Chapter 13

The Protection of the Financial Interests of the European Union—European Union Requirements and their Implementation by the Central and Eastern-European Countries

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ABSTRACT

This chapter analyzes the efforts of the European Union to protect its financial interests. The first part of the paper sets out the brief historical development of the criminal law protection of the financial interests of the European Union with particular emphasis on the strengthened and reinforced legal framework provided by the Treaty of Lisbon. The second part focuses on the newly adopted Directive of the European Union on the fight against fraud to the Union's financial interests by means of criminal law. The third part of the study addresses the implementation of the PIF Directive in Central and Eastern-European countries.

KEYWORDS

Treaty of Lisbon, protection of the financial interests, PIF Directive, European Public Prosecutor's Office, tax evasion, tax fraud, money laundering

1. The financial interests of the European Union as a supranational legal interest

The European Union (EU) has its *own budget independent from the Member States* of approximately *150 billion euros* per year. This huge amount attracts the attention of criminals, who seek to obtain money from the EU budget using illicit means. The budget of the EU has, therefore, become the target of a wide variety of highly diverse criminal behavior, forcing the Union to ensure the protection of its financial interests.

Fraud and other irregularities (e.g., corruption, money laundering, misappropriation of funds) affecting the financial interests of the EU cause *significant loss* for the

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EU, inducing the reduction of the resources that can be redistributed. These crimes endanger the effective implementation of different EU policies. The magnitude of the problem is well illustrated by the fact that, by some estimations, the overall damage caused by such criminal conduct can reach *10% to 20% of the EU budget*.[1] Therefore, the EU suffers significant damage. Further, given that a part of the budget of the EU is indirectly financed by the *taxpayers* of the Member States, the offenses harm them as well.[2] However, the establishment of the supranational framework for the fight against criminal offenses affecting the financial interests of the European can be justified using economic and *political reasons*. In the long term, the rising crime rate against the financial interests can negatively affect the *credibility, confidence, and political acceptance of the EU*. Therefore, these criminal offenses may seriously *slow down the process of European integration*.[3]

The financial interests of the EU can be regarded as a *supranational legal interest*. Thus, this legal interest goes beyond the interests of the Member States and is directly linked to the EU as a supranational entity.[4] The specialty of the supranational legal interests is that they *cannot be protected solely by the national criminal law of the Member States*, given that its scope often does not extend to the protection of the financial and other interests of other states or international organizations.[5] Furthermore, another problem is caused by the fact that the *national criminal law provisions of the Member States are different*. Given such differences, the same act can be regarded as a criminal offense in one Member State and as an administrative offense in another Member State; moreover, it is not punishable in a third Member State.[6] Consequently, perpetrators can choose the criminal offense in the Member State where the chance of criminal conviction is less likely and the penalty is the most lenient.[7] These factors force the EU to seek the *establishment of a unified, supranational framework* in connection with the protection of its financial interests. Thus, to achieve this objective, the Union can naturally use several non-criminal instruments, in particular administrative and civil law measures. However, the seriousness of the criminal offenses affecting the financial interests requires the application of *criminal sanctions*.[8]

Therefore, to ensure the *effective, proportionate, and dissuasive protection* of the Union's financial interests, one of the main objectives of the EU is to create a *unified or at least harmonized regulation of the criminal offenses affecting its financial interests*.

1 See for example Fromm, 2004, p. 13; Williams, 2013, pp. 229–234.
2 Holé, 2004, p. 309.
3 See Jacsó, 2012, p. 66; Murawska, 2008, pp. 53–54.
4 Karsai, 2002, pp. 19–20; Ligeti, 2005, p. 22.
5 Kaiafa-Gbandi, 2012, p. 321.
6 Hecker, 2007, p. 562.
7 Ligeti, 2005, p. 22.
8 Juszczak and Sason, 2017, p. 82; Madai, 2010, p. 90.

2. The criminal law protection of the financial interests of the European Union

2.1. Historical development before the Treaty of Lisbon

Although the EU promptly recognized the need for unified action for the protection of its financial interests, the first criminal law measures were adapted after a long development.

The *Founding Treaties of the European Communities* originally did not contain any criminal law provisions in connection with the protection of financial interests because the competences of the European Communities did not cover the field of criminal law in the first few decades of the history of the European integration, given that criminal law was considered as one of the *main symbols and the last rampart of the national sovereignty*.[9] Given the lack of criminal competence of the European Communities, criminal sanctioning of the unlawful acts against its financial interests *remained within the competence of the Member States,* and the Community legislator used primarily *administrative means* to protect these supranational interests until the 1990s.[10]

The judgment of the European Court of Justice in the so-called *Greek Maize case* in 1989 can be considered the first important milestone in the history of the protection of financial interests since it formulated the so-called *assimilation principle*. According to the ruling, the Member States are required, by virtue of Article 5 of the EEC-Treaty,[11] to *penalize any persons who infringe Community law in the same way* they penalize *those who infringe national law.* The choice of penalties remains within the discretion of the Member States; however, they must ensure that infringements of Community law are penalized under *procedural and substantive conditions, analogous* to those applicable to *infringements of national law of a similar nature and importance,* which make the penalty *effective, proportionate, and dissuasive*. Moreover, the national authorities must proceed, regarding infringements of Community law, with the *same diligence* they bring to bear in implementing corresponding national laws.[12]

The *principle of assimilation* elaborated by the European Court of Justice was incorporated by the *Maastricht Treaty,* signed in 1992, which established the so-called

9 See, for example Albrecht, 2000, p. 27; Farkas, 2001, p. 23; Hildebrandt, 2007, pp. 66–67; Jung, 1998, pp. 210–211.

10 Farkas, 2005, p. 11.

11 Article 5 of the EEC-Treaty – currently Article 4(3) TEU – regulates the so-called principle of sincere cooperation. Pursuant to this principle, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks that flow from the Treaties; the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union; and the Member States shall facilitate the achievement of the Union's tasks and refrain from any measure that could jeopardise the attainment of the Union's objectives.

12 Judgment of the Court of 21 September 1989 in Case 68/88 *Commission of the European Communities v Hellenic Republic*, ECR 2965, paragraphs. 22–25.

three-pillar structure of the EU. According to the provisions of the Treaty, the Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their financial interests. Furthermore, the Member States shall coordinate their action to protect the financial interests of the Community against fraud and shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.[13] As a result of the Treaty of Maastricht, the fight against fraud became *part of the primary law of the EU*.

