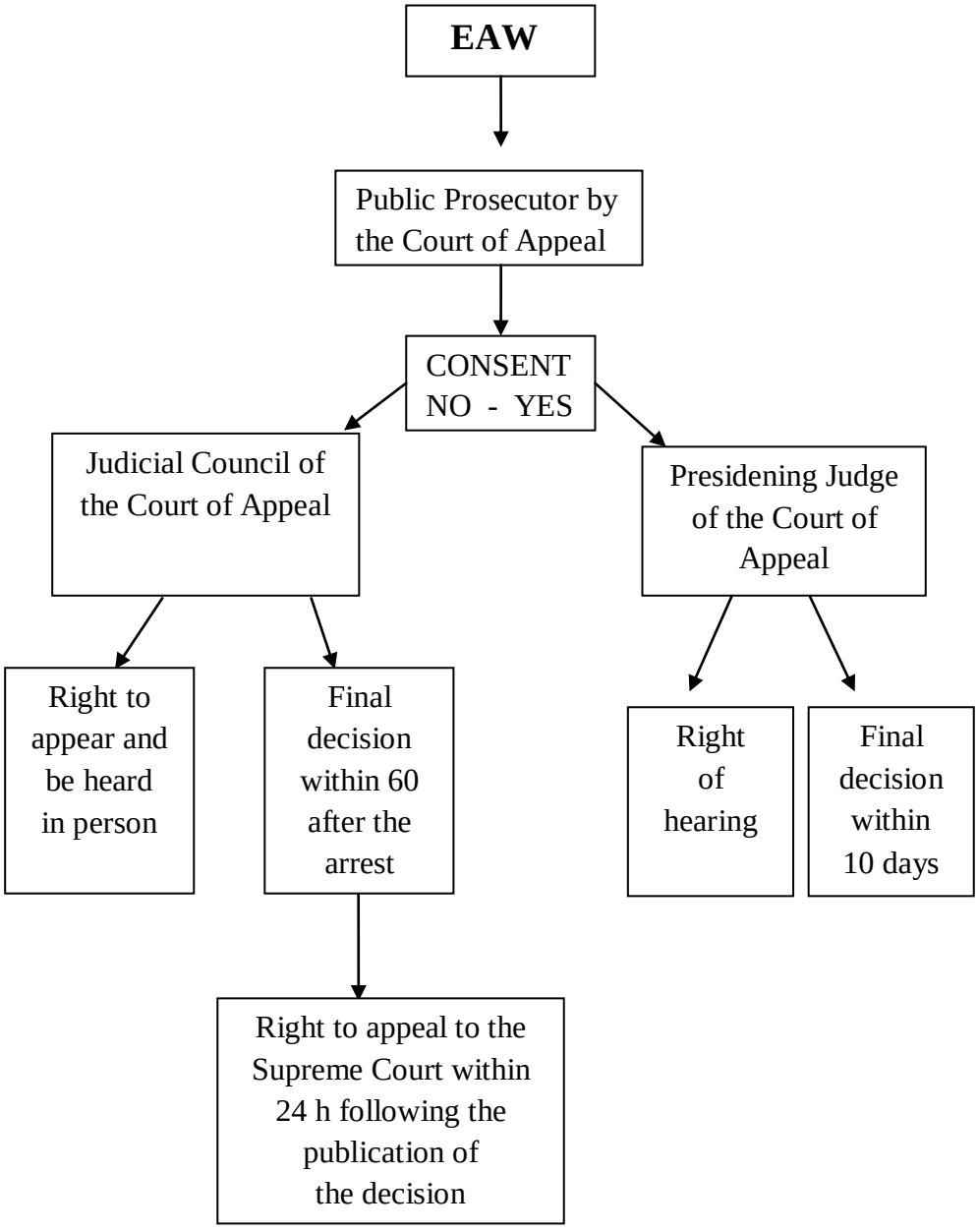
Furthermore, the modification in 2001 by the Parliament of article 28 of the Greek Constitution which states that the latter is a foundation for the participation of the country in the procedures of the European integration proves the importance that the Greek Constitutional Legislator has attached to EU law. This is because this new provision has made, in practical terms, more operative and effective the implementation as well as the interpretation of many EU criminal law standards and provisions. All these, however, prove that EU law has *modernized* and streamlined Greek law and has made it international.

On the other hand, the discussion over the two systems for law making suggests that the debate on the harmonization of criminal laws in the EU (both substantive and procedural) remains from the Greek point of view a necessary condition to the further development of judicial cooperation based on mutual recognition. Indeed, the Greek case suggests that the principle of mutual recognition is not a sufficient condition for long term judicial cooperation in the field of criminal law. It is thus felt that, from the Greek perspective, at least a minimum level of harmonization of laws is also needed in order for this cooperation to operate effectively now and in the long term. This will facilitate more efficiently the objective set for the Union to become an Area of Freedom, Security and Justice and will increase the mutual trust between the judicial authorities of Member States which, however, already share the same highly demanding concept of the rule of law.

Undoubtedly, the debate on EU criminal law was primarily focused within a constitutional context having as a central question whether the Community had competence to adopt criminal law measures or if it was an exclusive competence belonging to the Union and the third pillar. Yet, the European Court of Justice gave significant answers to these questions by accepting Community competence in order to achieve the effectiveness of Community Law and also (perhaps most significantly) by applying fundamental criminal law principles (such as the *ne bis in idem* principle) to the Union/Community sphere. Nevertheless, it is felt that the new era introduced by the Treaty of Lisbon will have a substantial impact on the development of EU criminal law. The entry into force of the Lisbon Treaty, at least, promises a more fertile debate on the development of European Criminal Law without any more references to the question '*who has the competence*', but rather to '*what kind of EU criminal law Europe needs and wants*'; and this is left to be seen.

Annex: (1)

GREECE as the executing the EAW State:



Annex: (2)

Grounds for refusal regarded as mandatory in the Council Framework Decision on the EAW:

Framework Decision	*Greek Implementing Law*
Article 3 (1) - (amnesty)	Article 11 (a) – (amnesty)
Article 3 (2) – (final decision)	Article 11 (b) - (irrevocable decision)
Article 3 (3) – (criminal responsibility)	Article 11 (c) - (criminal responsibility)

Annex: (3)

Grounds for refusal regarded as optional in the Council Framework Decision

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Framework Decision	*Greek Implementing Law*
Article 4 (1)	Article 10 (1) (a) →MANDATORY
Article 4 (2)	Article 11 (h) → MANDATORY only for Greek nationals
Article 4 (3)	Article 12 (b), (c)→ OPTIONAL
Article 4 (4)	Article 11 (d) → MANDATORY
Article 4 (5)	Article 12 (d) → OPTIONAL
Article 4 (6)	Article 11 (f) → MANDATORY only for Greek nationals Article 12 (e) → OPTIONAL for domiciled and residents
Article 4 (7)	Article 11 (g) →MANDATORY

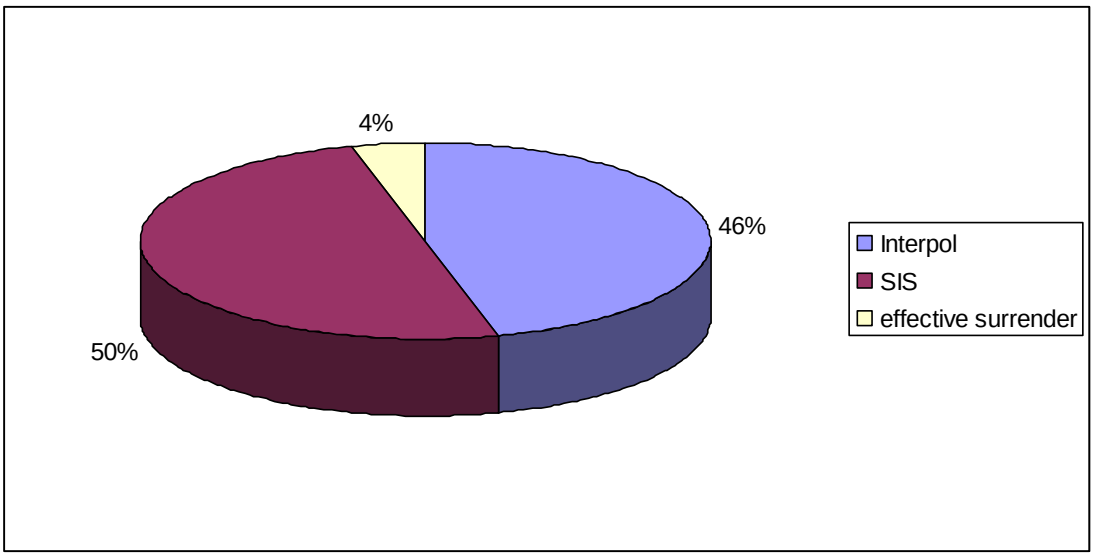
Annex: (4)

Statistics on the operation of the EAW in Greece [1062]

A. GREECE as the Issuing the EAW State:

2006:

- 53 EAW were issued, 43 of which were transmitted through Interpol and 47 through SIS
- 4 of these resulted in the effective surrender

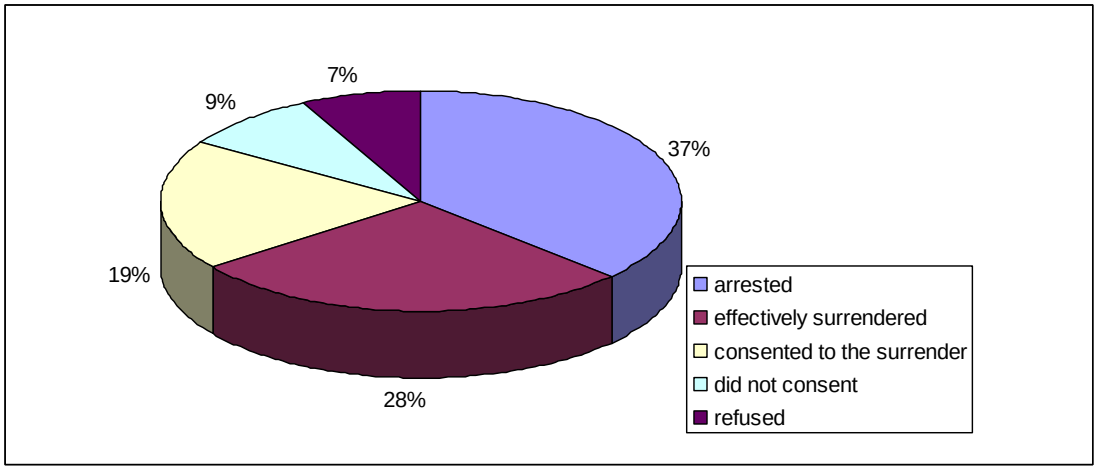


B. GREECE as the Executing the EAW State:

- 79 EAW were received in all the Courts of Appeal of Greece
- From these:
- 60 persons were arrested
- 45 were effectively surrendered
- 31 consented to the surrender
- 14 did not consent
- In 12 cases the Greek judicial authorities refused the execution on the following reasons: lack of common legal basis (3 cases), revocal of the EAW by the issuing State (1 case), statutory limitation cases (1 case), refusal on the

[1062] These are the officially provided statistics by the Greek Ministry of Justice.

grounds of article 4 par.6 (5 cases) and 7a (1 case) and of article 3 par. 2 (1 case).



- The requested person is surrendered roughly between 10 and 30 days (if he consents) and 20 days to 4 months (if he doesn't consent)
- In 11 cases the Greek judicial authorities executed the EAW with regard to a Greek national
- In 9 cases the Greek judicial authorities requested a guarantee under article 5 (3) of the Framework Decision
- In 1 case the Greek judicial authorities requested additional guarantees under article 5(1) and 5(2) of the Framework Decision

2008 statistics:

- There is an increase of around 30% of the received EAW
- The Court of Appeal in Athens has issued 71 EAW
- The Court of Appeal in Athens has received 77 EAW
- 35 of the received arrest warrants were successfully executed and surrendered in the issuing State

2009 statistics[1063]:

- Greece has issued 116 European Arrest Warrants
- Of these 84 were transmitted via Interpol and 87 via the SIS
- Of these 19 resulted in the effective surrender of the person sought
- The Greek judicial authorities has received 216 EAW
- 178 persons have been arrested under a EAW whereas 127 have been effectively surrendered
- Of those surrendered 94 have consented to the surrender whereas 33 did not consent
- In 23 cases the Greek judicial authorities refused the execution of a EAW (using as grounds for refusal: art. 11 par. F in eight cases; art. 11 par. D in two cases; art. 11 par.H in two cases; art. 10 par.1 a in one case; art.11 par. B in seven cases; art. 11 par.G in one case; and art.12 par. a in two cases.)
- The time between the arrest and the decision on the surrender of the person sought is 10 to 30 days in cases of consent, whereas in cases of non consent the time is 15 to 120 days
- In 27 cases the Greek Judicial authorities executed an EAW with regard to a national or resident of Greece

[1063] See the '*Replies to questionnaire on quantitative information on the practical operation of the European Arrest Warrant*', Council Doc. 7551/6/10, REV 6, Brussels, 16 November 2010.

Annex: (5)

List of Persons Interviewed

- Mr. Vasilios Skouris - President of the European Court of Justice
  09 January 2010.
- X official of the Greek Ministry of Justice.
  28 March 2008.
- Mr. Chamilothoris Ioannis – Presiding Judge at the Court of Appeal of Athens.
  24 March 2008.
- Mr. Pantelis – Public Prosecutor at the Court of Appeal of Athens.
  28 March 2008.
- Mr. Anagnostopoulos Ilias – Professor of Law at the University of Athens – Attorney at Law. 02 May 2008.
- Mr. Vgontzas – Attorney at Law.
  02 May 2008.
- Ms Olga Tsolka – Assistant Professor at the University of Athens – Attorney at Law. 19 September 2008.
- Mr. Karanikolas Athanasios – Attorney at Law.
  28 March 2008.

