

Report on the Hercule III

„Criminal law protection of the financial interests of the EU – Focusing on money laundering, tax fraud, corruption and on criminal compliance in the national legal systems with reference to cybercrime” project

1. Introduction– aim of the HERCULE project (HUUNIMISKOLCPFI)

The “*Criminal law protection of the financial interests of the EU – Focusing on money laundering, tax fraud, corruption and on criminal compliance in the national legal systems with reference to cybercrime*” project was funded by the European Anti-Fraud Office’s (OLAF) HERCULE III programme (2014–2020) “*Legal Training and Studies 2017*”, named after Hercule Poirot. The project started in January 2018 with the University of Miskolc as main coordinator and academics and practitioners from six countries (Austria, Germany, Greece, Hungary, Italy and Romania).

The general objective of the project was the protection of the financial interests of the European Union and preventing and combating fraud, corruption and other illicit activities affecting the financial interests of the Union. The action aimed at focusing on new practical challenges related to the topic (e. g. cybercrime). In connection with this general objective, the specific objectives of the project were the following:

- the raise of the awareness of the branches of legal professions that are involved in the protection of the financial interests of the European Union through organizing international conferences, workshops and trainings
- improvement of cooperation between practitioners and academics
- comparative analysis of the legal regulation and practice of the Member States involved
- exchange of information and best practices
- use of the results in the legal education
- examination of the relationship between EPPO and non-EPPO countries and fostering the sensitiveness in connection with this question.

The results of the project were published in an English and Hungarian volume.

2. Participants of the project and the main events

The project was coordinated by the University of Miskolc, Faculty of Law. The Hungarian project team included Prof. Dr. Ákos Farkas (university professor, project manager), Dr. habil. Judit Jacsó (associate professor, project coordinator), Dr. Bence Udvarhelyi (assistant professor, project coordinator), Dr. Erika Váradi-Csema (associate professor, project member) and dr. László Dornfeld (PhD student, project member).

In the project, the University of Miskolc had the following cooperation partners: National Office for the Judiciary, Office of the Prosecutor General of Hungary, National Tax and Customs Administration of B-A-Z County, Hungarian Financial Intelligence Unit of the National Tax and Customs Administration and LeitnerLeitner Budapest. Experts from five other Member States also participated in the project, including Prof. Dr. Gerhard Dannecker (University of Heidelberg), Prof. Dr. Robert Kert (Vienna University of Economics and Business), Prof. Dr. Richard Soyer (University Linz), Prof. Dr. Maria Kaiafa-Gbandi (University of Thessaloniki), Prof. Dr. Mirisan Valentin (University of Oradea) and Dr. Vincenzo Carbone (University of the International Studies of Rome). Judges, public

prosecutors and other academic and practical experts from the six Member States also participated in the implementation of the project.

The *opening conference* of the project with the title “*The Criminal Law Protection of the Financial Interests of the European Union Manifestations with Special Issues*” was organized in the University of Miskolc on the 23-24th March 2018. The aim of the conference was the practice-oriented discussion of the main questions and various special forms of the criminal law protection of the financial interests of the European Union through the presentation of the good practices of the Member States. The conference was focused on the criminal offences which fell in the narrower sense of the notion of EU fraud as well as on horizontal challenges like cybercrime and compliance, which were analyzed in the context of the protection of the Union's financial interests. The actuality of the conference was the adoption the new directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law adopted by the European Parliament and the Council in 2017.¹ The so-called PIF Directive, which has to be implemented into national legal systems of the Member States by the 6th July 2019, has introduced several innovations compared to the previous regulations. Therefore, one of the main objectives of the opening conference was the examination of the regulation of the directive in the light of the regulations of the Member States.