However, within the framework of the *third pillar of the EU,*[14] the Treaty of Maastricht declared that the Member States regard the *fight against fraud on an international scale* as matters of common interest to achieve the objectives of the Union and without prejudice to the powers of the European Community.[15] As per the provisions of the Treaty, the Council was empowered to adopt special *third pillar legal instruments* (joint positions, joint actions, conventions, and later framework decisions) in this field.[16] It opened the way for the EU legislator to adopt *criminal law measures* (within the framework of the third pillar cooperation, in specific sources of law) regarding the protection of financial interests for the first time in the history of integration. Based on the authorization of the Treaty, the Member States of the EU signed a Convention on the protection of the European Communities' financial interests on June 26, 1995.[17] The so-called *PIF Convention*, which laid down the cornerstones of the coherent and united EU action against criminal offenses affecting financial interests, set out the *definition of fraud affecting the European Communities' financial interests* and required Member States to *criminalize the described conduct* and impose *effective, proportionate, and dissuasive sanctions*.[18] *Three Additional Protocols* were subsequently added to the PIF Convention, which prescribed the sanctioning of other criminal offenses affecting the financial interests of the EU (corruption and money laundering) and regulated the responsibility of legal persons.[19] The PIF Convention and its Additional Protocols

13 Article 209a of the EEC-Treaty.
14 Cooperation in the fields of Justice and Home Affairs.
15 Point 5 of Article K.1 of the EU-Treaty.
16 Article 3(2) of the EU-Treaty.
17 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, pp. 48–57] (hereinafter, PIF Convention).
18 Notably, parallel with the PIF Convention, the European Union also adopted a Regulation that contains the administrative means of the protection of the financial interests. See Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests [OJ L 312, 23.12.1995, pp. 1–4].
19 Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests [OJ C 313, 23.10.1996, pp. 1–11]; Council Act of 29 November 1996 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests [OJ C 151, 20.5.1997, pp. 1–14]; Council Act of 19 June 1997 drawing up the Second Protocol of the Convention on the protection of the European Communities' financial interests [OJ C 221, 19.7.1997, pp. 11–22].

were undoubtedly important steps in the fight against illegal offenses detrimental to the Union's financial interests given that they were the first documents that explicitly provided for criminal sanctions for crimes affecting the EU budget. However, given *prolonged ratification* and the *incomplete or inadequate transposition* of the PIF instruments by Member States,[20] they could not contribute sufficiently to the harmonization of criminal justice systems of the Member States and, thus, could provide little for more effective protection of the financial interests of the EU. [21]

2.2. The protection of the financial interests of the EU in the Treaty of Lisbon

The *Treaty of Lisbon*, enforced in 2009, was an important milestone in the development of European criminal integration and the history of the protection of the financial interests of the EU. The Treaty of Lisbon *abolished the pillar system*, given which the former third pillar disappeared, and the judicial cooperation in criminal matters of the EU became an *independent, homogeneous, supranational policy.*[22]

The Treaty of Lisbon empowered the EU with *broad legislative competences in the field of criminal law and the protection of financial interests* and enabled the adoption of the *traditional secondary sources of law* (regulations and directives). It was a significant step forward, given that—contrary to the previous third pillar legal acts, like the PIF Convention— the Union now has effective tools to *monitor the implementation* of regulations and directives and to *sanction Member States* that fail to comply to implement or infringe the adopted EU legal acts.[23] The criminal law competences of the EU under the Treaty of Lisbon that can be used for the protection of financial interests can be divided into four categories:[24]

a) The *legal harmonization competence* of *Article 83(1) TFEU* enables the EU to establish minimum rules concerning the definition of criminal offenses and sanctions in the areas of *particularly serious crime with a cross-border dimension.* For the use of the Union's legal harmonization competence, two cumulative criteria are required to be met: the *particular seriousness* and the *cross-border dimension* of the crime, defined by three alternative requirements—the nature of the crime, the impact of the offense, or the special need to combat the area of crime on a common basis.[25] The 10 so-called *'eurocrimes'* are listed in the Treaty: terrorism, human trafficking, sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime,

20 See Report from the Commission: Implementation by Member States of the Convention on the Protection of the European Communities' financial interests and its protocols [COM(2004) 709, 25.10.2004.]; Second Report from the Commission: Implementation by Member States of the Convention on the Protection of the European Communities' financial interests and its protocols [COM(2008) 77, 14.2.2008.].

21 See Jacsó, 2012, p. 68.

22 Satzger, 2014, p. 98.

23 See Articles 258–260 TFEU.

24 See in details Udvarhelyi, 2019, pp. 117–133, 143–161.

25 See in details Asp, 2012, pp. 86–87; Dorra, 2013, pp. 195–200; Simon, 2012, pp. 247–248.

and organized crime. However, the Treaty does not contain an exhaustive enumeration because, based on developments in crime, *additional areas of crime* that fulfill the general requirements can be added to the list.[26]

b) *Article 83(2) TFEU* provides the Union a means to ensure the effective implementation of other Union policies through criminal law measures. Based on this *ancillary legal harmonization competence*, the EU can adopt criminal law measures if they are *essential to ensure the effective implementation of a Union policy.* For the application of this competence, two requirements must be fulfilled. First, there is a *need for previous harmonization measures* in the policy area the Union legislator intends to criminalize, which means that the criminal harmonization presupposes that other harmonized (non-criminal) rules exist in the area concerned.[27] Second, the criminal sanctions must be *essential for the effective implementation of the aforementioned harmonized Union policy,* which demands the Union legislator to prove that the current enforcement regime cannot achieve effective implementation of the policy concerned, criminal law is more efficient than the existing less restrictive measures to achieve the pursued objective, and the disadvantages caused by criminal law are not disproportionate regarding the objective of ensuring the effective implementation of a Union policy.[28]

c) *Article 325 TFEU* focuses directly on the protection of the financial interests of the EU. It obliges the Union and the Member States to *counter fraud and any other illegal activities* affecting the financial interests through *deterrent and effective measures,* and it allows the EU legislator to adopt all *necessary measures* in the fields of the prevention of and fight against fraud affecting the financial interests of the Union to afford *effective and equivalent protection* in the Member States and all the Union's institutions, bodies, offices, and agencies. This provision enables the adoption of *directly applicable, supranational criminal law measures* in this field.[29]

d) *Article 86 TFEU* provides the legal basis for the establishment of the *European Public Prosecutor's Office.* The Office is intended to be an *independent supranational prosecution authority* that is responsible for investigating, prosecuting, and bringing to justice the perpetrators of, and accomplices in, offenses against the Union's financial interests. It also exercises the functions of the prosecutor in competent courts of the Member States regarding such offenses. Therefore, the scope of competence of the European Public Prosecutor's Office is limited to *criminal offenses against the financial interests of the EU*; however, the European Council is entitled to extend the powers of the Prosecutor's Office to other *serious crimes having a cross-border dimension*.

26 See Dorra, 2013, pp. 214–215; Jacsó, 2017, pp. 66–67; Safferling, 2011, p. 414.
27 Asp, 2012, p. 133.
28 Öberg, 2011, pp. 290–293.
29 See for example Hecker, 2012, p. 493; Safferling, 2011, p. 409; Satzger, 2016, pp. 119–120.

After the Treaty of Lisbon, based on the aforementioned criminal law competences, *intensive criminal legislation* began in the field of the criminal law protection of the financial interests of the EU, as a result of which two important legal acts were adopted: the *Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive)*[30] and the *Regulation on the establishment of the European Public Prosecutor's Office (EPPO Regulation)*.[31] The PIF Directive contains the substantive criminal law provisions in connection with the fight against fraud, while the EPPO Regulation provides for the procedural side of the protection of the financial interests of the EU. In this study, we focus on the provisions of the PIF Directive and its national implementation.

3. Directive on the fight against fraud to the Union's financial interests via criminal law

The PIF Directive aims to establish *minimum rules* concerning the *definition of criminal offenses and sanctions* regarding *combating fraud and other illegal activities affecting the Union's financial interests* to *strengthen protection* against criminal offenses that affect those financial interests, as per the acquis of the Union in this field.[32] Thus, to achieve this objective, the Directive *defines the criminal offenses of fraud affecting the Union's financial interests*[33] and *other criminal offenses affecting financial interests* (active and passive corruption, money laundering, and misappropriation). In connection with the definition, the PIF Directive differentiates between the *expenditure and the revenue side of the budget*.

1. Regarding *non-procurement-related expenditure*, Member States must criminalize any intentional act or omission relating to
   a) the use or presentation of false, incorrect, or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union or on its behalf;
   b) non-disclosure of information in violation of a specific obligation, with the same effect;
   c) the misapplication of such funds or assets for purposes other than those for which they were originally granted.