Table of cases

Advocaten voor de Wereld VZW v Leden van de Ministerraad, Case C-303/05, judgment of 3 May 2007, [2007], 3 C.M.L.R.1.

Aegean Council of Appeal, decision **No. 35/2005**, NOMOS legal database, in Greek.

Alexandroupolis Council of Misdemeanours decision **No. 19/1999**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2001, p.1245, in Greek.

Athens Council of Misdemeanours decision **No. 2593/2006**, Poinika Chronika (Ποινικά Χρονικά), 2007, p.79, in Greek.

Athens Council of Misdemeanours decision **No. 2171/2005**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, p.1146, in Greek.

Athens Council of Misdemeanours decision **No. 3648/2003**, Poinika Chronika (Ποινικά Χρονικά), 2004, p.64, in Greek.

Attorney General of the Rebublic v. Konstantinou of 7/11/2005, in [2007] 3 C.M.L.R. 42, p.1163.

B.B v France in 1998, judgment by the Eur. Court of Human Rights.

Casati case, referred to Valsamis Mitsilegas, '*EU Criminal Law*', Modern Studies in European Law, Hart Publishing, 2009, p.61.

Case C-305/05 Ordre des barreaux francophones et germanophone and Others v Conseil des ministres, judgment of 26 June 2007.

Case C-306/09 '*I.B. v Conseil des ministres*' of 21 October 2010.

Cassis de Dijon, Case 120/78, [1979] ECR 649; [1979] CMLR 494.

Commission v. Council, Case C-176/03, of 13 September 2005.

Commission v. Council, Case C-440/05 of 23 October 2007.

Commission v. *Italy*, Case C-363/85, [1987] ECR 1733.

Court of Appeal of Athens case **No. 2944/2008**, Archeio Nomologias (Αρχείο Νομολογίας), 2009, p.634, in Greek.

Court of Appeal of Athens case **No. 347/2008**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2009, p.36, in Greek.

Court of Appeal of Athens (in Council) case **No. 33/2007** of 7th June 2007, NOMOS legal database, in Greek.

Court of Appeal of Athens case **No. 6/2007** of 06/02/07, not yet reported, in Greek.

Court of Appeal of Athens case **No. 25/2007** of 10/05/2007, not yet reported, in Greek.

Court of Appeal of Athens case **No. 25/2007** of 10/05/2007, not yet reported, in Greek.

Court of Appeal of Athens case **No.33/2007** of 07/06/2007, not yet reported, in Greek.

Court of Appeal of Athens (in Council) case **No. 6/2007**, not yet reported, in Greek.

Court of Appeal of Athens (in Council) case **No.25/2007** of in 10th Mai 2007, not yet reported, in Greek.

Court of Appeal of Athens case **No. 1152/2005**, Poinika Chronica (Ποινικά Χρονικά), 2006, p.550, in Greek.

Court of Appeal of Athens case **No. 29/2005** in Poiniki Dikaiosini (Ποινική Δικαιοσύνη), Poiniki Dikonomia (Ποινική Δικονομία), 2005, p.1160, in Greek.

Court of Appeal of Athens case **No. 30/2005**, NOMOS legal database, in Greek.

Court of Appeal of Athens case **No. 2993/2004**, Poinika Chronica (Ποινικά Χρονικά), 2005, p.931, in Greek.

Court of Appeal of Athens case **699, 780, 809, 3244/2003** (17 November case), Poinika Chronika (Ποινικά Χρονικά), 2004, p.1012, in Greek.

Court of Appeal of Athens case **No. 3028/2003**, Poinika Chronika (Ποινικά Χρονικά), 2005, p.165, in Greek.

Court of Appeal of Athens case **No. 1270/2003**, NOMOS legal database, in Greek.

Court of Appeal of Athens case **No. 1571/2003**, Poinika Chronika (Ποινικά Χρονικά), 2003, p.1007, in Greek.

Court of Appeal of Athens case **No. 1270/2003**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2003, p.1075, in Greek.

Court of Appeal of Athens case **No. 2741/2000**, reversed by Supreme Court decision in council 372/2002, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2002, p.1013, in Greek.

Court of Appeal of Athens case **No. 1161/2000**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2001, p.136, in Greek.

Court of Appeal of Pireas case **No. 4/2006** of 18/05/2006, not yet reported, in Greek.

Court of appeal of Thessaloniki case **No. 10/2006** of 22/12/2006, not yet reported, in Greek.

Dabas (Appellant) v. High Court of Justice Madrid (Respondent), House of Lords, Session 2006-07, [2007] UKHL 6, 28/02/07.

Dodekanisa Council of Appeal decision **No. 85/2005**, NOMOS legal database, in Greek.

Einhorn v France in 2001 (No.71555), Judgment by the Eur. Court of Human Rights.

Gaetano Mantello, Case C-261/09 of 16/11/2010.

Gözütok Hüseyin (C-187/01) and *Brügge Klaus* (C-385/01), 2003, ECR, 2003, I-5557. *Ignacio Pedro Santesteban Goicoechea Case C-296/08 PPU.*

Kozłowski Case C-66/08 of 18/02/08, 2008, 3 CMLR 26.

Krombach Case C-7 /98 [2000] ECR I-1935.

Larissa Council of Appeal decision **No. 50/2004**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2004, p.531, in Greek.

Leymann and Pustovarov, Case C-388/08 PPU, 1 December 2008.

Nafplio Council of Appeal decision **No. 459/2004**, Poinika Chronika (Ποινικά Χρονικά), 2007, p.73, in Greek.

Opinion of the Prosecutor of the Supreme Court **No. 12/2007**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2008, p.38, in Greek.

Ocalan v. Turkey, No. 46221/99, Judgment by the Eur. Court Human Rights of 12 March 2003.

Peers v Greece in 2001 (No. 28524), Judgment by the Eur. Court Human Rights.

Piraeus Council of Appeal decision **No. 109/2003**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2003, p.515, in Greek.

Price v UK in 2001 (No. 33394) Judgment by the Eur. Court Human Rights.

Pupino case C-105/03, [2005] ECR I-5285, 16/06/2005, OJ C 193, 06/08/2005.

Supreme Court of Greece case **No. 109/2010**, in NOMOS legal database, in Greek.

Supreme Court of Greece case **No.1266/2009**, in Poinika Chronika, 2010, p.326, in Greek.

Supreme Court of Greece case **No. 2166/2009**, in Poinika Chronika, 2010, p.684, in Greek.

Supreme Court of Greece case **No. 2035/2009**, in Poinika Chronika, 2010, in Greek.

Supreme Court of Greece case **No. 991/2009**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No.924/2009**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No**.**565/2009**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No**.**791/2009**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No.1811/2009**, in Poinika Chronika, 2010, p. 596, in Greek.

Supreme Court of Greece case **No.1006/2009**, in Poinika Chronika, 2010, p. 287, in Greek.

Supreme Court of Greece case **No.1083/2008,** in Poinika Chronika, 2009, p. 350, in Greek.

Supreme Court of Greece case **No.2155/08**, in Poinika Chronika, 2009, p. 823, in Greek.

Supreme Court of Greece case **No.2252/08**, in Poinika Chronika, 2009, p. 829, in Greek.

Supreme Court of Greece case **No.2027/08**, in Poinika Chronika, 2009, p. 807, in Greek.

Supreme Court of Greece case **No.216/2008**, in Poinika Chronika, 2009, p. 42, in Greek.

Supreme Court of Greece case **No.1024/2008**, in Poinika Chronika, 2008, p. 513, in Greek.

Supreme Court of Greece case **No.1379/2008**, in Poinika Chronika, 2009, p. 459, in Greek.

Supreme Court of Greece case **No. 382/2008** in 15/02/2008, not yet reported, in Greek.

Supreme Court of Greece case **No**. **415/2008** in 20/02/2008, not yet reported, in Greek.

Supreme Court of Greece case **No. 1025/2008**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No**. **1148/2008**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No.382/2008** of 15/02/2008, not yet reported, in Greek.

Supreme Court of Greece case **No. 194/2007,** in NOMOS legal database, in Greek.

Supreme Court of Greece Case **No. 2030/2007** of 16/11/2007, not yet reported, in Greek.

Supreme Court of Greece case **No. 1611/2007**, not yet reported, in Greek.

Supreme Court of Greece case **No. 1773/2007** of the 28/09/2007 in the Court in Poinika Chronika, 2007, p. 597 as well as in Poinikos Logos, 2007, p. 368, (both in Greek).

Supreme Court of Greece case **No**. **124/2007**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 306/2007** in 12/02/2007, not yet reported, in Greek.

Supreme Court of Greece case **No.1836/2007** in 12/10/2007, not yet reported, in Greek.

Supreme Court of Greece case **No.1594/2007** in Poinikos Logos, 2007, p.1136, in Greek.

Supreme Court of Greece case **No.1853/2007** of 15/11/2007, not yet reported, in Greek.

Supreme Court of Greece case **No.1161/2007**, Poinika Chronika, 2008, p.527, in Greek.

Supreme Court of Greece case **No. 1066/2007** of 15/05/2007, NOMOS legal database, in Greek.

Supreme Court of Greece **case No. 558/2007** of 15/03/2007 in Poinika Chronika, 2007, p. 597 as well as in Poinikos Logos, 2007, p. 368, both in Greek.

Supreme Court of Greece case **No.2358/2007** of 21/12/2007, case not reported, in Greek.

Supreme Court of Greece cases **No. 2310/2007** and **No.2030/2007**, not yet reported, in Greek.

Supreme Court of Greece case **No**. **570/2006**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 109/2006** in 17/01/06 in Poinikos Logos, 2006, p. 99, in Greek.

Supreme Court of Greece case **No**. **83/2006**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 592/2006,** in NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 766/2006,** in NOMOS legal database, in Greek.

Supreme Court of Greece Case **No. 1325/2005**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 1255/2005** of 20/05/2005 in Poiniki Dikaiosini (Ποινική Δικαιοσύνη), Nomologia Areiou Pagou (Νομολογία Αρείου Πάγου), 2005, p. 1498, in Greek.

Supreme Court of Greece case **No. 504/2005**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 591/2005** of 08/03/2005 in Poiniki Dikaiosini, 2005, p.1093. Also, in Poiniki Dikaiosini, 2005. '*Comments*' on the case 591/2005, Dimitrios Zimianitis, Poiniki Dikaiosini, 2005, p. 837 (in Greek). Also *'EAW and the*

surrender of nationals in order to be prosecuted', Poiniki Dikaiosini, p. 587, in Greek.

Supreme Court of Greece case **No. 177/2005,** in NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 654/2005,** in NOMOS legal database, in Greek.

Supreme Court of Greece case **No**.**1988/2005**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No**. **1735/2005** of in 07/09/2005 in Poiniki Dikaiosini, 2006, p. 162 and Poinikos Logos, 2005, p. 1696, (both in Greek).

Supreme Court of Greece case **No**.**4/2005**, NOMOS legal database, in Greek.

Supreme Court of Greece case **No. 402/2004**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, p.45, in Greek.

Supreme Court of Greece case **No. 721/2004**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2004, p.900, in Greek.

Supreme Court of Greece case **No. 1231/2004**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, p.33, in Greek.

Supreme Court of Greece case **No**. **402/2004**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, pp.46-47, in Greek.

Supreme Court of Greece case **No.2348/2004**, not yet reported, in Greek.

Supreme Court of Greece case **No. 351/2003**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2004, p.526, in Greek.

Supreme Court of Greece case **No. 464/2003,** in NOMOS legal database, in Greek.

Supreme Court case **No.820/1989**, Poinika Chronika, (Ποινικά Χρονικά), M, p.183, in Greek

Thessaloniki Council of Appeal decision **No. 27/2009**, NOMOS legal database, in Greek.

Thessaloniki Council of Appeal decision **No. 250/2009**, NOMOS legal database, in Greek.

Thessaloniki Council of Appeal decision **No. 1093/2008**, NOMOS legal database, in Greek.

Thessaloniki Council of Appeal, decision **No. 819/2008**, Poinika Chronika, 2009, p.159, in Greek.

Thessaloniki Council of Appeal, decision **No.221/2007**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2008, p.1286, in Greek.

Thessaloniki Council of Appeal decision **No. 221/2007**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2008, p.1286, in Greek.

Thessaloniki Council of Appeal, decision **No. 93/2006**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2006, p.413, in Greek.

Thessaloniki Council of Appeal decision **No. 51/2000**, Yperaspisi (Υπεράσπιση), 2000, p.1037, in Greek.

Thrace Council of Appeal decision **No. 101/2008**, Poinika Chronika (Ποινικά Χρονικά), 2009, p.658, in Greek.

Thrace Council of Appeal decision **No. 85/2002**, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2003, p.259, in Greek.

Wolzenburg Case C-123/08, OJ C-116, 09/05/2008.

Judgment no. Pl. ÚS 66/04 from May 3, 2006, '*Constitutionality of Framework Decision on the European Arrest Warrant'*, Re [2007] 3 C.M.L.R. 24.
Judgment P1/05 available online at: htpp://www.trybunal.gov.pl

Judgment BVerG, 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08 and 2 BvR 182/09, of 30/06/2009. Available online.

Judgment BVerG, 2 BvR 2236/2004 of 18/07/05,
Available from: http://www.bundesverfassungsgericht.de

Bibliography

Abi-Saab, Georges, '*The Proper Role of International Law in Combating Terrorism*', in 'Enforcing International Law Norms against Terrorism', ed. Andrea Bianchi, Hart, 2004, p. xii-xxii.

