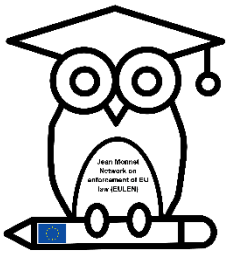

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Effectiveness of EU criminal law: do the criteria really exist?

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Abstract

This article critically examines the principle of effectiveness in EU criminal law, focussing on its role as a legal doctrine and justification for the expansion of EU competencies. Despite deep integration of this principle into EU jurisprudence, the analysis reveals that the concept of effectiveness lacks a clear and uniform definition, raising concerns about its normative clarity and legal measurability. The paper evaluates potential effectiveness criteria, such as compliance, the deterrent effect, enforcement mechanisms or legal uniformity, and demonstrates their conceptual ambiguity and limited practical applicability. Although effectiveness is central to EU legal order, the paper concludes that it remains a relative and context-dependent concept that is widely used to expand EU competence in criminal law.

Keywords: effectiveness, criminal law

> *The expansion of criminal law nowadays is so dynamic that it can be compared to a coasted bullet train. Nevertheless, one may wonder where this train is aiming to and whether the railway tracks are built on a solid basis. Moreover, the passengers of the train are in danger and the destination to which they arrive may be different from the one expected.*[1]

The effectiveness of EU criminal law presents a paradox regarding legislation, enforcement and legal certainty from the perspective of the EU and its Member States. If effectiveness is used both as the primary justification for expanding EU competence in the area of national criminal law and as the principal objective implementing EU law, can we allow this notion to remain undefined? How the harmonisation of EU criminal law can be evaluated without clear criteria when we are a talking about the duty to ensure the effectiveness of EU law?

The EU legislator often views differences between Member States' criminal laws as a significant obstacle to the effective implementation of EU policies. The use of directives to harmonise laws is seen as a way to reduce these divergences, with minimum rules intended to ensure respect for the diversity of national legal systems. However, at the same time, effectiveness is also interpreted as a demand to eliminate national rules that diverge from EU standards when these rules result an inconsistent level of protection and fail to safeguard the Union's interests.

This gives rise to a fundamental tension: how can these competing goals be reconciled? Therefore, the aim of this paper is to analyse existing criteria of effectiveness in EU legal doctrine and consider how they can be applied to EU criminal law. The scope of the research is limited to the analysis of definitions and criteria of effectiveness within EU doctrine, acknowledging ongoing disagreements about the nature and content of this concept. The study does not engage with sociological theories of law.
This paper is structured in free parts (I, II and III). The first part provides background on the function of principles in EU law, with a focus on criminal law. The second part examines the principle of effectiveness, clarifying its meaning and role within EU law. The third part explores the different manifestations of effectiveness, with a specific attention on the criteria applied in the context of EU criminal law.

I. Function of the principles in the EU law

The European Union (EU, Union) is a unique legal and political community, founded on the idea of reconciling the interests and rights of its Member States while applying common rules.[2] At its core, the EU is built on shared values, embedded in its founding treaties, which guide the institutions, policies, and decision-making processes of the Union. These values are reflected in the general principles of EU law, which serve as fundamental rules shaping the functioning of the Union and the application of its policies.
The principles of EU law perform multiple roles. They guide how laws are made, interpreted, and applied and how its values are put into practice. Principles also set the limits of the Union's competence or, conversely, open the way for its expansion. In certain cases, the principles limit the scope of the Union's competence; in others, they provide a basis for its expansion. In this way, principles are not merely abstract ideas but act as foundational norms that underpin the operation of EU law.[3] Furthermore, principles are also defined as fundamental, guiding provisions of a general character or ideas and the essence of law that embody its most distinctive features and influence other elements of the legal system[4].

[1] Iwona Seredyńska, 'Principles-Based Application of the Criminal Law' in *Insider Dealing and Criminal Law* (Springer, Berlin, Heidelberg 2012).
[2] Christophe Carugati and Bruno Deffains, 'Approche économique de l'effectivité du droit européen' in Aude Bouveresse and Dominique Ritleng (eds), *L'effectivité du droit de l'Union européenne* (Bruylant 2018) 33.
[3] Koen Lenaerts, Piet Van Nuffel and Tim Corthaut, *EU Constitutional Law* (Oxford University Press 2021; online edn, Oxford Academic, 21 April 2022) ch 6.
[4] Marius Andreescu, Andra Puran, 'Some considerations on the principles of law' 27 (2020) Studies in Law: Research Papers 87