30 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law [OJ L 198, 28.7.2017, pp. 29–41].

31 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office [OJ L 283, 31.10.2017, pp. 1–71].

32 Article 1 of the PIF Directive.

33 Under Article 2(1)(a) of the PIF Directive, the definition of the Union's financial interests' is all revenues, expenditure, and assets covered by, acquired through, or due to the Union budget; alternatively, it is the budgets of the Union institutions, bodies, offices, and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them.

2. Regarding *procurement-related expenditure,* at least when committed to making an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, Member States must criminalize any intentional act or omission relating to:
   a) the use or presentation of false, incorrect, or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union or on its behalf;
   b) non-disclosure of information in violation of a specific obligation, with the same effect;
   c) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;
3. Regarding *revenue other than revenue arising from VAT own resources,* Member States must criminalize any intentional act or omission relating to
   a) the use or presentation of false, incorrect, or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
   b) non-disclosure of information in violation of a specific obligation, with the same effect;
   c) misapplication of a legally obtained benefit, with the same effect.
4. Regarding *revenue arising from VAT own resources,* Member States must criminalize any intentional act or omission committed in cross-border fraudulent schemes on
   a) the use or presentation of false, incorrect, or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;
   b) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect;
   c) the presentation of correct VAT-related statements to fraudulently disguise the non-payment or wrongful creation of rights to VAT refunds.[34]

It can be regarded as a significant development in the fight against VAT fraud within the EU that the scope of the *PIF Directive,* under certain conditions, covers *VAT fraud*. The EU legislator recognized that the most serious forms of VAT fraud—in particular, carousel fraud and VAT fraud through missing traders—create serious threats to the common VAT system[35] and, thus, to the Union budget and the protection of the financial interests of the EU.[36] The European Commission has taken a firm standpoint

34 Article 3 of the PIF Directive.
35 See Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [OJ L 347, 11.12.2006, pp. 1–118].
36 Preamble (4) of PIF Directive.

on this issue during the legislative process of the PIF Directive. Referring to the case law of the Court of Justice of the European Union, the concept of EU fraud *expressis verbis* covered the VAT in the proposal of the PIF Directive.[37] Finally, given a political compromise, regarding revenue arising from VAT own resources, the PIF Directive shall apply only in cases of *serious offenses against the common VAT system*. Offenses against the common VAT system shall be considered to be serious where intentional acts or omissions are connected with the territory of two or more Member States of the Union and involve a total cost of at least EUR 10.000.000.[38]

The PIF Directive contains the definition of fraud and three other fraud-related criminal offenses that could affect the Union's financial interests: *money laundering*, *active and passive corruption,* and *misappropriation*. The definition of *money laundering* is determined by the PIF Directive regarding the Anti-Money Laundering Directive of the European Union.[39] According to the Anti-Money Laundering Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity to conceal or disguise the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
b) the concealment or disguise of the true nature, source, location, disposition, movement, rights regarding, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
c) 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;
d) participation in, association to commit, attempts to commit, and aiding, abetting, facilitating, and counseling the commission of any of the aforementioned actions.

According to the PIF Directive, Member States must only criminalize money laundering if the property derives from the criminal offenses covered by the Directive (i.e., the *predicate offenses of money laundering* must be EU fraud, corruption, and

37 See Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law [COM(2012) 363 final, Brussels, 11.7.2012.], the cited court judgement: Judgment of the Court (Grand Chamber) of 15 November 2011 in Case C-539/09 *European Commission v Federal Republic of Germany,* ECR I-11235.
38 Article 2(2) of the PIF Directive.
39 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [OJ L 141, 5.6.2015, pp. 73–117].

misappropriation).[40] According to the PIF Directive, *passive corruption* is the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind for himself or a third party or accepts a promise of such an advantage to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way that damages or is likely to damage the Union's financial interests. *Active corruption* is the action of a person who promises, offers, or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way that damages or is likely to damage the Union's financial interests. Finally, *misappropriation* is the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way that damages the Union's financial interests.[41]

The PIF Directive obliges the Member States to *criminalize the described conducts* and punish them with *effective, proportionate, and dissuasive criminal sanctions*. In the most serious cases, the Directive also prescribes the *minimum amount of the maximum penalty* the Member States are required to prescribe. Thus, the criminal offenses must be punishable by a maximum penalty of at least *four years of imprisonment* when they involve considerable damage or advantage, which is more than EUR 100,000. However, the Member States may provide for *sanctions other than criminal sanctions*, where the criminal offense involves damage or advantage of less than EUR 10,000. If the criminal offense is committed within a criminal organization, this shall be considered an aggravating circumstance.[42]

Furthermore, the Directive regulates the *liability of legal persons*. Legal persons can be held liable

a) if the aforementioned criminal offense is committed for their benefit by any person, acting either individually or as part of an organ of the legal person, having a leading position within the legal person;
b) where the lack of supervision or control by a person having a leading position has made possible the commission, by a person under its authority, of the criminal offense concerned for the benefit of that legal person.

Legal persons must be subject to *effective, proportionate, and dissuasive sanctions*, which shall include: criminal or non-criminal fines; exclusion from entitlement to public benefits or aid; temporary or permanent exclusion from public tender procedures; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments used for committing the criminal offense.[43]

40 Article 4(1) of the PIF Directive.
41 Article 4(2)–(3) of the PIF Directive.
42 Articles 7–8 of the PIF Directive.
43 Article 6 and 9 of the PIF Directive.

4. Fight against fraud affecting the Union's financial interests in the Central and Eastern-European countries

This chapter analyzes the protection of the financial interests of the EU by the Central and Eastern-European Member States, during which we try to present whether the Member States have managed to implement the provisions of the PIF Directive into their national criminal law system. In the analysis of the Member States, we focus on the Hungarian legislation, but briefly consider the provisions of the other Central and Eastern-European countries.

4.1. The Hungarian regulation

Hungary was required to *ensure the criminal protection of the financial interests of the EU* even *before the accession of the country to the EU*. The PIF Convention and its Additional Protocols were among the EU documents implemented by all the pre-accession States. A crucial reason was the fact that several pre-accession funds were available for the candidate countries through which the Community budget could potentially be damaged.[44] Although Hungary formally ratified the PIF Convention only in 2009,[45] to ensure compliance with the Convention, Act CXXI of 2001, which was enforced on April 1, 2002, inserted the criminal offense of *violation of the financial interest of the European Communities* into the previous Hungarian Criminal Code.[46] Therefore, the Hungarian legislator, unlike many other EU Member States, did not try to comply with its legal harmonization obligation by amending the existing criminal offenses but through the creation of a new, separate criminal offense. Thus, the national and EU budget was protected by different criminal law provisions in Hungary until 2012. As per the prior Criminal Code, the protection of the national budget was covered by *tax fraud,*[47] *employment-related tax fraud,*[48] *excise violation,*[49] *illegal importation,*[50] and *unlawful acquisition of economic advantage,*[51] while the crime of *violation of the financial interest of the European Communities* safeguarded the financial interests of the EU.[52] However, this distinction generated several challenges in practice.[53]

44 See: Madai, 2010, p. 97.
45 Act CLIX of 2009 on the promulgation of the Convention on the protection of the European Communities' financial interests drawn up based on Article K.3. of the Treaty establishing the European Community, and of the Additional Protocols thereto and of the declaration based on Article 35(2) of the Treaty on the European Union.
46 Act IV of 1978 on the Criminal Code (hereinafter referred to as: previous HCC).
47 Section 310 of the previous HCC.
48 Section 310/A of the previous HCC.
49 Section 311 of the previous HCC.
50 Section 312 of the previous HCC.
51 Section 288 of the previous HCC.
52 Section 314 of the previous HCC
53 See in detail, Halász, 2006, pp. 632–633; Láris, 2011, pp. 29–30; Madai, 2010, pp. 99–102; Miskolczi, 2007, pp. 33–35; Udvarhelyi, 2014, pp. 177–179.