Albors – Llorens Albertina, '*Changes in the Jurisdiction of the European Court of Justice under the Treaty of Amsterdam*', Common Market Law Review, Vol. 35, 1998, pp. 1273-1294.

Albrecht Peter-Alexis and Braum Stefan, '*Deficiencies in the Development of European Criminal Law*', European Law Journal, Vol. 5, No. 3, September 1999, pp. 293–310.

Alegre Susie, '*Mutual trust – Lifting the mask'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p.45.

Alegre Susie and Leaf Marisa, '*Mutual Recognition in European Judicial Cooperation: A step too far too soon? Case Study-The European Arrest Warrant'*, European Law Journal, Vol.10, March, 2004.

Alldridge Peter, '*Money Laundering Law*', Hart, 2003, pp.2-19.

Amnesty International, '*Report of 2006*'. Available from: http://www.amnesty.org

Anagnostopoulos E. (Αναγνωστόπουλος Η.), *'The bill on organized crime: Modernization or disintegration of liberal criminal law?' («Το σχέδιο νόμου για το οργανωμένο έγκλημα: Εκσυγχρονισμός ή αποσύνθεση του φιλελεύθερου ποινικού δικαίου;»)* in *Proceedings of the academic event of the Law Society of Northern Greece and the Association of Greek Criminal Lawyers with subject: 'The bill on the confrontation of organized crime' (later statute 2928/2001) [Πρακτικά επιστημονικής εκδήλωσης της Εταιρίας Νομικών Βορείου Ελλάδας και της Ένωσης Ελλήνων Ποινικολόγων με θέμα: «Το σχέδιο νόμου για την αντιμετώπιση του οργανωμένου εγκλήματος» (μετέπειτα ν.2928/2001)]*, Sakkoulas (Σάκκουλας), 2002, p.38, in Greek.

Androulakis N. (Ανδρουλάκης Ν.), '*Fundamental Notions of Criminal Trial*'(Θεμελιώδεις έννοιες της ποινικής δίκης), Sakkoulas (Σάκκουλας), 2007, pp19-21,467-475, in Greek.

Androulakis N. (Ανδρουλάκης Ν.), '*Criminal Law – General Part*' (Ποινικό Δίκαιο – Γενικό Μέρος), Sakkoulas (Σάκκουλας), 2006, pp.50-68 and 75, in Greek.

Androulakis N. (Ανδρουλάκης Ν.), *'Criminal doctrine and its effect in practice 50 years later (a paradigm)' ['Η ποινική δογματική και η απήχησή της στην πράξη 50 χρόνια μετά (ένα παράδειγμα)']*, Poinika Chronika (Ποινικά Χρονικά), 2002, p.291, in Greek.

Androulakis N. (Ανδρουλάκης Ν.), '*Criminal Law: General Part*' (Ποινικό Δίκαιο: Γενικό Μέρος), Dikaio & Oikonomia, P.N. Sakkoulas (Δίκαιο & Οικονομία, Π.Ν. Σάκκουλας), 2000, pp.131-150, in Greek.

Annual reports on the situation of fundamental rights in the European Union in 2002, 2003 and 2004 made by the Network of fundamental rights independent experts. Available from: http://europa.eu.int/comm/justice_home.

Argyropoulos A. (Αργυρόπουλος Α.), *'The fair penalty as a cultural asset' ('Η δίκαιη ποινή ως πολιτισμικό κεκτημένο')*, in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, p.33; Tsiridis, id., 2009, p.65, in Greek.

Argyropoulos A. (Αργυρόπουλος Α.), *'The preliminary examination of statute 3691/2008. The Committee and the new procedural deviation' ('Η προκαταρκτική εξέταση του ν.3691/2008. Η Επιτροπή και η νέα δικονομική εκτροπή')*, Poinika Chronika (Ποινικά Χρονικά), 2008, pp.941-942, in Greek.

Armstrong, K., '*Mutual Recognition*' in C. Barnard and J. Scott (eds.), '*The Law of the Single Market European Market: Unpacking the Premises'* (Hart, 2002), ch. 9.

Athens Bar Association, Press Releases of 2004, available at: http://www.dsa.gr, in Greek.

Baker Estella and Harding Christopher, '*From past imperfect to future perfect? A longitudinal study of the third pillar'*, 2009, European Law Review, p.2.

Bantekas Ilias, '*The principle of Mutual Recognition in EU Criminal Law'*, European Law Review, 2007.

Basilakakis E. (Βασιλακάκης Ε.), *'ECHR and Extradition (ΕΣΔΑ και Έκδοση)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2004, p.204, in Greek.

BBC News online of 18.07.05.

Bekas G. (Μπέκας Γ.), *'Political choices and the Law - The Extradition - surrender of the requested and the EAW (Πολιτικές επιλογές και Δίκαιο – Η έκδοση-προσαγωγή-παράδοση εκζητούμενου και το Ευρωπαϊκό Ένταλμα Σύλληψης)*', Poinikos Logos (Ποινικός Λόγος), 2007, p. 555, in Greek.

Belandis (Μπελαντής), *'The trials of the cases of 17 Noemvri and ELA. The anti-terrorist laws in practice (Οι δίκες για τις υποθέσεις της 17 Νοέμβρη και του ΕΛΑ. Οι αντιτρομοκρατικοί νόμοι στην πράξη)',* Dikaiomata tou Anthropou (Δικαιώματα του Ανθρώπου), 2007, Pp. 1156-1157, in Greek.

Bem Kazimierz, *'The European Arrest Warrant and the Polish Constitutional Court Decision of 27 April 2005',* in Elspeth Guild, Constitutional challenges to the European Arrest Warrant, 2006, p.125-136.

Bernard, N., '*Flexibility in the European Single Market*' in C. Barnard and J. Scott (eds.), '*The Law of the Single Market European Market: Unpacking the Premises'*, Hart, 2002.

Bieber, R., '*The Third Pillar and the 1996 Intergovernmental Conference*', in R. Bieber and J. Monar (eds), 'Justice and Home Affairs in the European Union, European Interuniversity Press, Brussels, pp. 383-390.

Boer M.Den, '*The Fight Against Organized Crime in Europe: A Comparative Perspective*', European Journal on Criminal Policy and Research, 2001, vol. 3, p.259-260.

Bogdandy Von Armin, '*The European Union as a Human Rights Organization? Human Rights and the core of the European Union'*, Common Market Law Review, (2000) Vol.37, p.p. 1307–1338.

Borgers J.Matthias, '*Implementing Framework Decisions'*, Common Market Law Review, Vol. 44, 2007, p.1361.

Bridge, J.W., '*The European Communities and the Criminal Law*', The Criminal Law Review, 1976, pp 88-97.

Bunyan Tony, '*The War on Freedom and democracy*', Statewatch analysis of 6 September 2002.

Chaikin David, '*Commercial corruption and money laundering: a preliminary analysis*', Journal of Financial Crime, 2008, pp. 269-281.

Chalmers James and Leverick Fiona, '*Fair Labelling in Criminal Law*', The Modern Law Review, Vol. 71, No. 2, 2008, p. 217-246.

Charambakis A. (Χαραλαμπάκης Α.) and Nikoleta Tsiakoumaki (Νικολέτα Τσιακουμάκη), *'Problems regarding the correct meaning and execution of the EAW (Προβλήματα αναφορικά με την ορθή ερμηνεία και εκτέλεση του Ε.Ε.Σ)*', Poinikos Logos (Ποινικός Λόγος), 2005, 759, in Greek.

Comments and Proposals of the National Commission for Human Rights for the application of the Law 3251/2004 (Παρατηρήσεις και Προτάσεις της Εθνικής Επιτροπής για τα Δικαιώματα του Ανθρώπου επί της εφαρμογής του Νόμου 3251/2004), 22/03/2007, in Greek. Available online at: http://www.nchr.gr.

Comte Francoise and Kramer Ludwig, '*Environmental Crime in Europe*', Europa Law Publishing, 2004.

Corstens, G.J.M., '*Criminal Law in the First Pillar?*', European Journal of Crime, Criminal Law, and Criminal Justice, Vol. 11/1, 2003, pp.131-144.

Craig Paul and De Burca Grainne, '*EU Law – Text, Cases and Materials*', Fourth Edition, 2008, Oxford, pp 14-20.

Craig Paul & De Burca Grainne, '*EU Law – Text, Cases and Materials'*, 2007, Oxford University Press, p.706-714.

Curtin, D., '*The Constitutional Structure of the Union: A Europe of Bits and Pieces*', Common Market Law Review, vol. 30, 1993, pp17-69.

Dagtoglou (Δαγτόγλου), *'Constitutional Law – Individual Rights (Συνταγματικό Δίκαιο, Ατομικά Δικαιώματα)*', 2005, p.495, in Greek.

Dalakouras (Δαλακούρας), *'The special investigatory techniques of article 6 of statute 2928/2001 (Οι ειδικές ανακριτικές πράξεις του άρθρ.6 του ν.2928/2001)',* Poinika Chronika (Ποινικά Χρονικά), 2001, p.1024.

Daniil (Δανιήλ), '*Thoughts and speculations regarding the provisions of statute 3424/2005 amending statute 2331/1995 that are procedurally interesting (Σκέψεις και προβληματισμοί σχετικά με διατάξεις του ν.3424/2005 που τροποποίησαν τον ν.2331/1995 και παρουσιάζουν δικονομικό ενδιαφέρον)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2008, pp.477-478, in Greek.

Dashwood Alan, '*European Community Legislative Procedures after Amsterdam*', Cambridge Yearbook of European Legal Studies, vol. 1, 1998, pp.25-38.

Dawes Anthony and Lynskey Orla, '*The ever-longer arm of EC Law: the extension of Community competence into the field of criminal law*', Common Market Law Review, 2008, Vol. 45, pp.131-158.

Delmas – Marty, M., '*Guest Editorial: Combating Fraud – Neccesity, Legitimacy, and Feasibility of the Corpus Juris*', Common Market Law Review, vol.37, 2000, pp. 247-256.

Delmas- Marty, M. and Vervaele, J.A.E., '*The implementation of the Corpus Juris in the Member States*', vol.1, Antwerp, Interentia, 2000.

Delmas-Marty Mireille, '*The European Union and Penal Law*', European Law Journal, Vol. 4, No. 1, March 1998, pp. 87–115.

Dimitrainas (Δημήτραινας), *'The identity of the perpetrator of the crime of money laundering: a contribution to the confrontation of special issues of diachronic law (Η ταυτότητα του δράστη του εγκλήματος της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες: συμβολή στην αντιμετώπιση ειδικότερων ζητημάτων διαχρονικού δικαίου)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2009, p.73, in Greek.

Dimitrainas, *'Money laundering: The investigatory provisions concerning the freezing and the prohibition of disposal of the property of the accused in the light of the provisions concerning the seizure and special confiscation of the property under question (from statute 2331/1995 to statute 3691/2008) [Νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες: Οι ανακριτικές διατάξεις δέσμευσης και απαγόρευσης εκποίησης των περιουσιακών στοιχείων του κατηγορουμένου υπό το πρίσμα των διατάξεων για την κατάσχεση και την ειδική δήμευση των κρίσιμων περιουσιακών στοιχείων (από το ν.2331/1995 στο ν.3691/2008)]',* Poinika Chronika (Ποινικά Χρονικά), 2008, p.947, in Greek.

Dimitrainas (Δημήτραινας), *'The expansion (?) of the meaning of the 'predicate' criminal activity in the crime of money laundering (Η διεύρυνση (;) της έννοιας της 'βασικής' εγκληματικής πράξης στο έγκλημα της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες)',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη ΙΙ: Μελέτες ποινικού δικαίου, εγκληματολογίας και ιστορίας του εγκλήματος),* Sakkoulas (Σάκκουλας), 2007, p.245, in Greek.

Dimitrainas (Δημήτραινας), *'The perpetrator of the crime of money laundering (Ο δράστης του εγκλήματος της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες)',* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;),* Sakkoulas (Σάκκουλας), 2007, pp.155-156, in Greek.

Dimitrainas (Δημήτραινας), *'Money laundering: views of the case law on special issues of the application of statute 2331/1995 (on the occasion of the Order of Larissa Council of Appeal no.50/2004) [Νομιμοποίηση εσόδων: Θέσεις της νομολογίας σε ειδικότερα ζητήματα εφαρμογής του ν.2331/1995 (με αφορμή το Βούλευμα του ΣυμβΕφΛάρισ 50/2004)]',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2004, p.589, in Greek.

Dimitrainas (Δημήτραινας), '*Money laundering. Issues of application of statute 2331/2995 (Ξέπλυμα βρώμικου χρήματος. Ζητήματα εφαρμογής του ν.2331/1995)'*, Nomiki Vivliothiki (Νομική Βιβλιοθήκη), 2002, p.219; in Greek.

Dine M., Janet, '*European Community Criminal Law*?', Criminal Law Review, 1993, pp.246-254.

Dionysopoulou (Διονυσοπούλου) *'Felonies in statute 2331/1995: The only choice of the Legislator? (Κακουργήματα στο ν.2331/1995: Μοναδική επιλογή για τον νομοθέτη;)',* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;),* Sakkoulas (Σάκκουλας), 2007, p.438-439, in Greek.

Dionysopoulou (Διονυσοπούλου), *'When does an element of property originate in criminal activity? Contribution in the definition of the circle of objects fit to money laundering (Πότε ένα περιουσιακό στοιχείο προέρχεται από εγκληματική δραστηριότητα; Συμβολή στον καθορισμό του κύκλου των πρόσφορων αντικειμένων της νομιμοποίησης εσόδων από εγκληματική δραστηριότητα)'*, Poinika Chronika (Ποινικά Χρονικά), 2006, p.362, in Greek.