Among the lecturers of the conference was Prof. Dr. Péter Polt (Prosecutor General of Hungary), Dr. Gábor Miklós Molnár (president of chamber of the Curia), Dr. Gábor Simonka (director of the Hungarian Financial Intelligence Unit) and Prof. Dr. Ákos Farkas (dean of the University of Miskolc, Faculty of Law). The participating cooperation partners were Prof. Dr. Gerhard Dannecker (University of Heidelberg), Prof. Dr. Richard Soyer (University Linz), Prof. Dr. Maria Kaiafa-Gbandi (University of Thessaloniki), Prof. Dr. Mirisan Valentin (University of Oradea) and Dr. Vincenzo Carbone (University of the International Studies of Rome).

Following the opening conference *two workshops* were held. The first workshop on the topic of corruption and money laundering was organized on the 2-4th July 2018 by the project members from the Vienna University of Economics and Business and the University of Miskolc. The second workshop on VAT fraud was organized on 29-31st October 2018 by the University of Oradea and University on Miskolc. These events enabled the local (Austrian and Romanian) practitioners to share their experiences on the subject topics.

3. Training for professionals: HERCULE Winter Academy

The closing event of the project was a Winter Academy with the title “*Current questions and answers relating to the criminal law protection of the financial interests of the European Union*” which was held on the 14-16th February 2019 at the Hungarian Judicial Academy. The event was organized by the Faculty of Law of the University of Miskolc, the Association of Hungarian Lawyers for the European Criminal Law, the Research Centre for European Criminal Law of the Faculty of Law of the University of Miskolc and the National Office for the Judiciary.

The Academy was opened by *Dr. András Osztoivits, director of the Hungarian Judicial Academy; Dr. Tünde Handó, president of the National Office for the Judiciary and Prof. Dr. Ákos Farkas project manager and former dean of the University of Miskolc, Faculty of Law.*

¹ 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, p. 29-41]

Dr. Tünde Handó emphasized on the importance of the choice of name of the project, as the famous character of Agatha Christie helped many persons to choose to pursue legal studies and career in the past and present.

The lectures of the first section presented the most important theoretical and practical questions in connection with the collection and assessment of evidences in the light of the practice of the Court of Justice of the European Union and the procedural guarantees. The chairman of the section was *Prof. Dr. Gerhard Dannecker (Head of Department, University of Heidelberg)*.

In the first lecture *Prof. Dr. Ákos Farkas (University of Miskolc)* talked about the differences in the regulation of evidence collection and assessment in the Member States and the main problems caused by this situation, some of which are still not solved despite the efforts of the European Union. One of the possible solutions could be the extension of the principle of mutual recognition to the collection of evidence; however, this has not been successful yet because of the protection of the national sovereignty of the Member States. According to the final conclusion of the presentation, the automatic recognition of the evidence obtained in another Member State is a deadlock; instead of this the adoption of common minimum is required. In response to a question, he added that it would be too slow and time-consuming to decide on the admissibility of evidence in each case individually, and this process could significantly be accelerated by common minimum standards, even if they could not be applied everywhere (for example in connection with experts).

Prof. Dr. Anne Schneider (Head of Department, University of Mannheim) talked about the constitutional issues of the collection of evidence, focusing on the hidden effects of EU law. The lecturer raised the question of the decisions of the European Court of Justice in the field of competition law has a hidden, unintentional impact on fundamental rights. In connection with the Taricco case from 2015², she pointed out that the requirement of an effective sanction is contrary to the system of procedural guarantees, which could result in more preliminary rulings in the future, according to her point of view.

In the next lecture, *Dr. Vanessa Seibel (public prosecutor, Public Prosecutor's Office of Mannheim)* talked about the consequences of the inadmissibility of evidence and demonstrated how the strictness of the admissibility tests has changed in certain Member States in the recent years. The biggest problem of the system is the lack of clear rules, but it can be beneficial as well, since it could provide more leeway for the authorities involved. Currently there is no specific test when the acquisition of evidence violated the fundamental rights, which poses a serious problem in practice. According to her view, the ideal solution could be the use the EU rules on fair trial as a benchmark.