Therefore, *Act LXIII of 2011,* enforced on January 1, 2012, integrated fraud-related crimes into one criminal offense called *budget fraud*.[54] The currently effective fourth Criminal Code,[55] which came into force on July 1, 2013, did not bring any substantial changes to budget fraud. The Criminal Code regulates the *criminal offenses against public finances* in Chapter XXXIX and contains *four criminal offenses*: *fraud relating to social security, social and other welfare benefits,*[56] *budget fraud,*[57] *omission of oversight or supervisory responsibilities in connection with budget fraud,*[58] and *conspiracy to commit excise violation.*[59] With the *new regulation of the financial criminal law* of 2011, the legislator intended to achieve the following objectives:

a) the provision of a *more effective and coordinated defense* of the budget
b) the elimination of loopholes and the possibilities of abuse
c) the abolition of the interpretational problems in connection with the criminal offense of *violation of the financial interest of the European Communities*
d) the elimination of the delimitation problems
e) the *unified protection of the revenue and the expenditure side of the budget* and of the *national and the EU budget*.

Thus, to achieve the objectives, the *focus of the protection of budget fraud becomes the budget* itself. This regulatory concept fully accords with the expectations of the EU, formulated in the PIF Convention and the PIF Directive.[60] According to the legal definition of the CC,

> "budget shall mean the sub-systems of the central budget, including the budgets of social security funds and extra-budgetary funds, budgets and/or funds managed by or on behalf of international organizations, and budgets and/or funds managed by or on behalf of the European Union. In respect of crimes committed in connection with funds paid or payable from a budget, [the] budget shall also mean (in addition to the above) budgets and/or funds managed by or on behalf of a foreign State."[61]

The revenue and expenditure sides of the EU budget are covered by budget fraud based on the legal definition. Regarding the expenditure side, the Hungarian regulation protects the budget managed by the EU or Member States and the budget of *any other foreign states*. The criminal offenses of budget fraud can be divided into three different types of conduct: we can distinguish between *budget fraud in the narrower sense,*

54 Section 310 of the previous HCC.
55 Act C of 2012 on the Criminal Code (hereinafter referred to as: previous HCC).
56 Section 395 of the HCC.
57 Section 396 of the HCC.
58 Section 397 of the HCC.
59 Section 398 of the HCC.
60 Udvarhelyi, 2014, pp. 170–188; Jacsó, 2017, pp. 53–57.
61 Section 396(9)(a) of the HCC.

budget fraud committed on excise goods, and the *violation of the settlement, accounting, or notification obligations regarding funds paid or payable from the budget (administrative budget fraud)*. *Budget fraud in the narrower sense* can be committed by anybody who

f) induces a person to hold or continue to hold a false belief, suppresses known facts in connection with any budget payment obligation or with any funds paid or payable from the budget, or makes a false statement to this extent;
g) unlawfully claims any advantage made available in connection with budget payment obligations;
h) uses funds paid or payable from the budget for purposes other than those authorized;

thereby, causing financial loss to one or more budgets.[62] According to the Hungarian Criminal Code, budget fraud is a *material delict*, punishable if it causes *financial loss to one or more budgets*. This provision also complies with the PIF Directive, which punishes EU fraud only if it affects the *misappropriation or wrongful retention of funds or assets* from the Union budget or budgets managed by the Union or on its behalf; or the *illegal diminution of the* resources of the Union budget or budgets managed by the Union, or on its behalf. The definition of *financial loss* can be found among the explanatory provisions of the CC, under which financial loss shall mean *damage to one's property,*[63] including *lost income*.[64] In connection with budget fraud, the Criminal Code contains a specific provision that supplements the aforementioned definition. According to this provision, financial loss also includes

> "any loss of revenue stemming from non-compliance with any budget payment obligation, as well as the claiming of funds from a budget unlawfully or the use of funds paid or payable from a budget for purposes other than those authorized."[65]

Analyzing the punishable conduct of the PIF Directive reveals that the Hungarian regulation is mostly in compliance with them. Similar to the PIF Directive, budget fraud can only be committed *intentionally*; negligent conducts are not punishable. The *punishment* that could be imposed on the perpetrators of budget fraud *depends on the amount of the financial loss.*[66] The legislator defined it as aggravating circumstance if the budget fraud is committed in *criminal association with accomplices* or on a *commercial scale*.

Notably, the Hungarian legislator provided a possibility for the *reduction of the penalty without limitation*. According to this provision, the penalty may be reduced without limitation if the *perpetrator provides compensation for the financial loss caused by*

62 Section 396(1) of the HCC.
63 Therefore, the depreciation of property caused by crime [Point 16 of Section 459(1) of the HCC].
64 Point 17 of Section 459(1) of the HCC.
65 Section 396(9)(b) of the HCC.
66 The individual categories are prescribed in the Closing Provisions of the HCC.

the budget fraud referred to in Sections 396(1)–(6) *before the indictment*. The reduction is applicable *regardless of the amount of financial loss caused*.

It is an important social interest that the subsidies and payments from the budget must be used transparently. Therefore, the Hungarian legislator also criminalizes the *violation of the settlement, accounting, or notification obligations relating to funds paid or payable from the budget*. This criminal offense can only be committed in connection with the *expenditure side of the budget* (i.e., in connection with *funds from the budget*). The offense is committed by any person who *does not comply or inadequately complies with the settlement, accounting, or notification obligations relating to funds paid or payable from the budget*; *makes a false statement* to this extent; or *uses a false, counterfeit, or forged document or instrument*. Contrary to budget fraud in the narrower sense, this criminal offense is *immaterial*; it does not contain any results, meaning that the financial loss is not necessary for the realization of the offense. Hence, the Criminal Code provides enhanced protection of the expenditures of the budget relative to the provisions of the PIF Directive.

The Hungarian Criminal Code also regulates the *specific liability of the director of an economic operator* or a *member or employee with authority to exercise control or supervision*. According to the provision of the Hungarian Criminal Code, the director and the member or the employee of an economic operator can be held liable if he *fails to discharge the obligation of exercising control or supervision*, thereby making it possible for the member or employee of the economic operator to commit the budget fraud within the framework of their respective functions.[67]

4.2. The protection of the financial interests of the EU in other Member States

Analyzing the regulation of the other Central and Eastern-European countries reveals different solutions for the protection of the financial interests of the EU. First, there are states, where the related crimes are found in the national Criminal Codes but the domestic budget and the EU budget are protected with separate criminal offenses. This is the situation in the Czech Republic, Slovakia, and Slovenia.