Dionysopoulou (Διονυσοπούλου), *'The confiscation of the products of criminal activity. Remarks and de lege ferenda proposals to the provisions of statute 2331/1995 (Η δήμευση των προϊόντων της εγκληματικής δραστηριότητας. Παρατηρήσεις και de lege ferenda προτάσεις στις διατάξεις του ν.2331/1995)',* Yperaspisi (Υπεράσπιση), 2000, p.802, in Greek.

Dionysopoulou (Διονυσοπούλου), *'Money laundering and receiving products of crime. A contribution to the issue of the legally protected right of article 2 para.1 of statute 2331/1995 (Νομιμοποίηση εσόδων από εγκληματική δραστηριότητα και αποδοχή προϊόντων εγκλήματος. Μία συμβολή στο ζήτημα του προστατευόμενου έννομου αγαθού του αρ.2 παρ.1 ν.2331/1995)',* Poinika Chronika (Ποινικά Χρονικά), 1999, p.991, in Greek.

Dougan, '*Minimum Harmonization and the Internal Market*', Vol. 37, Common Market Law Review, (2000), p.853.

Duyne, P., Lampe, K. and Newell, J., '*Criminal finances and organizing crime in Europe*', Willem-Jan van der Wolf, 2003, p.110.

ECLAN study, *'Analysis of the future of mutual recognition in criminal matters in the European Union'*, Final Report, 20/11/2008. The Institute for European Studies Université Libre de Bruxelles, together with the European Criminal Law Academic Network (ECLAN) were selected by the European Commission to carry out in 2008 a project on "analysis of the future of mutual recognition in criminal matters in the

European Union". The final report is written by Gisèle Vernimmen-Van Tiggelen and Laura Surano. Available online at: http://ec.europa.eu/justice/doc_centre/criminal/recognition/doc_criminal_recognition_en.htm.

Elagab Omer and Elagab Jeehaan, '*International law documents relating to terrorism*', third Edition, Routledge – Cavendish, 2007, p.xxv.

Eleftherotypia newspaper (Ελευθεροτυπία), *'Government satisfied with adoption of terror-law («Ικανοποιημένη η κυβέρνηση από την ψήφιση του τρομονόμου»)',* article of 8/6/2001, available online at: www.enet.gr, in Greek.

European Arrest Warrant – High Coust of Cyprus, (Europaiko Entalma Sillipsis – Anotato Dikastirio Kiprou), Poiniki Dikaiosini, 2/2006, p.179.

Evaluation Report on the fourth round of mutual evaluations - 'the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States – Report on Greece, Council, COPEN 167, 13416/1/08, Brussels, 20 October 2008.

Explanatory Report on the Bill on 'Modifications of provisions of the Criminal Code and the Code of Criminal Procedure and other provisions for the citizens' protection from crimes of criminal organizations' (Εισηγητική Έκθεση στο σχέδιο νόμου 'Τροποποίηση διατάξεων του Ποινικού Κώδικα και του κώδικα Ποινικής Δικονομίας για την προστασία του πολίτη από αξιόποινες πράξεις εγκληματικών οργανώσεων'), Poinika Chronika (Ποινικά Χρονικά), 2001, p.1007, in Greek.

Explanatory Report on the Bill 'Prevention and suppression of money laundering and the financing of terrorism' (Αιτιολογική Έκθεση στο σχέδιο νόμου 'Πρόληψη και καταστολή της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες και της χρηματοδότησης της τρομοκρατίας'), Poinika Chronika (Ποινικά Χρονικά), 2008, p.908, in Greek.

Faure and G. Heine, '*Criminal Enforcement of Environmental Law in the European Union*', Comparative Environmental Law and Policy Series, 2005, pp.1-90.

Fichera Massimo, *'The European Arrest Warrant and the Sovereign State: A Marriage of Convenience?'* European Law Journal, Vol. 15, No.1, 2009.

Filippo Di, Marcello, '*Terrorist crimes and international co-operation: critical remarks on the definition and inclusion of terrorism in the category of international crimes*', European Journal of International Law, 2008, pp. 533-570.

Fitrakis Eutixis (Φυτράκης Ευτύχης), *'The EAW in practice: New developments, new concerns (Το Ευρωπαϊκό Ένταλμα Σύλληψης σε εφαρμογή: Νέες εξελίξεις, νέες ανησυχίες)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2006, p. 210-220.

Fletcher Maria '*Some developments to the ne bis in idem principle in the European Union: Criminal Proceedings against Hüseyin Gözütok and Klaus Brügge',* The Modern Law Review, Vol.66, 2003, p.769-780.

Fletcher Maria, '*Extending 'indirect effect' to the third pillar: the significance of Pupino',* European Law Review, 2005, p. 862.

Florian Geyer, '*The European Arrest Warrant in Germany. Constitutional Mistrust towards the Concept of Mutual Trust'*, in Guild (Ed.), Constitutional Challenges to the European Arrest Warrant (Wolf Legal Publishers, 2006), pp. 101–124.

Fotopoulou Vana, article at Eleytherotypia newspaper (Ελευθεροτυπία), 23/06/2004, available online at: http://www.enet.gr/online, in Greek,

Gareau H., Frederick, '*State Terrorism and the United States – From Counterinsurgency to the War on Terrorism'*, Clarity Press, 2004, p. 3-35.

Garlick Paul, *'The European Arrest Warrant and the ECHR'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p. 168.

Geyer, '*Case Note: European Arrest Warrant. Court of Justice of the European Communities*', European Constitutional Law Review, vol. 4, 2008, pp.149-161.

Giannidis (Γιαννίδης), *'The new legitimization of Criminal Law and the end of classic doctrines (Η νέα νομιμοποίηση του Ποινικού Δικαίου και το τέλος της κλασικής δογματικής)'*, Poinika Chronika (Ποινικά Χρονικά), 2007, p. 773, in Greek.

Gilmore Bill, 'The Twin Towers and the Third Pillar: Some Security Agenda Developments', EUI Working Paper LAW No. 2003/7, European University Institute Florence, available online.

Gilmore C., William, '*Dirty Money – The evolution of international Measures to counter Money Laundering the Financing of Terrorism*', Third edition, Council of Europe Publishing, 2004.

Gilmore William and Levi Michael, '*Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control?*', European Journal of Law Reform, 2002, pp.337-377.

Greek Parliamentary Minutes on the discussion on the Greek Constitution in 1975, in Greek.

Greek Parliamentary Minutes of 22nd June 2004, session 35th.. Available online at: http://www.parliament.gr., in Greek.

Greek Parliamentary Minutes of 24th June 2004, session 35th.. Available online at: http://www.parliament.gr., in Greek.

Greek Parliamentary Minutes of 23rd June 2004, session 36th.. Available online at: http://www.parliament.gr., in Greek.

Greek Parliamentary Minutes of 24th January 2001, session 6th. Available online at: http://www.parliament.gr., in Greek.

Greek Society of Criminal Law (Ελληνική Εταιρεία Ποινικού Δικαίου), '*Findings (Πορίσματα)* in *Organised crime under the criminal law viewpoint. Proceedings of the VII Panhellenic convention (Το οργανωμένο έγκλημα από τη σκοπιά του ποινικού δικαίου. Πρακτικά του Ζ' πανελληννίου συνεδρίου)'*, Dikaio & Oikonomia, P.N. Sakkoulas (Δίκαιο & Οικονομία, Π.Ν. Σάκκουλας), 2000, p.245, in Greek.

Guelke Adrian, '*Varieties of terrorisms*', in 'The new Age of Terrorism and the International Political System', I.B. Tauris, 2009, pp. 52-70.

Harding Christopher, '*Criminal Enterprise – Individuals, organizations and criminal responsibility*', Willan Publishing, 2007, p. 224-242.

Harding Christopher, '*Exploring the intersection of European Law and National Criminal Law*', European Law Review, 2000, 25(4), 374-390.

Hatzopoulos Vassilis, '*With or without you ... judging politically in the field of Area of Freedom, Security and Justice*', 2008, European Law Review, p. 1-16.

Hedemann – Robinson Martin, '*The EU and environmental crime: the impact of the ECJ's judgment on Framework Decision 2005/667 on ship-source pollution*', Journal of Environmental Law, 2008, p. 287.

Hellenic Ministry of the Interior, Public Administration and Decentralisation, Elections results, available online at: http://www.ypes.gr/ekloges, in Greek.

Hellenic Criminal Bar Association, Press Releases of 2004, available at: http://www.hcba.gr, in Greek.

Herlin-Karnell, Ester, '*Commission v. Council: Some Reflections on Criminal Law in the First Pillar*', European Public Law, vol. 13, 2007, p. 73.

Hoffman Bruce, '*Defining Terrorism*' in 'Inside Terrorism', revised and expanded edition, Columbia University Press, 2006, pp. 1-41.

House of Lords, 10th Report of Session 2007-08 – European Union Committee, '*The Treaty of Lisbon: an impact assessment*', p.114.

House of Lords, 30th Report of Session 2005-06, *'European Arrest Warrant – Recent Developments, Report with evidence'*,
available at: http://www.parliament.uk/lords/index.cfm

House of Lords 9th Report, European Communities Committee, on '*Prosecuting fraud on the Communities' finances – The Corpus Juris*', of 26 May 1999, Session 1998-99.

Horng, '*The Principle of Mutual Recognition – The European Union's Practice and Development'*, (1999), World Competition, Kluwer Law International, p. 135.

IJzerman A., '*From the CATS portfolio: The European Evidence Warrant'*, (2005), European Evidence Warrant – Transnational Judicial Inquiries in the EU, J.A.E. Vervaele (ed.), Intersentia.

Jacobs Francis, '*The Role of the European Court of Justice in the protection of the Environment',* Journal of Environmental Law, vol. 18, 2006, p. 204.

Jimeno-Bulnes Mar, '*After September 11th: the Fight Against Terrorism in National and European Law. Substantive and Procedural Rules: Some Examples'*, European Law Journal, Vol. 10, No. 2, March 2004, pp. 235–253.

Kaiafa-Gbandi (Καΐάφα-Γκμπάντι), *'The prevention of terrorism and the criminal law of pre-preemptive suppression: New criminal acts for the encounter of terrorism in E.U. (Η πρόληψη της τρομοκρατίας και το ποινικό δίκαιο της προ-προληπτικής καταστολής: Νέες αξιόποινες πράξεις για την καταπολέμηση της τρομοκρατίας στην Ε.Ε.)'*, Poinika Chronika (Ποινικά Χρονικά), 2009, p.385-400, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'Penalization of money laundering: Basic characteristics of statute 3691/2008 and the limits of the rule of law (Ποινικοποίηση της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες: Βασικά χαρακτηριστικά του ν.3691/2008 και δικαιοκρατικά όρια)'*, Poinika Chronika (Ποινικά Χρονικά), 2008, p.918, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'The criminal confrontation of money laundering: Among international, European, and national legislation (Η ποινική αντιμετώπιση του ξεπλύματος βρώμικου χρήματος: Μεταξύ διεθνούς, ευρωπαϊκής και εθνικής νομοθεσίας)',* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, pp.65, 97-98, in Greek.

Kaifa-Gbandi (Καϊάφα- Γκμπάντι), M, *'Newer developments in the EU Criminal law and democratic deficits (Νεότερες εξελίξεις του ποινικού δικαίου στην Ε.Ε και δικαιοκρατικά ελλείμματα)*', 2006, Poinika Chronika (Ποινικά Χρονικά), p. 582, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'Towards a new delimitation of the punishability of organized crime in E.U. – Its implications for our national legal order (Προς μια νέα οριοθέτηση του αξιοποίνου του οργανωμένου εγκλήματος στην Ε.Ε. – Η σημασία της για την εθνική μας έννομη τάξη)'*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, p.1438, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'The delimitation of the punishability of terrorism and the challenges for a criminal law under rule of law (Η οριοθέτηση του αξιοποίνου της τρομοκρατίας και οι προκλήσεις για ένα δικαιοκρατούμενο ποινικό δίκαιο)'*, Poinika Chronika (Ποινικά Χρονικά), 2005, p.874, in Greek.

Kaifa-Gbandi (Καϊάφα- Γκμπάντι), M, *'The law on the EAW and terrorism and the statements of faith in the Constitution (Ο νόμος για το Ευρωπαϊκό Ένταλμα Σύλληψης και την τρομοκρατία και οι δηλώσεις πίστης στο Σύνταγμα)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2004, p.836, in Greek.

Kaifa-Gbandi (Καϊάφα- Γκμπάντι), *'The EAW: The provisions of the Law. 3251/2004 and the transition from the extradition to the surrender (Ευρωπαϊκό Ένταλμα Σύλληψης: Οι ρυθμίσεις του Ν. 3251/2004 και η μετάβαση από την έκδοση στην παράδοση)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2004, p.1296, in Greek.

Kaifa-Gbandi (Καϊάφα- Γκμπάντι), *'Searching for the EC jurisdiction on the criminal suppression- A crucial bend of the evolution of the criminal law in the framework of the EU (Αναζητώντας κοινοτική αρμοδιότητα για την ποινική καταστολή – Μια κρίσιμη καμπή των εξελίξεων για το ποινικό δίκαιο στα πλαίσια της Ευρωπαϊκής Ένωσης)*', 2004, ΕΕΕυρΔ, p. 63, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'The notion of organised crime in E.U. – The criminal law between the citizens' security and freedom (Η έννοια του οργανωμένου εγκλήματος στην Ε.Ε. – Το ποινικό δίκαιο μεταξύ ασφάλειας και ελευθερίας των πολιτών)'*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2003, pp.538-552, in Greek.