Dr. Oliver Landwehr (Senior Legal and Policy Officer, European Commission, OLAF) gave the fourth presentation analyzing the changing role of OLAF in investigations. OLAF is a “hybrid” organization which conducts administrative investigations in criminal matters, but without criminal measures, since it can only make recommendations. The legal status of the organization is evolving, for example, in connection with the collection and admission of evidence, because currently in many Member States there are no administrative procedures, according to the rules of which the evidence gathered could be taken into consideration. In future, criminal investigations will be taken over by the European Public Prosecutor's Office (EPPO)³. At the end of the presentation, he presented the proposal of the Commission on the

² Case C-105/14 Taricco and Others [ECLI:EU:C:2015:555]

³ 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, p. 1-71]

division of competences and cooperation between OLAF and EPPO,⁴ according to which the two organizations cannot investigate in the same case but can assist each other in a number of ways. During the debate, Prof. Dr. Gerhard Dannecker asked whether the parallel criminal and administrative investigation infringes the ‘ne bis in idem’ principle or not. In his answer, the lecturer said that there is no double sanction, because the criminal investigation may result in the punishment of the perpetrator, while the aim of the administrative procedure is to reclaim the money.

The final presentation was held by *Dr. Gábor Gál (Member of the Competition Commission, Hungarian Competition Authority)* on the topic of the European competition law. He presented the different types of cartels with examples as well as the responses of the EU law, such as the European Competition Network, which allows cooperation between the authorities of the Member States and the EU. He then talked about the methods to increase the efficiency of the fight against cartels, such as the regulation of whistleblowers in Hungary, according to which the informants receive an amount of money equivalent to 1% of the fines imposed. In his comment, Prof. Dr. Gerhard Dannecker stated that good practices and procedures in the field of cartel law can serve as a model for the future cooperation between EPPO and Member States.

The Winter Academy continued on the next day with the welcome words of *Dr. János Bóka (State Secretary responsible for EU and international judicial cooperation, Ministry of Justice, Hungary)*.

In the second section, the lectures focused on the implementation of the directive on the protection of the financial interests of the EU. The chairman of the section was *Prof. Dr. Gerhard Dannecker (Head of Department, University of Heidelberg)*.

The first lecture was held by *Dr. Franz Reger (Former Head of the Department of Fiscal Penal Law, Ministry of Finance, Austria)*, in which he emphasized the need for the proper implementation of the PIF directive in connection with VAT fraud. The fight against VAT fraud is in the interest of the Member States. It is an important development that the scope of the PIF Directive covers VAT fraud (if two conditions are met). This provision is also in line with the objective of the EPPO, which focuses on the cross-border commission of crimes. He also spoke about the criminalization of filing a proper tax return, which may seem problematic, but in this case, the intention is to avoid paying tax (in the case of a missing trader). Relating to the comments, he stated that the possibility of double punishment could not arise under the Austrian law, since the case will be fully relegated to the EPPO if it exceeds the threshold of 10 million euro.

The second lecturer of the section was *Kai Sackreuther (public prosecutor, Public Prosecutor's Office of Mannheim)* who talked about the issuing bogus invoices. He stated that nowadays there are no carousel frauds without the use of bogus invoices and underlined the role of fictitious companies issuing bogus invoices which become the part of the current system of tax fraud. In case of criminal organizations, it is used as a means to conceal bribery fees and for payments to illegal workers. The fictitious companies often change their headquarters and stay undetected for years because of the more lenient regulation for small businesses. In Germany this means that often more prosecutors are involved in a case.