The Criminal Code of the *Czech Republic* distinguishes between three tax-related criminal offenses regarding the protection of domestic financial interests *(evasion of taxes, fees, and similar compulsory payments;*[68] *evasion of tax, social security insurance fee, and similar compulsory payment;*[69] and *breach of information duty in tax proceedings*[70]), while the budget of the EU is protected by another criminal offense (i.e., *harming financial interests of European Communities*).[71] This criminal offense can be committed by a person who produces, uses, or presents false, incorrect, or incomplete documentation or states in such documentation false or grossly distorted data regarding income or expenses of the summary budget of European Communities or budgets administered

67 Section 397 of the HCC.
68 Section 240 of the Czech Criminal Code.
69 Section 241 of the Czech Criminal Code.
70 Section 243 of the Czech Criminal Code.
71 Section 243 of the Czech Criminal Code.

by European Communities or on their behalf or conceals such documentation or data and, thus, facilitating incorrect use or withholding of financial resources from any such budget or diminishing of funds of any such budget. It is also punishable if the perpetrator diminishes or uses financial resources (without authorization) comprising the income or expenses of the summary budget of the European Communities or budgets administered by European Communities or on their behalf. The punishment is more severe if the criminal offense causes larger damage; if the offender commits the act as a member of an organized group, as a person who has a special obligation to protect the interests of European Communities, or causes substantial or extensive damage.

The regulation of the *Slovakian Criminal Code* is quite similar. It contains three criminal offenses in connection with the protection of the financial interests of the Slovakian state: *tax and insurance evasion,*[72] *failure to pay tax and insurance,*[73] and *failure to pay tax*.[74] The financial interests of the EU are protected by the criminal offense of *damaging financial interests of the European Communities,*[75] which punishes the use or presentation of a false, incorrect, or incomplete statement or document, or the failure to provide mandatory data, or the use of funds from the general budget of the European Communities or the budget managed by or on behalf of the European Communities for purposes other than those for which they were originally intended, thus allowing embezzlement or illegal withholding of funds from the aforesaid budget. It is an aggravating circumstance if the crime causes larger, substantial large-scale damage, if the commission of the offense was by reason of specific motivations, and if the offender acts in a more serious manner or as a member of a dangerous grouping. The Slovakian Criminal Code punishes intentional and negligent conduct. Further, the Slovakian Criminal Code contains a special liability of the head of businesses, according to which it is also punishable if a person by breaching or failing to comply with an obligation resulting from his employment, occupation, position, or function in the management or supervision over his subordinates enables the commission of the criminal offense.

In the *Slovenian legal system*, the domestic budget is protected via the criminal offense of tax evasion,[76] while the financial interests of the EU are defended by the criminal offense of *fraud to the detriment of European Communities*.[77] According to this crime, a person can be held liable if the person avoids expenses by using or submitting false, incorrect, or incomplete statements or documents, or does not reveal data and, thus, misappropriates or unlawfully withholds or uses inappropriately funds of the general budget of European Communities or the budgets managed by European Communities or managed on their behalf. It is also punishable if the perpetrator

72 Section 276 of the Slovakian Criminal Code.
73 Section 276 of the Slovakian Criminal Code.
74 Section 277 of the Slovakian Criminal Code.
75 Sections 261–263 of the Slovakian Criminal Code.
76 Section 249 of the Slovenian Criminal Code.
77 Section 229 of the Slovenian Criminal Code.

acquires funds using offenses and from the budgets. The punishment can be higher if the criminal offense results in a large property benefit acquired or a large loss of property. The liability of the head of businesses is also regulated in the Slovenian system, under which the managers of companies or other persons authorized to take decisions or assume control in enterprises can be held liable if they render possible or do not prevent the criminal offenses of noted perpetrators that are subordinated and act on behalf of the company.

Second, there are states where the national criminal law protects the domestic and the EU budget in the same criminal offense. This is the situation in *Croatia*, where the *Croatian Criminal Code* protects the revenue and the expenditure side of its budget with two different criminal offenses, but the scope of both covers the protection of the financial interests of the EU. The revenue side of the budget is covered by the criminal offense of *Tax and Customs Duty Evasion*.[78] It can be committed by anybody who provides false or incomplete information on income, items, or other facts of relevance for determining the amount of tax or customs duty payable, or whoever, regarding mandatory declaration, fails, with the same aim, to declare his or her income, items or other facts of relevance to the determination of tax or customs duty payable. The criminal offense is punishable if it results in a reduction of the tax or customs duty payable by an amount exceeding 20 thousand kunas or to its non-determination in the said amount. The aim of the perpetrator must be the evasion of paying full or in part the perpetrator or another person's tax or customs duty. It is also punishable if the perpetrator uses a tax relief or customs privilege in an amount exceeding 20 thousand kunas in breach of the conditions under which he or she obtained it. The Croatian Criminal Code *expressis verbis* declares that these provisions shall also be applied to the perpetrator who reduces EU funds by committing the acts described therein. The expenditure side of the budget is protected by the criminal offense of *Subsidy Fraud*.[79] Based on this crime, anybody must be held liable who provides a state subsidy provider with false or incomplete information concerning the facts on which the decision on the granting of a state subsidy depends or fails to inform a state subsidy provider of changes important for deciding on the granting of a state subsidy. The perpetrator must act with the aim that he or she or another person receive a state subsidy. The criminal offense also holds liable perpetrators who use the granted state subsidy funds in a manner contrary to their intended use. Similar to the other criminal offense, the Croatian legislator here also declares that state subsidies shall be equated with subsidies and aid granted from EU funds.

Third, there are countries, where criminal offenses aimed at the protection of the EU's financial interests are not regulated by the Criminal Code but by another legal act. In *Romania*, Law no. 78/2000 on the prevention, detection, and sanctioning of corruption contains a series of acts against the financial interests of the EU. Section 4/1 of the law (Offences against the Financial Interests of the EU) punishes

78 Section 256 of the Croatian Criminal Code.
79 Section 256 of the Croatian Criminal Code.

the using or presenting in bad faith false, inaccurate, or incomplete documents or statements, which results in the illegal obtaining of funds from or the illegal diminishing of the resources of the general budget of the European Communities or from the budgets administrated by them or on their behalf. The deliberate omission to provide the information required according to the law to obtain funds from the general budget of the European Communities or the budgets administrated by them or on their behalf is also sanctioned. Furthermore, the law criminalizes changing the destination of the funds obtained from the general budget of the European Communities or the budgets administrated by them or on their behalf. The law also contains provisions for the liability of the directors, administrators, or persons with decisional or control tasks within an economic agent who can be held punishable if they willingly do not observe an official duty by not performing or deficiently performing it and if it had, as result the perpetration, of one of the aforementioned offenses by a person subordinate to him or her and who acted on behalf of that specific economic agent.[80]

Finally, in *Serbia*, the Criminal Code only protects the domestic budget through the criminal offenses of *tax avoidance*[81] and *avoidance of withholding tax*.[82] The scope of the Serbian criminal law does not cover the protection of the financial interests of the EU, since the country is currently not an EU member.

5. The fight against money laundering in the Member States

Given that the scope of the PIF Directive covers EU fraud and other criminal offenses affecting its financial interests. Among the three crimes regulated by the PIF Directive, we only intend to analyze the criminal offense of money laundering.

5.1. The regulation of money laundering in the European Union

As noted in the prior chapters, the *fight against money laundering* has significant importance in the *protection of the financial interests of the EU* given that this criminal offense can hurt the financial interests of the EU. Therefore, the PIF Directive also regulates money laundering as among *"other criminal offences affecting financial interests."*[83] However, the EU has already adopted several other legal acts against money laundering since the EU legislator recognized that money laundering could jeopardize the functioning of the internal market because the lack of EU action against money laundering could induce Member States to adopt measures that can be inconsistent with the completion of the single market in their quest to protect their financial systems.[84] The definition of *money laundering* is determined by the PIF Directive regarding

80 Sections 18/1-18/5 of the Romanian Law no. 78/2000. See in detail, Mirisan, 2019, pp. 179–184.
81 Section 225 of the Serbian Criminal Code.
82 Section 226 of the Serbian Criminal Code.
83 Article 4 of the PIF Directive.
84 See Jacsó, 2004, pp. 143–144; Jacsó, 2005, p. 99; Udvarhelyi, 2013a, p. 458.

the *Anti-Money Laundering Directive (4th AMLD)* of the European Union.[85] However, anti-money-laundering regulating measures are considered in several international documents[86] and other legal acts of the European Union.