Kaiafa-Gbandi (Καϊάφα-Γκμπάντι), *'Interposition in the presentations of Mr. N. Livos and Mr. Al. Kostaras (Παρέμβαση στις εισηγήσεις των κκ. Ν. Λίβου και Αλ. Κωστάρα)'* in Greek Society of Criminal Law (Ελληνική Εταιρεία Ποινικού Δικαίου), *Organised crime under the criminal law viewpoint. Proceedings of the VII Panhellenic convention (Το οργανωμένο έγκλημα από τη σκοπιά του ποινικού δικαίου. Πρακτικά του Ζ' πανελληνίου συνεδρίου)*, Dikaio & Oikonomia, P.N. Sakkoulas (Δίκαιο & Οικονομία, Π.Ν. Σάκκουλας), 2000, p.196, in Greek.

Kairer Gunther and Albrecht Hans-Jorg, '*Crime and Criminal Policy in Europe*', Freiburg, 1990.

Kalfelis Grigoris (Καλφέλης Γρηγόρης), *'Extradition of Greek nationals (Έκδοση Ελλήνων Πολιτών)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2007, p. 1191, in Greek.

Kalfelis Grigorios (Καλφέλης Γρηγόριος), *'The EAW - One-dimensional consolidation of the European suppressive mechanisms? (Το Ευρωπαϊκό Ένταλμα Σύλληψης – Μονοδιάστατη ενοποίηση των ευρωπαϊκών κατασταλτικών μηχανισμών;)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2006, p.199, in Greek.

Kamperou-Ntalta (Καμπερου-Νταλτα), '*Statute 3691/2008 on money laundering. Interpretative approach of the statute and international criminal framework (Ο ν. 3691/2008 για το ξέπλυμα βρώμικου χρήματος. Ερμηνευτική προσέγγιση του νόμου & διεθνές ποινικό πλαίσιο)'*, Dikaio & Oikonomia, P.N. Sakkoulas (Δίκαιο & Οικονομία, Π.Ν. Σάκκουλας), 2009, pp.60-64, in Greek.

Kamperou-Ntalta Eleni (Καμπέρου-Ντάλτα Ελένη), *'Crimes committed by Greek nationals to a foreign State (Εγκλήματα Ελλήνων Πολιτών στην Αλλοδαπή)*', Poinika Chronika (Ποινικά Χρονικά), 2005, p.313, in Greek.

Kathimerini newspaper (Καθημερινή), *'Opening for the terror-law (Και πρεμιέρα στον τρομονόμο)'*, article of 3/8/2001 by Eva Karamanoli (Εύα Καραμανώλη), available online at: www.kathimerini.gr, in Greek.

Katsios (Κάτσιος), *'Mundus vult decipi'. The course of Directive 91/308/EEC on money laundering and the non-application of statute 2331/1995' (Mundue vult decipi. Η πορεία της Οδηγίας 91/308/ΕΟΚ για την καταπολέμηση της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες και η μη εφαρμογή του ν.2331/1995)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2000, p.397, in Greek.

Keijzer Niko, '*The European Arrest Warrant Framework Decision between Past and Future*', in E. Guild (ed.), Constitutional Challenges to the European Arrest Warrant, 2006, Wolf Legal Publishes, p. 13-73.

Keijzer Nico, '*The European Arrest Warrant and Human Rights*', in Current Issues in European Criminal Law and the Protection of EU Financial Interests, Austrian Association of European Criminal Law, 2006, p. 141.

Kioupis Dimitrios (Κιούπης Δημήτριος) *'The Law 3251/2004- A brief presentation of its basic points (Ο Ν. 3251/2004 – Μια σύντομη παρουσίαση των βασικών του σημείων)'*, Poinikos Logos (Ποινικός Λόγος), 2004, p. 974, in Greek.

Kiritsis (Κυρίτσης), *'Terrorism and political crime: proposals for a classification (Τρομοκρατία και πολιτικό έγκλημα: Προτάσεις για μια ταξινόμηση)'*, Poinika Chronika (Ποινικά Χρονικά), 2005, pp.490-499, in Greek.
Krieken van J., Peter, '*Terrorism and the International Legal Order*', T.M.C. Asser Press, 2002, pp. 395-424.

Kritharas (Κριθαράς), *'Conceptualization of organized crime (Εννοιολόγηση του οργανωμένου εγκλήματος)'*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2005, p.899, in Greek.

Leczykiewicz Dorota, *'Constitutional Conflicts and the Third Pillar'*, European Law Review, (2008), 33, p. 230-242.

Leong Veng Mei, Angela, '*The Disruption of International Organized Crime – An Analysis of Legal and Non-Legal Strategies*', Ashgate, 2007, p. 17.

Levi Michael, '*Reflections on organized crime: Patterns and Control*', The Howard Journal of Criminal Justice, Vol. 37, 1998, p. 337.

Ligeti Katalin & M. Nyitrai Péter, National Report of Hungary, in ECLAN study.
Ludlow Peter, '*The 1998 UK Presidency: A view from Brussels',* Journal of Common Market Studies, (1998), Vol. 36, p.p.573-583.

Livos (Λίβος), *'Money laundering' and its tracing' ('Το 'ξέπλυμα βρώμικου χρήματος' και η εξιχνίασή του'),* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, p.377, in Greek.

Livos (Λίβος), '*Organised Crime and Special Investigative Techniques. Vol.1: Doctrine of Organised Crime. Issue A: The criminological-doctrinal phenotype of organised crime (Οργανωμένο Έγκλημα και Ειδικές Ανακριτικές Πράξεις. Τόμος Ι: Δογματική του Οργανωμένου Εγκλήματος. Τεύχος Α: Ο εγκληματολογικό-δογματικός φαινότυπος του οργανωμένου εγκλήματος)',* Dikaio & Oikonomia, P.N. Sakkoulas (Δίκαιο & Οικονομία, Π.Ν. Σάκκουλας), 2007, pp.55-64, in Greek.

Livos (Λίβος), *'Much ado about nothing? The investigatory powers of the National Authority for the Confrontation of Money Laundering (Πολύ κακό για το τίποτα; Οι ανακριτικές αρμοδιότητες της Εθνικής Αρχής Καταπολέμησης της Νομιμοποίησης Εσόδων από Εγκληματικές Δραστηριότητες)',* Poinika Chronika (Ποινικά Χρονικά), 2006, pp.381-382, in Greek.

Livos (Λίβος), *'The security problem and security as a problem: The example of Criminal Law (Το πρόβλημα της ασφάλειας και η ασφάλεια ως πρόβλημα: Το παράδειγμα του Ποινικού Δικαίου)',* in *Honorary Volume for Ioannis Manoledakis I:*

Democracy, freedom, security (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη I: Δημοκρατία, ελευθερία, ασφάλεια)" Sakkoulas (Σάκκουλας) 2004, p.200.

Livos (Λίβος), *'Organized crime: Meaning and procedural means for its encounter (Οργανωμένο έγκλημα: Έννοια και δικονομικοί τρόποι αντιμετώπισής του)',* in Greek Association of Criminal Law (Ελληνική Εταιρεία Ποινικού Δικαίου), *Organized crime from a criminal law aspect (Το οργανωμένο έγκλημα από τη σκοπιά του ποινικού δικαίου),* 2000, p.48, in Greek.

Manitaki A. (Μανιτάκη Α.), '*The assignment of competences to the EU and the reservation of sovereignty according to art. 28 par. 2 and 3 of the Constitution (Εκχώρηση αρμοδιοτήτων στην Ευρωπαϊκή Ένωση και η επιφύλαξη κυριαρχίας κατά το άρθρο 28 παρ. 2 και 3 Συντ.)*', ΕΕΕυρΔ., 2003, p.755. (in Greek).

Manoledakis (Μανωλεδάκης), *'State security or freedom? (Ασφάλεια κράτους ή ελευθερία;)',* in Manitakis, Takis (eds.) [Μανιτάκης, Τάκης (επιμ.)], *Terrorism and rights: from state security to law insecurity (Τρομοκρατία και δικαιώματα: από την ασφάλεια του κράτους στην ανασφάλεια δικαίου),* Savvalas (Σαββάλος), 2005, pp.29-30, in Greek.

Manoledakis (Μανωλεδάκης), '*Security and Freedom (nterpretation of Statute 2928/2001 on organised crime and relevant texts) [Ασφάλεια και Ελευθερία (Ερμηνεία του ν.2928/2001 και σχετικά κείμενα)]',* Sakkoulas (Σάκκουλας), 2002, p.106, in Greek.

Manoledakis Ioannis (Μανωλεδάκης Ιωάννης), Kaifa-Gkmpanti Maria (Καϊάφα-Γκμπάντι Μαρία, *'Comments on the Commission's Proposal regarding the adoption of a Framework Decision related to the EAW (Παρατηρήσεις στην πρόταση της Επιτροπής για έκδοση απόφασης πλαισίου από το Συμβούλιο σχετικά με το Ευρωπαϊκό Ένταλμα Σύλληψης)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), p.1108, in Greek.

Margaritis (Μαργαρίτης), *'17 November Trial: The objections were overruled, but the standards of our legal culture have been downgraded (Δίκη 17Ν: Οι ενστάσεις απορρίφθηκαν, αλλά το επίπεδο του νομικού μας πολιτισμού υποβαθμίστηκε)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2003, p.302, in Greek.

Marotta Emanuel, '*Europol's Role in Anti-Terrorism Policing*', in 'The Future of Terrorism', ed. Max Taylor and John Horgan, Routledge, 2000, p.15.

Matsi Aliki and Galanopoulos Antonis, article of 23/06/2004, at Eleytherotypia Newspapaper (Ελευθεροτυπία), available online at: http://www.enet.gr/online, in Greek.

Maurias Kostas (Μαυριάς Κώστας) *'Constitutional Law (Συνταγματικό Δίκαιο)*', Sakkoulas (Σάκκουλας), 2004, in Greek.

McClean David, '*Transnational Organized Crime – A commentary on the UN Convention and its Protocols*', Oxford University Press, 2007.

Millington Trevor and Sutherland M., '*The Proceeds of Crime*', second edition, OUP, pp. 571-601.

Milonopoulos Christos (Μυλωνόπουλος Χρήστος), *'The abolition of the double criminality as an abuse of right and the case law of the ECJ on the EAW (Η κατάργηση του διπλού αξιοποίνου ως κατάχρηση δικαιώματος και η νομολογία του ΔΕΚ για το Ευρωπαϊκό Ένταλμα Σύλληψης)*', Poinikos Logos (Ποινικός Λόγος), 2007, p. 1, in Greek.

Milonopoulos Christos (Μυλωνόπουλος Χρήστος), '*Criminal Law – General Part*' (Ποινικό Δίκαιο – Γενικό Μέρος), Sakkoulas (Σάκκουλας), 2007, pp. 14-15 and 66-69, in Greek.

Milonopoulos Christos (Μυλωνόπουλος Χρήστος), *'Report on the Bill of the EAW (Έκθεση στο σχέδιο νόμου 'Ευρωπαϊκό Ένταλμα Σύλληψης)*', Poinika Chronika, (Ποινικά Χρονικά), 2004, p.1048, in Greek.

Milonopoulos Christos (Μυλωνόπουλος Χρήστος), *'Extradition of nationals and the execution of the EAW against nationals (Έκδοση ημεδαπού και εκτέλεση ευρωπαϊκού εντάλματος σύλληψης κατά ημεδαπού)*', Poinikos Logos (Ποινικός Λόγος), 2005, p. 751, in Greek.

Milonopoulos (Μυλωνόπουλος), '*Statute 2928/2001 for the citizen's protection from crimes of criminal organizations (Ο ν. 2928/2001 για την προστασία του πολίτη από αξιόποινες πράξεις εγκληματικών οργανώσεων)'*, Poinikos Logos (Ποινικός Λόγος), 2001, p.794, in Greek.

Mitsilegas Valsamis., '*The Impact of the European Union on the Greek Criminal Justice System'*, in L. Cheliotis and S. Xenakis (Eds), 'Crime and punishment in contemporary Greece', Peter Lang Publishers, Forthcoming.

Mitsilegas Valsamis, '*EU Criminal Law*', Modern Studies in European Law, Hart Publishing, 2009.

Mitsilegas Valsamis, '*The third wave of third pillar law. Which direction for EU criminal justice?*', European Law Review, 2009, p. 525-526.

Mitsilegas Valsamis, Gilmore Bill, '*The EU Legislative Framework Against Money Laundering and Terrorist Finance: A Critical Analysis In The Light Of Evolving Global Standards*', International and Comparative Law Quarterly, 2007, p. 125-127.

Mitsilegas Valsamis, '*The External Dimension of EU Action in Criminal Matters'*, European Foreign Affairs Review, Vol. 12, (2007) p. 459 - 465.

Mitsilegas Valsamis, '*Trust-Building Measures in the European Judicial Area in Criminal Matters: Issues of Competence, Legitimacy and Inter-institutional Balance*' in S. Carrera and T. Balzacq, Security versus Freedom? A Challenge for Europe's Future (Ashgate, Aldershot, 2006), pp. 280

Mitsilegas Valsamis, '*The Constitutional Implications of Mutual Recognition in Criminal Matters in the EU'*, Common Market Law Review, vol. 43, 2006.

Mitsilegas, V., '*Constitutional Principles of the European Community and European Criminal law*', European Journal of Law Reform, vol. 8, 2006, p. 302.

Mitsilegas Valsamis, '*Money Laundering Counter-Measures in the European Union – A New Paradigm of Security Governance versus Fundamental Legal Principles'*, Kluwer Law International, 2003.

Mitsilegas Valsamis, Monar Jörg and Rees Wyn, '*The European Union and Internal Security – One Europe or several?*', Palgrave Macmillan, 2003, p. 97.

Mitsilegas Valsamis, '*From National to Global, From Empirical to Legal: The Ambivalent Concept of Transnational Organized Crime*', in 'Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption, ed. Margaret E. Beare, University of Toronto Press, 2003, pp. 55-87.

Mitsilegas V., Monar J and Rees W., '*The European Union and Internal Security*', Basingstoke, Palgrave Macmillan, 2003, pp 19-22.