The next lecture by *Prof. Dr. Robert Kert (Head of Institute, Vienna University of Economics and Business)* focused on the provisions of the PIF Directive and the new Directive on

⁴ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations [COM(2018) 338 final, 23.5.2018]

combating money laundering by criminal law⁵. One of the most important differences between them is that the latter includes self-laundering as an offense. In this context, he said that it could be problematic for the Member States to decide whether tax savings could be the subject of money laundering. He pointed out that personal savings cannot be considered as such, otherwise, it would violate the principle of proportionality, as all tax evasions would be considered money laundering. In the comments, Prof. Dr. Gerhard Dannecker stated that, under German law, if 10% of the assets on an account are considered as “dirty”, the whole amount could be confiscated. However, this regulation is considered to be too strict and will be changed.

In the last lecture of the section, *Prof. Dr. Maria Kaiafa-Gbandi (Head of Department, Aristotle University of Thessaloniki)* presented the Hans Åkerberg Fransson⁶, Menci⁷ and Taricco I/II⁸ cases. The objective of her presentation has been to specify the importance of those judgements to Member States’ judiciaries, intending to serve the proper administration of justice in an institutionally multilevel and highly sensitive judicial area. First of all, she compared the judgements in the cases Hans Åkerberg Fransson and Menci (with regard to the enforcement of the ne bis in idem principle between administrative and criminal sanctions) and stressed that in the Menci case the Court, moving back from its initial stance gave after all advantage to the protection of EU’s financial interests. In relation to the Taricco I case, she pointed out that it may have unforeseeable consequences if the limitation period does not apply due to the requirement of effective protection of the EU’s financial interests and stressed that the Court rightly modified its decision in its judgement for the Taricco II case. The overview of her presentation offered support to national judges for an effective protection of fundamental rights in their national laws, but also pointed out the importance for vigilance in their future activation to this direction in collaboration with the competent bodies of the EU legal order.

The third section focused on the theoretical and practical issues of the protection of the financial interests of the European Union. The chairman of the section was *Prof. Dr. Richard Soyer (Head of Department, University of Linz)*. The first lecturer, *Prof. Dr. Ilona Görgényi (Head of Institution, University of Miskolc)* unfortunately couldn’t attend on the event; therefore her lecture was read by Dr. Judit Jacsó.

Dr. János Homonnai (public prosecutor, Office of the Prosecutor General of Hungary) analyzed the fight against corruption from the point of view of the prosecutors. First, he briefly described the Hungarian rules of bribery, after that, he presented the problems of investigation. In connection with this he highlighted the consensual nature of the criminal offence, the lack of direct evidence and the importance of collecting and scrutinizing indirect evidence, after which he presented the hidden tools. At the end of his lecture he also proposed the exemption of the co-operating defendant from criminal liability, the augmentation of the protection of whistleblowers and easier availability of electronic and financial data.

The next lecturers were *Dr. Judit Szabó (judge, Tribunal of the Capital)* and *Dr. Péter Pfeifer (judge, Tribunal of Veszprém)* about money laundering and corruption in judicial practice. Dr. Péter Pfeifer began his presentation on corruption with statistical data, international surveys and the importance of latency in this context. The overall number of registered corruption crimes was 984 in 2016, and 1123 in 2017. Both are extremely low numbers. He presented the

⁵ 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, p. 22-30]

⁶ Case C-617/10 Åkerberg Fransson [ECLI:EU:C:2013:105]

⁷ Case C-524/15 Menci [ECLI:EU:C:2018:197]

⁸ Case C-105/14 Taricco and Others [ECLI:EU:C:2015:555]; Case C-42/17 M.A.S. és M.B. [ECLI:EU:C:2017:936]

relevant domestic regulations and showed some of the recent decisions of the Curia. For example, according to the judicial practice of the Curia, that passive corruption is committed in every case when the perpetrator accepts money, while active corruption can only be punished if the bribed person expressed the intent to influence during the term of his office. Dr. Judit Szabó briefly described the Hungarian regulation of money laundering and the relationship between bribery and money laundering. She presented the recommendations of MONEYVAL from 2016 and its legal transposition, focusing on the work of the working group dealing with it. She reported improving statistics on both the number of cases and the length of procedures, as there were 50 cases in 2011-2016 and 34 cases in 2017-2018. She then talked about the problematic questions in the judicial practice concerning the legal regulations, like question of value limit and the legal definition of the “asset” and the “account money”.