The Anti-Money Laundering measures of the European Union can be divided into *two main categories*. First, *five Anti Money Laundering Directives*[87] regulate the *preventive instruments against money laundering*, as their primary objective is to prevent the financial sector from being used for laundering by requiring customer due diligence and reporting obligations.[88] Second, a *Criminal Law Directive*[89] (*6th AMLD*) contains *repressive measures for combating money laundering* and lays down *minimum standards for criminal offenses and sanctions*.[90] Furthermore, as noted, the *PIF Directive* also contains regulations in connection with money laundering. It is necessary to analyze the provisions of the 6th AMLD relating to the offense of money laundering.

The Preamble of the Directive emphasizes that money laundering and the related financing of terrorism and organized crime are significant problems at the EU level because they damage the integrity, stability, and reputation of the financial sector and threaten the internal market and internal security of the Union. Thus, to tackle the problems and complement and reinforce the application of the preventive

85 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [OJ L 141, 5.6.2015, pp. 73–117].

86 Most important in the field of the soft law regulation is the 40 Recommendations of the Financial Action Task Force (FATF). FATF as an inter-governmental body sets international standards to prevent money laundering and terrorist financing. See https://www.fatf-gafi.org/.

87 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, pp. 77–82]; Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering – Commission Declaration [OJ L 344, 28.12.2001, pp. 76–82]; 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 L 309, 25.11.2005, pp. 15–36]; Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [OJ L 141, 5.6.2015, pp. 73–117]; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU [OJ L 156, 19.6.2018, pp. 43–74].

88 For details, see Bausch and Voller, 2014, pp. 6–9; Bülte, 2010, pp. 94–99; Gál, 2004, pp. 42–45; Jacsó, 2004, pp. 142–157; Jacsó, 2005, pp. 98–122; Jacsó, 2009, pp. 221–228; Jacsó and Udvarhelyi, 2017a, pp. 8–24; Langlois, 2013, pp. 96–98; Met-Domestici, 2016, pp. 170–179; Udvarhelyi, 2013, pp. 456–464, 467–469.

89 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law [OJ L 284, 12.11.2018, pp. 22–30].

90 Article 1(1) of the 6th AMLD.

Anti-Money Laundering Directives, this Directive aims to combat money laundering using criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.[91]

The Directive first sets out the *definition* and the *predicate offenses of money laundering*. In connection with the latter, it must be mentioned that the *list of predicate offenses has significantly been expanded* relative to the previous and current preventive directives.[92] The *6th AMLD* lists more than 20 *criminal offenses* that are considered criminal activity and, thus, can be *predicate offenses* of money laundering.[93]

The Directive defines these offenses, where relevant, by *reference to the related legal act of the EU*. Regarding other criminal offenses, Member States should decide how to delimit the range of offenses.[94] As a *general rule*, however, the Directive also provides that any offense should be regarded as a predicate offense of money laundering that is punishable, as per national law, by deprivation of liberty or a detention order for a maximum of more than one year or, regarding Member States that have a minimum threshold for offenses in their legal systems, any offense punishable by deprivation of liberty or a detention order for a minimum of more than six months.[95] Notably, the provisions of this Directive do not apply to money laundering regarding property derived from criminal offenses affecting the Union's financial interests, which is subject to specific rules by the PIF Directive.[96]

The *definition of money laundering* is regulated similarly to the previous preventive directives. Accordingly, Member States must take the necessary measures to ensure that the following conducts, when committed intentionally, are punishable as a criminal offense:

a) The conversion or transfer of property,[97] knowing that such property is derived from criminal activity, to conceal or disguise the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action.

91 Preamble (1) of the 6th AMLD. See Jacsó, 2017, pp. 128–129; Jacsó and Udvarhelyi, 2017b, p. 40.
92 See Jacsó, 2017, p. 130; Jacsó and Udvarhelyi, 2017b, pp. 43–44.
93 1. Participation in an organized criminal group and racketeering; 2. Terrorism; 3. Trafficking in human beings and migrant smuggling; 4. Sexual exploitation; 5. Illicit trafficking in narcotic drugs and psychotropic substances; 6. Illicit arms trafficking; 7. Illicit trafficking in stolen goods and other goods; 8. Corruption; 9. Fraud; 10. Counterfeiting of currency; 11. Counterfeiting and piracy of products; 12. Environmental crime; 13. Murder, grievous bodily injury; 14. Kidnapping, illegal restraint and hostage-taking; 15. Robbery or theft; 16. Smuggling; 17. Tax crimes relating to direct and indirect taxes, as laid down in national law; 18. Extortion; 19. Forgery; 20. Piracy; 21. Insider trading and market manipulation; 22. Cybercrime. See: Article 2(1) of the 6th AMLD.
94 Preamble (5) of the 6th AMLD.
95 Article 2(1) of the 6th AMLD.
96 Article 1(2) of the 6th AMLD.
97 According to Article 2(2) of the 6th AMLD property means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.

b) The concealment or disguise of the true nature, source, location, disposition, movement, and rights regarding, or ownership of, property, knowing that such property is derived from criminal activity.
c) The acquisition, possession, or use of property, knowing at the time of receipt, that such property was derived from criminal activity.[98]

As noted, the Directive criminalizes the aforementioned conducts when committed *intentionally* and with the *knowledge that the property was derived from criminal activity*. When determining whether the property is derived from criminal activity and whether the person knew that, the specific circumstances of the case should be considered, such as the fact that the value of the property is disproportionate to the lawful income of the accused person, and the criminal activity and acquisition of property occurred within the same time frame. Intention and knowledge can be inferred from *objective, factual circumstances*.[99] Beyond the criminalization of intentional money laundering, the Directive also allows the Member States to punish the aforementioned conducts as criminal offenses, where the offender *suspected or ought to have known* that the property was derived from criminal activity.[100]

The Directive also stipulates that money laundering can also be punishable if the property derived from a predicate offense that occurred on the *territory of another Member State or of a third country,* where that conduct would constitute a criminal activity had it occurred domestically. However, except for some predicate offenses listed in the Directive, Member States can prescribe the requirement of *double incrimination*, according to which the relevant conduct must constitute a criminal offense under the national law of the other Member State or of the third country where that conduct was committed.[101]

Contrary to the previous preventive directives, the Criminal Law Directive obliges Member States to criminalize *self-laundering*. Thus, regarding the conversion or transfer of property, and the concealment or disguise of the true nature, source, location, disposition, movement, and rights with respect to, or ownership of the property derived from criminal activity, the perpetrator of the predicate offense can be held liable for money laundering. However, the perpetrator of the predicate offense is not punishable for the mere acquisition, possession, or use of the property.[102]

Given the differences between the criminal justice systems of the Member States, the Directive requires the Member States to ensure that *aiding, abetting, inciting, and attempting* money laundering is punishable as a criminal offense.[103]

The Directive also contains detailed provisions on the *penalties to be imposed*. It obliges the Member States to prescribe *effective, proportionate, and dissuasive criminal penalties,* and in serious cases, money laundering must be punishable by a *maximum*