Mitsilegas Valsamis, '*Defining organized crime in the European Union: the limits of European criminal law in an area of freedom, security and justice'*, European Law Review, 2001, p.568.

Monar Jorg, '*Anti-terrorism law and policy: the case of the European Union*', in Global anti-terrorism law and Policy, Cambridge University Press, 2005, pp. 425-452.

Monar Jorg, '*Justice and home affairs in the Treaty of Amsterdam: reform at the price of fragmentation*', European Law Review, 1998, vol. 23, pp. 320-335.

Monar, J., '*European Union – Justice and Home Affairs; a Balance Sheet and an Agenda for Reform*', in G. Edwards and A. Pijpers (Eds), The Politics of European

Treaty Reform: The 1996 Intergovernmental Conference and Beyond, 1997, pp.326-339.

Morgan Caroline, *'The European Arrest Warrant and the Defendants' Rights: An Overview'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p.195.

Mouzakis Dionisios (Μουζάκης Διονύσιος), *'The criminal jurisdiction of the EC (Επί της ποινικής αρμοδιότητας των Ευρωπαϊκών Κοινοτήτων)*', Poinika Xronika (Ποινικά Χρονικά), 2004, p.485, in Greek.

Mpekas Giannis (Μπέκας Γιάννης), *'Political choices and the Law - The Extradition - surrender of the requested and the EAW (Πολιτικές επιλογές και Δίκαιο – Η έκδοση-προσαγωγή-παράδοση εκζητούμενου και το Ευρωπαϊκό Ένταλμα Σύλληψης)*', Poinikos Logos (Ποινικός Λόγος), 2007, p. 549, in Greek.

Muller-Graff, P.C., '*The Legal bases of the Third Pillar and its Position in the framework of the Union Treaty*', Common Market Law Review, vol.31, 1994, p.509.

Nikoloudis (Νικολούδης), *'Money laundering' (article 2 of statute 2331/1995 – on the occasion of the recent case law) [Η 'Νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες' (Άρθρο 2 ν.2331/1995 – Με αφορμή την πρόσφατη νομολογία)]'*, Poinika Chronika (Ποινικά Χρονικά), 2000, pp.771-772, in Greek.

Nilsson, '*Mutual Trust or Mutual Mistrust?, Mutual Trust in the European Criminal Area'*, Editions De L' Universite De Bruxelles, 2005, pp.29-33.

Nußberger Angelika, '*Poland: The Constitutional Tribunal on the implementation of the European Arrest Warrant'*, International Journal of Constitutional Law, 1 January 2008.

Nuotio Kimmo, '*Terrorism as a catalyst for the emergence, harmonization and reform of criminal law*', Journal of International Criminal Justice**,** 2006, pp. 998-1016.

Nyamuya Maogoto Jackson, '*Battling Terrorism – Legal Perspectives on the Use of Force and the War on Terror*', Ashgate, 2005, pp.1-40.

O'Keeffe, D., '*Recasting the Third Pillar*', Common Market Law Review, 1995, Vol.32, pp. 893-920.

Papacharalampous (Παπαχαραλάμπους), *'Socially neutral activities and money laundering (Κοινωνικά ουδέτερες πράξεις και ξέπλυμα βρώμικου χρήματος)',* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money*

Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;), Sakkoulas (Σάκκουλας), 2007, pp.214-215, in Greek.

Papacharalampous Chari (Παπαχαραλάμπους Χάρη), *'The criminal law of the enemy: EAW, terrorism, and extraordinary antiterrorism legislation in the U.S.A (Το ποινικό δίκαιο του εχθρού: Ευρωπαϊκό Ένταλμα Σύλληψης, τρομοκρατία και έκτακτη αντιτρομοκρατική νομοθεσία στις Η.Π.Α)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2002, p.190, in Greek.

Papacharalampous (Παπαχαραλάμπους), *'The Bill of the Ministry of Justice on Organised Crime: 'aberratio ictus' with inestimable 'collateral damage' (Το Σχέδιο του Υπουργείου Δικαιοσύνης για το Οργανωμένο Έγκλημα: 'aberrato ictus' με ανυπολόγιστες 'παράπλευρες ζημιές»)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2001, pp.285-286, in Greek.

Papadamakis (Παπαδαμάκης), '*Undercover operations and lifting of confidentiality as investigative techniques against organised crime' (Ανακριτική διείσδυση και άρση του απορρήτου ως ανακριτικές πράξεις κατά του οργανωμένου εγκλήματος)',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη ΙΙ: Μελέτες ποινικού δικαίου, εγκληματολογίας και ιστορίας του εγκλήματος),* Sakkoulas (Σάκκουλας), p.954, in Greek.

Papakyriakou (Παπακυριάκου), *'The criminal legislation on the suppression of money laundering as a fundamental axis of a new model of criminal policy (Η ποινική νομοθεσία για την καταστολή της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες ως θεμελιώδης άξονας ενός νέου μοντέλου αντεγκληματικής πολιτικής)',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη ΙΙ: Μελέτες ποινικού δικαίου, εγκληματολογίας και ιστορίας του εγκλήματος),* Sakkoulas (Σάκκουλας), 2007, p.526, in Greek.

Pararas P. (Παραράς Π.), *'The Constitution and the EAW (Το Σύνταγμα και το Ευρωπαϊκό Ένταλμα Σύλληψης)*', 13/01/2002, Newspaper 'The Bima' (Το Βήμα), Available online at: http://tovima.dolnet.gr, in Greek.

Parga Hinarejos Alicia, '*Bundesverfassungsgericht (German Constitutional Court), Decision of 18 July 2005 (2 BvR 2236/04) on the German European Arrest Warrant Law'*, Common Market Law Review, (2006), Vol. 43, p.p. 583–595.

Pavlou (Παύλου), *'Statute 3691/2008 on prevention and suppression of money laundering and financing of terrorism. The finalization of a historical doctrinal deviation and the consolidation of suppressive arbitrariness (Ο ν. 3691/2008 για την πρόληψη και την καταστολή της νομιμοποιήσεως εσόδων από εγκληματικές δραστηριότητες και της χρηματοδοτήσεως της τρομοκρατίας. Η οριστικοποίηση μιας*

διαχρονικής δογματικής εκτροπής και η εμπέδωση της κατασταλτικής αυθαιρεσίας)', Poinika Chronika (Ποινικά Χρονικά), 2008, p.932, in Greek.

Pavlou (Παύλου), '*(Previous) 'criminal activity': tautology or evolution? Another contribution to the doctrinal understanding of statute 2331/1995 (on money laundering) in the light of recent regulations of statutes 3424/2005 and 3472/2006 [(Προηγούμενη) 'εγκληματική δραστηριότητα': ταυτολογία ή μετεξέλιξη; Μία ακόμη συμβολή στη δογματική κατανόηση του ν.2331/1995 (για τη νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες) υπό το πρίσμα των πρόσφατων ρυθμίσεων των ν.3424/2005 και 3472/2006)',* in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, p.135, in Greek.

Pavlou (Παύλου), *'Money laundering. From statute 2331/1995 to statute 3424/2005: the evolution and expansion of a doctrinal and penal deviation (Νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες. Από τον Ν.2331/1995 στον Ν.3424/2005: η εξέλιξη και γιγάντωση μίας δογματικής και κυρωτικής εκτροπής)',* Poinika Chronika, (Ποινικά Χρονικά), 2006, p.347, in Greek.

Pavlou (Παύλου), *'Criminal Law and the 'Framework Decisions' of E.U. Another (dangerous) point of entrance of the European criminal law in the Greek one [Το Ποινικό Δίκαιο και οι 'Αποφάσεις-Πλαίσιο' της Ε.Ε. Μία ακόμη (επικίνδυνη) πύλη εισόδου του ευρωπαϊκού ποινικού δικαίου στο ελληνικό]'*, Poinika Chronika (Ποινικά Χρονικά), 2004, p.977, in Greek.

Pavlou (Παύλου), *'Persecutory deviations in the application of statute 2331/1995 on money laundering and the required rationalization of its application (Διωκτικές εκτροπές στην εφαρμογή του ν.2331/1995 για το ξέπλυμα βρώμικου χρήματος και ο απαιτούμενος εξορθολογισμός της εφαρμογής του)'*, Poinika Chronika (Ποινικά Χρονικά), 2003, p.199, in Greek.

Pavlou (Παύλου), *'Transboundary crime and the gradual adaptation of Greek criminal legislation towards its more effective confrontation (Το διασυνοριακό έγκλημα και η σταδιακή προσαρμογή της ελληνικής ποινικής νομοθεσίας για την αποτελεσματικότερη αντιμετώπισή του)',* Poinika Chronika (Ποινικά Χρονικά), 2002, p.780.

Pavlou (Παύλου), *'Money laundering' (article 2 of statute 2331/1995), especially its delimitation from 'receiving and handling products of crime' (article 394 of the Criminal Code) [Η 'Νομιμοποίηση εσόδων από εγκληματικές ενέργειες' (Άρθρο 2 ν.2331/1995) και ιδίως η οριοθέτησή της από την 'αποδοχή και διάθεση προϊόντων εγκλήματος' (άρθρο 392 ΠΚ)]'*, Yperaspisi (Υπεράσπιση), 2000, p.644, in Greek.

Peers Steve, '*EU Criminal Law and the Treaty of Lisbon*', 2008, European Law Review, pp.507-529.

Peers Steve, '*The European Community's Criminal Law Competence: The Plot Thickens*', European Law Review, vol. 33, 2008, p.410.

Peers Steve, '*Salvation outside the Church: Judicial Protection in the Third Pillar after the Pupino and Segi Judgments'*, Common Market Law Review, (2007), 44, p.883-929.

Peers, S., '*EU Justice and Home Affairs Law*', second edition, Oxford University Press, 2006, pp. 382-387.

Peers Steve, '*Mutual Recognition and Criminal Law in the European Union: Has the Council got it wrong?'*, Common Market Law Review, (2004).

Peers Steve '*Statewatch briefing on the European Evidence Warrant to the European Parliament'*, Statewatch, 15 March 2004.

Peers Steve, '*Statewatch analyses No. 3, Proposed Framework Decision on European arrest warrants'*. Available at: www.statewatch.org/news/2001/oct/ewarrant.pdf.

Peers Steve, '*EU Responses to Terrorism'*, International and Comparative Law Quarterly, 2003, p.228.

Petropoulos (Πετρόπουλος), *'Issues of intent in the crime of money laundering (article 2 para.5 of statute 3691/2008) [Ζητήματα υποκειμενικής υποστάσεως του εγκλήματος της νομιμοποίησης εσόδων από εγκληματικές δραστηριότητες (άρθρο 2 παρ.5 του ν.3691/2008)]'*, Poinika Chronika (Ποινικά Χρονικά), 2008, p.958, in Greek.

Ping He, '*The new weapon for combating money laundering in the EU*', Journal of Money Laundering Control, 2004, pp.115-121.

Pitto Emmanuel, '*Mutual Trust and Enlargement'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p. 47

Plachta M and W van Ballegooij, '*The Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States of the European Union*', in Blextoon, Handbook on the European Arrest Warrant, TMC Asser Press, 2005, p.32-26.

Pollatou (Πολλάτου), *'DNA analysis and new horizons in crime investigation (Ανάλυση του DNA και νέοι ορίζοντες στη διερεύνηση του εγκλήματος)*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2001, p.1179-1183, in Greek.

Pontier Jannet A. and Burg Edwige, '*EU Principles on Jurisdiction and Recognition and Enforcement of Judgements in civil and Commercial Matters*', TMC Asser Press, 2004, p. 27-44.

Ramraj Victor, Michael Hor and Kent Roach, '*Global anti-terrorism law and policy*', Cambridge University Press, 2005, pp. 1-12.

Reinisch August, '*The Action of the European Union to Combat International Terrorism*', in 'Enforcing International Law Norms against Terrorism', ed. Andrea Bianchi, Hart, 2004, p.144-151.

Report on Bill 'Amendment, completion and replacement of provisions of statute 2331/1995 and adaptation of Greek legislation to Directive 2001/97/EC of the European Parliament and the Council on the prevention of the use of the financial system with the purpose of money laundering and other provisions' (Έκθεση επί του νομοσχεδίου 'Τροποποίηση, συμπλήρωση και αντικατάσταση διατάξεων του ν.2331/1995 και προσαρμογή της ελληνικής νομοθεσίας στην Οδηγία 2001/97/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου για την πρόληψη της χρησιμοποίησης του χρηματοπιστωτικού συστήματος με σκοπό τη νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες και άλλες διατάξεις)', Poinika Chronika (Ποινικά Χρονικά), 2006, p.340, in Greek.

Rigos (Ρήγος), *'Money laundering. A first approach to the provisions of articles 1-9 of statute 2331/1995 (Νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες. Μία πρώτη προσέγγιση των διατάξεων των αρ.1-9 ν.2331/1995)',* Elliniki Dikaiosyni (Ελληνική Δικαιοσύνη), 1996, p.366, in Greek.

Roberts Adam, '*Countering Terrorism: A Historical Perspective*', in 'Counterterrorism: Democracy's Challenge', edited by Andrea Bianchi and Alexis Keller, Hart, 2008.

Ryder Nicholas, '*The Financial Services Authority and money laundering: a game of cat and Mouse*', Cambridge Law Journal, 2008, pp. 640-642.

Samios Th., (Σάμιος Θ.), *'Investigative techniques for criminal organizations (Ανακριτικές πράξεις επί εγκληματικών οργανώσεων)',* Poinika Chronika (Ποινικά Χρονικά), 2001, p.1035, in Greek.

Sarmiento Daniel, '*European Union: The European Arrest Warrant and the quest for constitutional coherence'*, International Journal of Constitutional Law, 1 January 2008.