The main topic of the fourth section was the question of the establishment of the European Public Prosecutor’s Office. The chairman of the section was *Prof. Dr. Erika Róth (Head of Department, University of Miskolc)*.

The first speaker of the section was *Prof. Dr. Péter Polt (Prosecutor General of Hungary)*. He presented the process of the establishment of the EPPO, including the development and the major changes of the draft regulation over the years. According to his point of view, the regulation does not achieve its most important objective, i.e. the unified fight against criminal offences threatening the financial interests of the European Union. The difference between minimum and maximum penalties raises the possibility of forum shopping. He explained that, according to his point of view, the current college model, in which prosecutors are members of both national and European organizations, seriously undermines the sovereignty of the Member States. Instead of this model, he supported the network model, because it has already been proven in many cases as an effective, less bureaucratic alternative. According to his point of view, it does not harm national sovereignty if the EPPO could act as a private prosecutor, which is based on the fact that the European Union can be considered as the victim of the crimes in question. However, it still requires further legislation. In response to the comments, he explained the need for an agreement between the non-participating Member States and the EPPO for the interest that the system can work well in the future.

Prof. Dr. Valentin Mirisan (Dean, University of Oradea) and *Dr. Christian Mihes (Head of Department, University of Oradea)* also talked about the European Public Prosecutor’s Office. In their presentation, they analyzed the most important steps leading to establishment creation of the organization, its purpose and the regulations governing the functioning of EPPO. They pointed out why they consider the establishment of the body as an important step forward, and talked about the position of Romania, which was the only Member State where the lower house of the Parliament rejected, and the Senate supported the creation of EPPO, but with respect for subsidiarity.

In the last lecture, *Dr. Stefan Schumann (University of Linz)* presented on the competences of the EPPO in the light of competences of the European Union and the Member State. According to his opinion, the determination of the scope of the EPPO is too vague. However, if the EPPO proves to be successful, its scope can be extended to more crimes. He spoke extensively about the jurisdictional conflict of the applicable laws of Member States, about forum shopping and about the role of the EU law, including the practice of ECJ and the provisions of the Charter of Fundamental Rights of the EU. He drew attention to the fact that, if they were the basis for cooperation, it would be necessary to include rules on guarantees beyond the minimum standards set by the EU. However, if the Member States’ regulations were adjusted to the minimum, this could result in the erosion of the procedural guarantees.

The aim of the last day of the event was the discussion of the results of the conference, within the framework of which the organizers presented the final document which contained the conclusions in connection with the topics discussed during the two conferences and two workshops.

4. Final thoughts

It can be summarized that the closing event of the project, in which about one hundred people took part, was successfully organized. The participants of the Winter Academy could hear highly informative professional lectures, which were accompanied by a lively professional discourse. The complexity of the topics was clearly visible, since theoretical and practical experts working in different fields could express their opinion in connection with the topics of the conference.

We are convinced that the HERCULE Winter Academy has reached its goal and has provided an opportunity for a theoretical and practice-oriented review of a wide range of professional issues as well as for building collegial relationships and for informal exchanges of information.

The participants of the Winter Academy were awarded with a certificate undersigned by the professors of the University of Miskolc, the University of Heidelberg, the University of Linz, and the Vienna University of Economics and Business. The organizers received positive feedback from the participants on the online evaluation platform of the project. The written and edited version of the presentations of the HERCULE project will be published in an English and Hungarian volume by Wolters Kluwer Publisher, therefore it will become available to both domestic and foreign practitioners and theoreticians, and will also be used in the legal education.

For more information on the activities and results of the project, please visit the website: hercule.uni-miskolc.hu.