98 Article 3(1) of the 6th AMLD. See: Article 1(3) of the 6th AMLD.
99 Preamble (13) of the 6th AMLD.
100 Article 3(2) of the 6th AMLD.
101 Article 3(3)–(4) of the 6th AMLD.
102 Article 3(5) of the 6th AMLD. See: Jacsó and Udvarhelyi, 2017b, p. 45.
103 Article 4 of the 6th AMLD.

term of imprisonment of at least four years. The Directive also provides Member States with the possibility to prescribe additional sanctions or measures when necessary.[104] Member States must regard as *aggravating circumstance* a situation where money laundering was committed within the framework of a criminal organization,[105] or the perpetrator is an obliged entity under the 4th AMLD[106] and has committed the offense in the exercise of their professional activities. Member States may also assess to consider a situation as an aggravating circumstance if the laundered property is of considerable value or the laundered property derives from certain types of predicate offenses.[107]

Apart from natural persons, the Directive also obliges Member States to ensure the *liability of legal persons*.[108] Among the *sanctions that can be imposed on legal persons*, the Directive lists criminal or non-criminal fines; exclusion from entitlement to public benefits or aid; temporary or permanent exclusion from access to public funding, including tender procedures, grants, and concessions; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; a judicial winding-up order; temporary or permanent closure of establishments that have been used for committing the offense.[109] Furthermore, the Directive also contains regulations in connection with the *freezing and confiscation of the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offenses*[110] and the *establishment of the jurisdiction of the Member States*.[111]

Finally, it is worth noting that, in July 2021, the European Commission proposed a package of legislative proposals to strengthen the EU's anti-money laundering and counter-terrorist financing rules. It comprised four legislative proposals regarding preventive regulation.[112] The legislative process has not yet been completed.

5.2. The protection of money laundering in the national Criminal Codes

In this part, we intend to analyze the national regulation of money laundering by the Central and Eastern-European Member States, during which we must present whether the Member States managed to *implement the provisions of the 6th AML Directive* into their national criminal law system. In this context, we would like to focus

104 Article 5 of the 6th AMLD.
105 A criminal organisation means a structured association, established over a period, of more than two persons acting in concert to commit offences that are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty to obtain, directly or indirectly, a financial or other material benefit. Article 1(1) of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [OJ L 300, 11.11.2008, pp. 42–45].
106 See: Article 2 of the 6th AMLD.
107 Article 6 of the 6th AMLD.
108 Article 7 of the 6th AMLD.
109 Article 8 of the 6th AMLD.
110 Article 9 of the 6th AMLD.
111 Article 10 of the 6th AMLD.
112 For more, see European Commission, 2021.

on the Hungarian regulation and briefly consider the provisions of the other Central and Eastern-European countries. We focus on criminal law and the provision in the national Criminal Codes and do not analyze the preventive rules against money laundering.

5.2.1. The regulation of money laundering in the Hungarian Criminal Code

Given the legal harmonization obligation resulting from the EU membership of the country, Hungary also ensures the *fight against money laundering with criminal and non-criminal measures*. In Hungary, money laundering has been criminalized since 1994. Parallel to the modification of the Hungarian Criminal Code, a new act was adopted that prescribed specific obligations for the members of the financial sector.[113]

The currently effective Hungarian Criminal Code regulates money laundering in a separate Chapter (XL Money Laundering), which contains *two criminal offenses*:

a) *Money laundering*[114]
b) *Failure to comply with the reporting obligation related to money laundering*[115]

According to the Hungarian legislator, the protected legal interest of money laundering is the fight against organized criminality and terrorist financing and also the trust in the proper functioning of the legal economy and the protection of the financial institutions and other participants in financial life. With the amendment of Act XLIII of 2020 (enforced on 1 January 2021), the legislator aimed to make the previous criminal policy objective of preventing the use of assets derived from crime more effective. The legislation created a more detailed and differentiated definition of the statutory offense, regarding the predicate offense and qualifying circumstances. The criminal offense of money laundering in the Hungarian Criminal Code can be divided into *four main categories of punishable conduct*:

a) Any person who conceals or disguises the origin of assets derived from criminal activity, including any right on and the location of such assets and any changes therein, is guilty of money laundering (*classical form of money laundering*).[116]
b) A person involved in receiving assets derived from a criminal activity from others with the intent to conceal or disguise the origin of the assets, including any right on and the location of such assets, and any changes therein, or in concealing, converting, transferring such assets, participates in the alienation of or uses such assets, performs any financial transaction or receives

113 Act XXIV of 1994 on the Prevention and Combating of Money Laundering. The current regulation about the Prevention and Combating of Money Laundering and Terrorism Financing is the Act LIII of 2017.
114 Sections 399–400 of the HCC.
115 Section 401 of the HCC.
116 Section 399(1) of the HCC.

any financial service in connection with those assets or makes the necessary arrangements to that effect (*intentional money laundering*).[117]

c) A person involved in receiving assets derived from a punishable activity from others, or in concealing, converting, transferring such assets, participates in the alienation of or uses such assets, performs any financial transaction, or receives any financial service in connection with those assets or makes the necessary arrangements to that effect with the intent of aiding efforts to prevent the enforcement of confiscation and asset recovery ordered against others, or with intent to prevent the enforcement of confiscation and asset recovery ordered against others (*abetting-like money laundering*).[118]

d) Any person who, in connection with assets derived from a criminal activity committed by others acquires, obtains the right of disposition over such assets or safeguards, conceals, handles, uses, consumes, converts, transfers, or participates in the alienation of such assets is also guilty of money laundering (*receiver-like money laundering*).[119]

Notably, the Hungarian Criminal Code criminalized *self-laundering*. However, the abettor or aider shall not be prosecuted if he or she commits the criminal offense defined in respect of assets derived from a criminal activity he or she has committed (regarding the third and fourth types of money laundering).

The *object of money laundering* is the *assets*, which encompasses the new types and elements of the property (e.g., various forms of electronic data like cryptocurrencies used for payment). As per the *'all-crime approach,'* assets must be derived from the *'punishable criminal offense."*[120] As noted, this approach is more severe than the EU legislation. Money laundering can be punished even if the perpetrator of the predicate offense is unknown or is not punishable. Therefore, the punishment of the perpetrator of the predicate offense is not a prerequisite for the punishment of the perpetrator of money laundering. Hence, *any criminal offenses committed by anybody and anywhere, punishable under Hungarian law, can be a predicate offense of money laundering*.[121]

The *punishment* for intentional money laundering *depends on the amount of the assets and other circumstances in accordance with the regulation of the 6th AMLD.* The punishment shall be imprisonment for up to five years for a *felony* if the value involved in money laundering is below the substantial value (not more than 5 million HUF). In the most serious cases, imprisonment shall be between five to 10 years. Other relevant circumstances by the qualifications are when money laundering is committed *on a*

117 Section 399(2) of the HCC.
118 Section 399(3) of the HCC.
119 Section 399(4) of the HCC.
120 Mezei, 2018, pp. 21–28.
121 See Gál, 2013, p. 51; Tóth, 1998, p. 41.

commercial scale, by a service provider per the Anti Money Laundering Act,[122] *or by a public official.*

The Hungarian legislator also punishes *negligent money laundering.*[123] Any person who engages in preparations for money laundering is guilty of a *misdemeanor* punishable by imprisonment not exceeding one year. Finally, it is important to note that it is not a criminal offense but an administrative offense if the value of the offense does not exceed HUF 50,000.