Saul Ben, '*The legal response of the League of Nations to terrorism*', Journal of International Criminal Justice, 2006, pp.78-102.

Saul Ben, '*Defining Terrorism in International Law*, Oxford University Press, 2006, pp.1-66.

Sever Sasa, '*The ne bis in idem principle in the case law of the European Court of Justice'*, in Current Issues in European Criminal Law and the protection of EU Financial Interests, Austrian Association of European Criminal Law, 2006, p. 147.

Simeonidis Dimitrios (Συμεωνίδης Δημήτριος), *'The EAW and the extradition of Greek citizens (ΕΕΣ και έκδοση Ελλήνων πολιτών)*', Timitikos Tomos Maloledaki (Τιμητικός Τόμος Μανωλεδάκη), p. 971, in Greek.

Simeonidis Dimitris and Paulou Stefanos (Συμεωνίδης Δημήτρης και Παύλου Στέφανος), *'EAW and extradition of Greek nationals*, Poinika Xronika (Ποινικά Χρονικά), 2006, p.196, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), '*Lawyers: Obligations of assistance n the confrontation of money laundering and the financing of terrorism and criminal liability (Δικηγόροι: Υποχρεώσεις συνδρομής στην αντιμετώπιση της νομιμοποίησης παράνομων εσόδων και χρηματοδότησης της τρομοκρατίας και ποινική ευθύνη)',* Poinika Chronika (Ποινικά Χρονικά), 2008, p.934, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'Legal professional privilege and money laundering (Δικηγορικό απόρρητο και νομιμοποίηση παράνομων εσόδων)',* in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη ΙΙ: Μελέτες ποινικού δικαίου, εγκληματολογίας και ιστορίας του εγκλήματος)*, Sakkoulas (Σάκκουλας), 2007, pp.660-661, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'The crime of money laundering after statute 3424/2005: interpretative remarks (Το έγκλημα της νομιμοποίησης παράνομων εσόδων μετά το ν.3424/2005: ερμηνευτικές παρατηρήσεις)'*, in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, pp.170-171, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'Towards a new definition of organized crime in European Union (Για ένα νέο ορσμό του οργανωμένου εγκλήματος στην Ευρωπαϊκή Ένωση)',* Poinika Chronika (Ποινικά Χρονικά), 2006, p.870, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'The terrorist crime: the provisions of statute 3251/2004 and their implications in the framework of our criminal law system (Το τρομοκρατικό έγκλημα: Οι ρυθμίσεις του ν. 3251/2004 και η*

σημασία τους στα πλαίσια του ποινικού μας συστήματος)', Nomiko Vima (Νομικό Βήμα), 2005, p.625, in Greek.

Simeonidou-Kastanidou Elisavet (Συμεωνίδου-Καστανίδου Ελισάβετ), *'Execution of the EAW of the German authorities against nationals (Εκτέλεση ευρωπαϊκού εντάλματος σύλληψης των γερμανικών αρχών σε βάρος ημεδαπού)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2005, p.1312, in Greek.

Simeonidou-Kastanidou Elisabeth, '*Defining Terrorism*', European Journal of Crime, Criminal Law and Criminal Justice, Vol.12/1, 2004, pp.14-35.

Simeonidou-Kastanidou Elisavet (Συμεωνίδου-Καστανίδου Ελισάβετ), *'The law on the EAW and the encounter of terrorism - the basic characteristics and a first interpretative approach (Ο νόμος για το Ευρωπαϊκό ένταλμα σύλληψης και την αντιμετώπιση της τρομοκρατίας- Βασικά χαρακτηριστικά και πρώτη ερμηνευτική προσέγγιση)*', Poiniki Dikaiosini, (Ποινική Δικαιοσύνη), 2004, p.776, in Greek.

Symeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'The crime of money laundering – Problems from the application of statute 2331/1995 up to now (Το έγκλημα της νομιμοποίησης εσόδων από παράνομες πράξεις – Προβλήματα από τη μέχρι σήμερα εφαρμογή του ν.2331/1995)'*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2002, pp.390-391, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'Statute 2928/2001 'for the citizen's protection from crimes of criminal organizations. Basic characteristics and a first interpretative approach (Ο ν.2928/2001 'για την προστασία του πολίτη από αξιόποινες πράξεις εγκληματικών οργανώσεων'. Βασικά χαρακτηριστικά και πρώτη ερμηνευτική προσέγγιση)'*, Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2001, p.694, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'The initiatives of the European Union for the confrontation of terrorism and of organized crime (Οι πρωτοβουλίες της Ευρωπαϊκής Ένωσης για την αντιμετώπιση της τρομοκρατίας και του οργανωμένου εγκλήματος)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2000, p.195, in Greek.

Simeonidou-Kastanidou (Συμεωνίδου-Καστανίδου), *'Money laundering (Η νομιμοποίηση εσόδων από εγκληματικές πράξεις)'*, in Bemmann & Spinellis (eds.) [Bemmann & Σπινέλλης (επιμ.)], *Criminal Law – Freedom – Rule of Law. Honorary Volume for G.A. Magkakis (Ποινικό Δίκαιο – Ελευθερία – Κράτος Δικαίου. Τιμητικός Τόμος για τον Γ.Α. Μαγκάκη)*, Sakkoulas (Σάκκουλας), 1999, p.389, in Greek.

Skandamis Nikos (Σκανδάμης Νίκος), *'European Law (Ευρωπαϊκό Δίκαιο)*', Sakkoulas (Σάκκουλας), 2003, p. 144, in Greek.

Smith K.E., '*The Evolution and Application of EU Membership Conditionality*' in M. Cremona (ed.), *The Enlargement of the European Union* (OUP, Oxford, 2003), pp. 105–140.

Spencer, J.R., '*The Corpus Juris Project –Has it a future?*', Cambridge Yearbook of European Legal Studies, vol. 2, 1999, pp.355-367.

Spencer, J.R., '*The Corpus Juris Project and the Fight against Budgetary Fraud*', Cambridge Yearbook of European Legal Studies, vol. 1, 1998, pp.77-106.

Spinelis D. (Σπινέλλης Δ.), *'The EAW and the replacement of the extradition procedure (Το Ευρωπαϊκό Ένταλμα Σύλληψης και η αντικατάσταση της διαδικασίας της έκδοσης),* in the honor of A. Giotopoulou-Maragkopoulou (Τιμητικός Τόμος Α. Γιωτοπούλου-Μαραγκοπούλου), Nomiki Bibliothiki (Νομική Βιβλιοθήκη), 2003, p.1273, in Greek.

Spinellis Dionisios (Σπινέλλης Διονύσιος), *'Past and future of the extradition in Europe (Παρελθόν και μέλλον της έκδοσης στην Ευρώπη)',* Poinika Chronika (Ποινικά Χρονικά), 2001, p. 681, in Greek.

Spyrakos (Σπυράκος), *'The correlation and combination of personal data for the suppression of organized crime (Η συσχέτιση και ο συνδυασμός προσωπικών δεδομένων για την καταστολή του οργανωμένου εγκλήματος)',* Poinika Chronika (Ποινικά Χρονικά), 2001, p.1031, in Greek.

Stathopoulos (Σταθόπουλος), *'Political crime and the organization '17 Noemvri'. Some more general thoughts on freedom and its limits (Πολιτικό έγκλημα και η οργάνωση '17 Νοέμβρη'. Και μερικές γενικότερες σκέψεις για τις ελευθερίες και τα όριά τους)',* Elliniki Dikaiosyni (Ελληνική Δικαιοσύνη), 2003, pp.896-897, in Greek.

Stein Sibyl, '*Combating Crime in the European Union: The Development of EU policy after the Convention*', European Journal of Crime, Criminal Law and Criminal Justice, Vol. 12/4, p.337-347.

Stessens Guy, '*The Principle of Mutual Confidence between Judicial Authorities in the Area of Freedom, Justice and Security'*, L'espace penal europeen: enjeux et perspectives, Editions De L' Universite De Bruxelles, 2002, p.102.

Stessens Guy, '*Money Laundering – A new International Law enforcement Model*', Cambridge University Press, 2000, p.159.

Stefanou A Elias. and Kapardis Andreas, *'The First Two Years of Fiddling around with the Implementation of the European Arrest Warrant in Cyprus'*, in Elspeth Guild, Constitutional challenges to the European Arrest Warrant, 2006, p. 75-83.

Storskrubb Eva, '*Civil Procedure and EU Law – A Policy Area Uncovered*', Oxford University Press, 2008, p. 277.

The Law Society, '*Guide to Lisbon Treaty – European Union insight',* January 2008, available online.

The mutual recognition of criminal judgments in the EU: will the free movement of prosecutions create barriers to genuine criminal justice?',
Available at: www.statewatch.org/news/jun00/05mutual.htm.

Tobler, C., '*Case-Note*', Common Market Law Review, vol.43, 2006, p.841.

Tsadiras Alexandros, '*National Courts - Cyprus Supreme Court (Ανώτατο Δικαστήριο Κύπρου), Judgment of 7 November 2005 (Civil Appeal no. 294/2005) on the Cypriot European Arrest Warrant Law'*, Common Market Law Review, 2007, pp. 1515-1518.

Tsiridis (Τσιρίδης), '*The new statute on money laundering (statute 3691/2008) [Ο νέος νόμος για το ξέπλυμα χρήματος (ν.3691/2008)]'*, Nomiki Vivliothiki (Νομική Βιβλιοθήκη), 2009, pp.47-54, in Greek.

Tsiridis (Τσιρίδης), *'Remarks and propositions on the bill concerning the implementation in our legislation of the third Council Directive (2005/60/EC) on money laundering and the Directive 2006/70/EC (Παρατηρήσεις και προτάσεις επί του σχεδίου νόμου για την ενσωμάτωση στη νομοθεσία μας της τρίτης κοινοτικής Οδηγίας (2005/60/ΕΚ) για τη νομιμοποίηση εσόδων από εγκληματικές δραστηριότητες και της Οδηγίας 2006/70/ΕΚ)',* Poiniki Dikaiosyni (Ποινική Δικαιοσύνη), 2008, p.625, in Greek.

Tsiridis (Τσιρίδης), *'Money laundering and the vocation of the attorney (obligations and responsibilities) [Το ξέπλυμα βρώμικου χρήματος και το λειτούργημα του συνηγόρου (υποχρεώσεις και ευθύνες)]',* in Greek Criminal Attorneys Association (Ενωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, pp.354-355, in Greek.

Tsolka Olga (Τσόλκα Όλγα), *'EAW: an ambitious tool for the promotion of the judicial cooperation in the framework of the EU (Ευρωπαϊκό Ένταλμα Σύλληψης: Ένα φιλόδοξο μέσο για την προώθηση της δικαστικής συνεργασίας στο πλαίσιο της Ευρωπαϊκής Ένωσης)*', Nomiko Bima (Νομικό Βήμα), 2002, p. 103, in Greek.

Tzannetis (Τζαννετής), *'The confiscation of laundered products of criminal activity (Η δήμευση των νομιμοποιούμενων προϊόντων της εγκληματικής δραστηριότητας)',* in Greek Criminal Attorneys Association (Ενωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, pp.251-253, in Greek.

Tzannetis (Τζαννετής), *'The meaning of criminal organization under the new article 187 of the Criminal Code (Η έννοια της εγκληματικής οργάνωσης κατά το νέα άρθρο 187 ΠΚ)',* Poinika Chronika (Ποινικά Χρονικά), 2001, p.1016, in Greek.

Vassilakopoulos (Βασιλακόπουλος), *'On money laundering: Logical-systematic interpretation and entropy of statute 2331/1995 (Τινά περί ξεπλύματος. Λογική-συστηματική ερμηνεία και εντροπία του ν.2331/1995')*, in Greek Criminal Attorneys Association (Ένωση Ελλήνων Ποινικολόγων), *Money Laundering. 'Clean' or free society? (Ξέπλυμα βρώμικου χρήματος. 'Καθαρή' ή ελεύθερη κοινωνία;)*, Sakkoulas (Σάκκουλας), 2007, pp.230-231, in Greek.

Vassilakopoulos (Βασιλακόπουλος), *'Money laundering. Critical remarks on the criminal provisions of statute 2331/1995 (Ξέπλυμα βρώμικου χρήματος. Κριτικές παρατηρήσεις στις ποινικές διατάξεις του Νόμου 2331/1995)',* Poinika Chronika (Ποινικά Χρονικά), 1996, pp.1361-1362, in Greek.

Vathiotis Konstantintos (Βαθιώτης Κωνσταντίνος), '*Issues of Criminal Law*' (Στοιχεία Ποινικού Δικαίου), Nomiki Vivliothiki (Νομική Βιβλιοθήκη), 2007, pp. 01-10, 107, 116, in Greek.

Vathiotis (Βαθιώτης), *'Witness protection under article 9 of statute 2928/2001 (Η προστασία μαρτύρων κατά το άρθρο 9 του ν.2928/2001)'*, Poinika Chronika (Ποινικά Χρονικά), 2001, p.1053, in Greek.

Vennemann Nikola, '*Country Report on the European Union*', in 'Terrorism as a challenge for National and International law: Security versus Liberty?', Springer, 2004, pp.217-238.

Vervaele A.E, John, '*Mutual trust and Mercosur integration in South America'*, Mutual Trust in the European Criminal Area, Editions De L' Universite De Bruxelles, 2005, p.305.

Vgontzas Antonis (Βγόντζας Αντώνης), *'Judicial Cooperation between EU and USA – A new prospect in the fight against crime or a defeat of the rule of law? (Δικαστική συνεργασία ΕΕ και ΗΠΑ-Μια νέα προοπτική στην καταπολέμηση του εγκλήματος ή μία ήττα του κράτους δικαίου;)*', Poiniki Dikaiosini (Ποινική Δικαιοσύνη), 2003, p. 746.

Viano Emilio, '*Global Organized Crime and Internal Security*', Ashgate, 2000.

Walker Neil, '*Justice and Home Affairs*', International and Comparative Law Quarterly, 1998, pp 01-05.

Wasmeier Martin and Thwaites Nadine, *'The "battle of the pillars": does the European Community have the power to approximate national criminal laws?'*, European Law Review, 2004, vol. 24, p. 613.

Weatherill Stephen, '*Cases and Materials on EU Law*', 2007, Oxford, pp 04-11.

Weatherill Stephen, '*Harmonization: How much, how little?*', European Business Law Review, 2005, Vol. 16, p. 533.

Weyembergh Anne, '*Approximation of criminal laws, the Constitutional Treaty, and the Hague Programme*', Common Market Law Review, Vol. 42, 2005, p.1579.

Wilt van der, Harmen, '*The principle of Reciprocity'*, Handbook on the European Arrest Warrant, R. Blekxtoon et all., TMC Asser Press, 2005, p.71.

White, S., '*Harmonisation of Criminal Law under the First Pillar'*, European Law Review, vol. 31, 2006, p. 89.

Wouters Jan and Naert Frederik, *'Of Arrest Warrants, Terrorist Offences and Extradition Deals: An Appraisal Of The EU's Main Criminal Law Measures Against Terrorism After "11 September"'***,** Common Market Law Review, Vol. 41, 2004, p.913.

Xanthaki Helen and Stefanou Constantin, '*The new EU draft Money Laundering Directive: a case of inter-institutional synergy*', Journal of Money Laundering Control, 2000, pp.325-335.

Xanthaki Helen and Stefanou Constantin, '*Greece: Money Laundering*', Journal of Money Laundering Control, 1999, p.161-172.

Zachariadis (Ζαχαριάδης), *'Witness protection and leniency measures in the prosecution of organized crime (Remarks on articles 9 of statute 2928/2001 and 187B of the Criminal Code) [Προστασία μαρτύρων και μέτρα επιείκιας κατά τη διαδικασία διώξεως του οργανωμένου εγκλήματος (Παρατηρήσεις στα άρθρα 9 ν.2928/2001 και 187Β ΠΚ)]'*, in *Honorary Volume for Ioannis Manoledakis II: Studies on criminal law, criminology, and history of crime (Τιμητικός τόμος για τον Ιωάννη Μανωλεδάκη ΙΙ: Μελέτες ποινικού δικαίου, εγκληματολογίας και ιστορίας του εγκλήματος)*, Sakkoulas (Σάκκουλας), 2007, p.769, in Greek.

Zimianitis Dimitrios (Ζημιανίτης Δημήτριος), *'The application of the EAW in the context of the protection of individual rights (Η Εφαρμογή του Ευρωπαϊκού Εντάλματος Σύλληψης υπό το πρίσμα της προστασίας των ατομικών δικαιωμάτων)*', Dikaiomata tou Anthropou (Δικαιώματα του Ανθρώπου), 2004, p. 1209, in Greek.

Table of legal texts used in this thesis

Act: The prevention and control of organized crime: a strategy for the beginning of the new millennium', OJ C 124 of 3.5.2000.

Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of Freedom, Security and Justice, Text adopted by the Justice and Home Affairs Council of 3 December 1998. OJ C19/1, 23/01/1999.

Action plan to combat organized crime, adopted by the Council on 28 April 1997, OJ C 251, 15/08/1997 p. 0001 – 0016.

Annex to the Report from the Commission on the European Arrest Warrant, COM (2006) 8 Final, 24/01/2006.

Annex to the report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Staff working document Doc 6815/05 COPEN 42+ADD 1 of 1 March 2005.

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters in 1968.

Cardiff European Council, 15 and 16 June 1998, Presidency Conclusions, par.38.
Commission's Press release of 18.07.05.

Commission Proposal and Explanatory Memorandum of 1990 reproduced in W. Gilmore, in International efforts to combat money laundering, Cambridge University Press, 1992, p.244.

Commission Staff Working document, 'Annex to the report from the Commission', SEC (2005) 267, Brussels, 23.02.2005, p.5.

Commission Staff Working Paper, Brussels, COM (2004) 409 final, 8 June 2004.

Communication from the Commission, Towards an Area of Freedom, Security and Justice, Brussels, 14/07/1998, COM 1998, 459 Final.

Communication from the Commission to the Council and the European Parliament, Mutual Recognition of Final Decisions in Criminal Matters, p.2, COM (2000) 495 Final, 26/07/2000.

Communication from the Commission to the Council and the European Parliament on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States, COM (2005) 195 Final, 19/05/2005.

Communication from the Commission to the Council and the European Parliament on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information', COM/2004/0221 final.

Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice', COM/2005/0184 final.

Communication on the implications of the Court's judgment of September 13', 2005 COM (2005), 583 Final.

Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union. REV 1/ 6655/1/08 of 30 April 2008.

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, Official Journal C 313 , 23/10/1996, p. 0012 – 0023.

Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19–62.

Convention on the protection of the Environment through Criminal law, Council of Europe, Strasbourg, 04/11/1998.

Council Act 97/C 195/01 of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. Official Journal C 195 of 25 June 1997.

Council Act of 27 September 1996, adopted on the basis of Article K.3 of the Treaty on European Union, drawing up the Convention relating to extradition between the Member States of the European Union.

Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, p. 48.

Council Directive 91/308/EEC of June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L 166 of 28 June 1991.

Council Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 06.12.2008, p. 28-37.

Council Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, OJ L 280/52 27.10.2009.

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering', OJ L 166, 28.6.1991, p. 77–83.

Council Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L309/15 of 25/11/2005.

Council Directive 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, and adopting certain reviewed Recommendations of the Financial Action Task Force.

Council Framework Decision 2009/299/JHA of 26 February 2009, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism', OJ L 330, 9.12.2008, p. 21–23.

Council Framework Decision 2003/80/JHA of 17 January 2003 on the protection of environment through criminal law, O.J L 29/55 of 05/02/2003.

Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework against ship-source pollution, OJ No. L 255/164 of 30-09-2005.

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328 of 24/11/2006.

Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, OJ L 68, 15/03/2005.

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76 of 22/03/2005.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327/27 of 05/12/2008.

Council Framework Decision 2008/978/JHA on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime'. OJ L 300, 11.11.2008, p. 42–45.

Council Framework Decision 2002/584/JHA of the 13 June of 2002 on the European Arrest Warrant, OJ L 190 18/07/2002, pp 1-18.

Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

Council Framework Decision on Combating Terrorism 13 June 2002, OJ L164/3 of 22/06/02.

Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16/05/2005.

Council of the EU - response to the Commission proposal on combating terrorism, Doc No.12647/01, 10.10.01 and 12647/1-4/01.

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001.

Copenhagen European Council Presidency Conclusions of 1993, SN 180/1/93 REV 1.

Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, OJ L280/1 of 26/10/10.

Europäisches Haftbefehlsgesetz – EuHbG 2006.

Europol Convention.

Explanatory Memorandum presented by the Commission for a Council Framework Decision on the EAW - explanatory note to art 49 of the 'Proposal for a Council Framework decision on the EAW and the surrender procedures between the Member States, COM/2001/0522/final/2-CNS 2001/0215. Available from: www.europa.eu.int.

Explanatory memorandum to the Commission proposal for a framework decision on the European Arrest Warrant' COM (2001) 522 final/2, note 4.5 (6).

FATF Mutual Evaluation Interim Follow-up Report of 19 February 2010.

FATF/PLEAN Report 2010 (55) of 30 September 2010.

FATF Report of 06/02/1990.

FATF Third Mutual Evaluation Report in Greece – June 2007.

FATF 40 Recommendations of 1990.

Finland's EU Presidency statement, Informal JHA Ministerial Meeting, Tampere 20-22 September 2006.

First Commission's report on the implementation of the Money Laundering Directive (91/308/EEC) to be submitted to the European Parliament and to the Council', COM (95) 54 final, Brussels, 03.03.1995.

Greek Criminal Code.

Greek Criminal Procedure Code.

Greek Constitution.

Greek Law implementing the Council Framework Decision on the European Arrest Warrant, Law 3251/2004.

Greek Statute 3691/2008.

Greek Statute 3251/2004.

Greek Statute 2928/2001.

Greek Law 2718/1999, F.E.K (Φ.Ε.Κ) Α΄ 105/26-05-1999.

Greek Statute 1916/1990.

Green Paper on conflicts of jurisdiction and the principle of ne bis in idem in criminal proceedings, COM (2005) 696 final, Brussels, 23.12.2005.

Hague Programme, OJ C- 053, 03/03/2005.

Information note from General Secretariat to Working Party on Cooperation in Criminal Matters on the subject: 'Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant' - Year 2006, Brussels, 30 January 2008, 11371/4/07 REV 4 COPEN 106.

Initiative for a Directive regarding the European Investigation Order in criminal matters', COPEN 115, 29 April 2010.

Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union' (98/733/JHA), OJ L 351, 29/12/1998 p. 0001 – 0003.

Joint Action 96/610/JHA: of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter- terrorist cooperation between the Member States of the European Union, OJ L 273, 25/10/1996 P. 0001 – 0002.

Joint action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, OJ L 351, 29.12.1998, p. 1–3.

Joint Action 98/428/JHA on the creation of a European Judicial Network, OJ L 191, 7.7.1998, p. 4.

Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. OJ L 333, 9.12.1998, p. 1–3.

Joint action/96/443/JHA of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia. Official Journal L 185 of 24.07.1996.

Joint Action 96/750/JHA of 17 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking, OJ L 342, 31.12.1996, p. 6–8.

Madrid European Council Presidency Conclusions in 1995.

Mutual Recognition of judicial decisions and judgments in criminal matters, NOTE from the UK Delegation to the (then) K.4 Committee, Council doc. 7090/99, Brussels, 29 March 1999, especially par. 9.

Palermo Convention.

Presidency Conclusions, European Council, 15-16 June 1998.

Presidency Conclusions in the field of Justice and Home Affairs of 13 and 14 December 1996.

Programme of Measures to implement the principle of Mutual Recognition of decisions in criminal Matters, OJ C 012, 15/01/2001.

Progress Report on the Intergovernmental Conference of 17 June 1996, (doc. CONF 3860/1/96 REV 1).

Proposal for a Council framework Decision on the fight against organized crime' COM/2005/0006 final.

Proposal for a Council Directive on prevention of the financial system for the purpose of the money laundering, COM (90) 106 Final –SYN 254, of 23 March 1990.

Proposal for a Framework Decision on the EAW and the surrender procedures, COM (2001) 522 Final/2 of 25/09/2001.

Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (presented by the Commission), Brussels, 28.4.2004, COM(2004) 328 final.

Proposal for a Council Directive on prevention of the financial system for the purpose of money laundering, COM 90 - 106 Final of 23 March 1990.

Proposal for a Council Framework Decision on combating terrorism, COM (2001) 521 Final.

Proposal for a Council Framework Decision on the fight against organized crime, Brussels, 10 May 2006 (15.05), Doc. 9067/06.

Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing', COM (2004) 448 Final of 30 June 2004.

Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, (2000/C 177 E/03), COM(1999) 352 final, 1999/0152(COD).

Recommendation on the role of the EU in combating terrorism, of 5 September 2001.

Regular 2004 Report on Romania's progress towards accession.

Regulation 2201 /2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility.

Report from the Commission to the European Parliament and the Council on Romania's progress on accompanying measures following Accession, COM (2007) 378 final, Brussels, 27.6.2007.

Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, COM (2005) 63 Final Brussels, 23.02.2005, p.2, par.1.

Report from the Commission to the European Parliament and the Council on Romania's progress on accompanying measures following Accession, COM (2007) 378 final, Brussels, 27.6.2007.

Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2007) 681 final of 6.11.2007.

Report from the Commission on the EAW, COM (2006) 8 Final.

Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, COM (2005) 63 Final Brussels, 23.02.2005.

Report from the Commission, based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, SEC(2005) 267.

Report from the Council to the Working Party on 19 December 2006. 16870/06, COPEN 133, Brussels, 19/12/06.

Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, COM (2006) 187 Final, 02.05.2006.

Report 8th of Activities of the Commission in 1974.

Resolution of the Council on the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings of 2009, 2009/C 295/01 of 30 November 2009.

Resolution on criminal procedures in the European Union (Corpus Juris), A4-0091/93 of 13 April 1999.

Resolution on combating terrorism in the European Union, OJ C 55 of 24/02/1997.

Resolution on the first Commission report to the European Parliament and the Council on implementation of Directive 91/308/EEC on money laundering (COM(95)0054 - C4-0137/95), Official Journal C 198 , 08/07/1996 P. 0245.

Stockholm Programme – An open and secure Europe serving and protecting the citizens, Brussels, 02/12/2009, 17024/09.

Tampere European Council Presidency Conclusions, 15 and 16 October 1999.

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000.

Treaty of Maastricht on 7 February 1992, OJ 1992 C 191.

Treaty on the functioning of the European Union –consolidated version, OJ C115/47 of 09/05/2008.

Treaty on European Union, OJ C 191 of 29.07.1992.

Treaty of Amsterdam, OJ C- 340 of 10 November 1997, OJ C 340 of 10.11.1997.

Treaty establishing the European Economic Community (EEC) of 01 January 1958.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ 2007/C 306/01.

Treaty of Schengen - Schengen Implementing Convention 1990.

United Nations Convention against 'Transnational Organized Crime of November 2000.

United Nations international Drug Control Programme Fact Sheet No.5 for the General Assembly Special Session on the World Drug Problem, New York, 08-10 June 1998.

UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances', of 1988 of the United Nations to combat drug trafficking and drug money laundering. This is the so-called 'Vienna Convention' which came into force 1rst November 1990. Available online.