If we compare the regulation of the Hungarian Criminal Code with the provisions of the Criminal Law Directive of the EU, the *Criminal Code is mostly in conformity with the new EU Directive*. The Hungarian legislator also criminalizes self-laundering. Furthermore, the Criminal Code even prescribes *stricter rules than the EU Directive,* given that it punishes negligent money laundering, which is not an obligation but a possibility according to the relevant EU requirements.

5.2.2. The regulation of money laundering in other countries

If we analyze the regulation of the other Central and Eastern-European countries, we can see that money laundering is punishable in all national criminal codes. One of the most important questions is how a country addresses the predicate offenses and whether a country punishes the negligence form of money laundering.

The crime of money laundering is regulated in Chapter V (*Crimes against property*) of the *Criminal Code of the Czech Republic*.[124] Money laundering can be committed by a person who conceals the origin or otherwise attempts to substantially complicate or render impossible to establish the origin of items or other asset values acquired via a criminal offense committed in the Czech Republic or abroad or as a reward for such a criminal offense or items or other asset values obtained for an item or other asset value referred to, or who allowed the commission of such an act to another person (intentional crime). The object of money laundering can be items or other assets from all criminal offenses (*all-crime approach*), similar to the Hungarian provision. However, if the property is derived from a particularly serious offense, the Czech Criminal Code provides for a more severe penalty. The Criminal Code expressly provides for the case where the predicate offense is committed abroad: it shall be punishable and shall be deemed to be an offense committed abroad, which fulfills the elements of an offense under the Act Czech Republic, irrespective of whether it is punishable under the law of the State in the territory of which it was committed.[125] Notably, the *negligence form* of the crime is also punishable.[126] In less severe cases, the punishment is imprisonment for up to four years, pecuniary penalty, prohibition of activity, or confiscation of items or other asset values. In the most serious cases, the

122 Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorism Financing.
123 Section 400 of the HCC.
124 Section 216 of the Czech Criminal Code.
125 Section 217/A of the Czech Criminal Code.
126 Section 217 of the Czech Criminal Code.

sanction is imprisonment for three to eight years or confiscation of property. It should be stressed that there is a special rule according to which, if the perpetrator commits such an act regarding an item or other asset value derived from a criminal offense for which the law stipulates a lighter punishment, the perpetrator shall be sentenced to this lighter punishment. If the money laundering is committed negligently, the sanction is imprisonment for up to one year, prohibition of activity, or confiscation of items or other asset values; in the serious case, imprisonment is for one to five years. The punishment depends on the amount of the asset. The legislator defined an aggravating circumstance as the situation where money laundering is committed by a member of an organized group, the asset value derived from an especially serious felony gains substantial profit for the perpetrator or for another, or the perpetrator uses his or her occupational position to commit such an act.

In the *Croatian Criminal Code*, the crime of money laundering is regulated in Chapter XXIV (*Criminal offenses against economy*).[127] Money laundering is punishable if the perpetrator invests, takes over, converts, transfers, or replaces a material gain from the criminal activity to conceal or disguise its illicit origin; conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of proceeds of crime; or acquires, possesses, or uses the proceeds of crime. The *negligence form* of the crime is also punishable. The criminal offense shall be punished with imprisonment from six months to five years. We could find the requirement of double criminality: if the material gain is derived from the criminal activity conducted in a foreign country, the perpetrator shall be punished when the activity is a criminal offense also under the domestic law of the country where it is committed.

The *Polish Criminal Code* regulates the crime of money laundering in Chapter XXXVI (*Crimes against business transactions and material interests in civil-law transactions*). Concerning predicate offenses, Poland also adopted the all-crime approach. Therefore, all offenses provided by the Criminal Code can be predicate offenses for money laundering.[128]

In *Romania*, money laundering is regulated in Law Nr. 129/11.07.2019 for preventing and combating money laundering and terrorist financing and for amending and supplementing some normative acts rather than the Criminal Code.[129] Per the definition of money laundering, the conduct of this crime is the exchange or transfer of assets, knowing that they come from the commission of crimes, to hide or conceal the illicit origin of the goods or help the person who committed the crime from which the assets originates to evade prosecution, trial, or punishment; the concealment or hiding of the true nature, source, location, provision, movement, or ownership of the assets or rights over them, knowing that such assets originated from crimes

127 Section 265 of the Croatian Criminal Code.

128 See more about the regulation and the evaluation of Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), 2021.

129 See Law no. 129/2019 to prevent and combat money laundering and terrorism financing, as well as to amend and supplement some legislative act; in details see Mirisan and Cirmaciu, 2019, pp. 387–397.

commission; or the acquisition, possession, or use of assets by a person other than the active subject of the offense from which the assets originate, knowing that they originate from the commission of crimes. Money laundering is the punishment of imprisonment from three to 10 years. The attempt shall be punishable. If the offense is committed by a legal person, it is also punishable. The acknowledgment of the origin of the assets or the purpose pursued must be established by objective factual circumstances, whether the offense from which the assets originate was committed in the territory of Romania, other Member States, or third countries.

In the *Serbian Criminal Code*, the crime of money laundering can be found in Chapter XXII (*Offences against economic interest*), where whoever converts or transfers assets knowing that such assets originate from a criminal offense to conceal or misrepresent the unlawful origin of the assets or conceals and misrepresents facts on the assets knowing that such assets originated can be held punishable.[130]

The *Slovakian Criminal Code* uses a different name for the offense instead of money laundering: *'legalization of the proceeds of crime.'*[131] It can be committed by any person who performs any of the following regarding income or other property obtained by crime to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offense, frustrate their seizure for criminal proceedings or forfeiture or confiscation: transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or holds, hides, conceals, uses, consumes, destroys, alters, or damages. The punishment shall be imprisonment of two to five years. In the most serious cases (e.g., if the offender obtains large-scale benefits, if the predicate offense is a serious felony, or if the money laundering is committed as a member of a dangerous group), the criminal offense is punishable by up to 20 years of imprisonment. Similar to the Hungarian regulation, the failure to comply with the reporting obligation related to money laundering is also punishable.[132] However, negligent money laundering does not constitute a criminal offense.

The *Slovenian Criminal Code* also contains the crime of money laundering[133] in Chapter XXIV *(Criminal offenses against the economy*). If a person accepts, exchanges, stores, disposes of, uses in economic activity or any other manner determined by the act governing the prevention of money laundering, conceals or attempts to conceal by laundering the origin of money or property that was, to his knowledge, acquired through the commission of a criminal offense, or commits the offense mentioned in the preceding paragraph, and is simultaneously the perpetrator of or participant in the criminal offense with which the money or property under the preceding paragraph was acquired, he or she shall be punished by imprisonment of up to five years.

130 Section 245 of the Serbian Criminal Code.
131 Section 233 of the Slovakian Criminal Code.
132 Section 234 of the Slovakian Criminal Code.
133 Section 245 of the Slovenian Criminal Code.

By high value, the punishment is imprisonment of up to eight years and a fine. If the crime is committed within a criminal association for the commission of such criminal offences, the perpetrator shall be punished by imprisonment of one up to 10 years and by a fine. Whoever should and could have known that the money or property had been acquired through a criminal offense shall be punished by imprisonment of up to two years. The negligent form of money laundering is also punishable.

Therefore, despite the harmonization efforts of the EU, there are significant differences between the national regulations. There is, however, a tendency for Member States to adopt the same approach to the scope of the basic offenses. There are also differences in the level of penalties and the criminalization of negligent money laundering.

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