There are many different perspectives on the normative character of legal principles. Among certain ones, principles are viewed as guiding ideas, while others prefer to give them the role of general legal norms, pointing out the normative character.[5] The significance of principles as a background for specific rules is deeply rooted in Dworkin's analysis of rights- he presented a comprehensive theory on this basis. On the one hand, he maintained that both- principles and rules guide decisions regarding legal obligations.[6] On the other hand, Dworkin declared that principles do not set out the legal consequences that follow automatically from them as rules do; rather they tell us about values and show us a direction.[7] There is no doubt, that principles refer to a proposition that is legally valuable, operating at a ground. Nevertheless, the principles in EU law have different functions. First, they are tools for interpretation, second - principles are grounds for review[8] and third, rules for evaluating the breach of law.[9] So principles in the EU law are not applied as a self-standing rules and often were used as a rules for interpretation or the gap fillers, [10]ensuring the autonomy and coherence of EU legal system.[11] The special attention should be paid at the principles in EU criminal law- before the Lisbon Treaty, EUCJ required EU Member States to take appropriate measures by the means of criminal law on the basis of the principles. In addition, where is no relevant EU law or the rules do not provide an answer, we can use general principles to fill the legal gaps, in a manner with the overall body of EU law and general principles.[12] Nevertheless, principles often lack precise legal definition and very often raise more questions than they can answer,[13] so the application of principles as unwritten rules is strongly tied with the judiciary and it is evident that their interpretation can vary significantly depending on the situation.[14]In general, principles in most cases do not provide a possible result, but rather show an obligation, demanding to ensure the certain degree of quality.

As mentioned above, the principles are not applied as standalone rules. Their flexibility and fluid nature allow them to serve to variety of functions, so they are sometimes described as the 'dark matter' of EU legal order- while they provide normative guidance, their application often depends on judicial interpretation, which may vary across national courts.[15] It means that we are faced with core tension looking how we should define them. Even T. Tridimas argues that many decades after the establishment of the EU, its diverse and often bewildering terminology plays a misleading role in the interpretation of principles. [16]

From the light of criminal law, principles can legitimise criminalisation or expansion of EU competence in criminal law of EU Member States. Why it is so important? It can be explained in the following way. Criminal law has long been considered a symbol of national sovereignty. It is still based on the principle of territoriality and reflects the cultural, political and legal choices of each state. The EU has expanded its competences in criminal law cautiously, moving from intergovernmental cooperation to supranational competence after

[5]Egidijus Jarašiūnas, 'Bendrieji Europos Sąjungos teisės principai Europos Sąjungos Teisingumo Teismo jurisprudencijoje: šaltinių vartojimo, įkvėpimo ir norminio pobūdžio funkcijų problemos' in *Piliečio XXI amžiaus iššūkiai tarptautinei teisei*(Mykolas Romeris University 2020).

[6]Paul Yowell, 'A Critical examination of Dworkin's Theory of Rights', 52 (2007) American Journal of Jurisprudence 93.

[7] Jacques Ziller, 'General Principles of European Union Law: Their Origins and Role in the Evolution of European Integration' (2025) 2 *Fascicolo* 191

[8] Dean Knight, 'Grounds of Review' (2018) in *Vigilance and Restraint in the Common Law of Judicial Review*, 75–146. Cambridge Studies in Constitutional Law, 75-46.

[9] Takis Tridimas, *General Principles of EC Law* (Oxford University Press 2000) 17.

[10] Yilin Wang, 'The Origins and Operation of the General Principles of Law as Gap Fillers' (2022) 13(4) *Journal of International Dispute Settlement* 560.

[11] Koen Lenaerts and Jose A Gutierrez-Fons, 'The Constitutional Allocation of Powers and General Principles of EU Law' (2010) 47(6) *Common Market Law Review* 1629

[12] Gintaras Švedas, 'Europos Sąjungos teisės įtaka Lietuvos baudžiamajai teisei' (2010) 74 *Teisė* 8.; RA Duff, 'Criminal Law and Political Community' (2018) 16(4) *International Journal of Constitutional Law* 1251, Jannemieke Ouwerkerk, 'Criminal Justice beyond National Sovereignty: An Alternative Perspective on the Europeanisation of Criminal Law' (2015) 23 *European Journal of Crime, Criminal Law and Criminal Justice* 11.

[13] Takis Tridimas, *General Principles of EC Law* (Oxford University Press 2000) 1–2.

[14] Kęstutis Jankauskas, 'Teisės principų vaidmuo teisiniame procese: socialinių santykių reguliavimo ypatumai' (2004) 51(59) *Jurisprudencija* 140.

[15] Armin Cuyvers, 'General Principles of EU Law' in Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger and Armin Cuyvers (eds), *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Brill Nijhoff 2017) 217.

[16]Takis Tridimas, 'The general principles of EU law and the Europeanisation of national law' Review of European Administrative Law 2 2020, 5-6.

Lisbon[17]. Today the EU's efforts to expand its competence in criminal law include not only the most serious crimes cases, but also rise discussions about other domains such as public health, environmental protection, or fair competition.[18] From this point of view, the increasing power of European Union in the criminal law demands to diminish differences in the legal orders calling for common definitions and criminal sanctions and effectiveness is the cornerstone for implementing EU rules,[19] while the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policies.[20]Moreover, the effective implementation of EU policies through criminal law calls for discussion about the *more* effective enforcement of EU law, so we are confronted with certain degree of effectiveness in the development of criminal law legislation, namely by strengthen effectiveness of EU law.[21] So this principle is like the catalysator for the harmonisation of criminal law moving us away from territorially defined criminal law.

Therefore, the principle of effectiveness in EU criminal has at least several dimensions- an autonomous principle, derivative element from other principles, requiring ensuring the effectiveness of other EU principles. In this derivative role, effectiveness acts as a benchmark to test whether other principles contribute to a system that secures the full operation of EU norms.[22] At the moment, we are faced with several levels of effectiveness: CJEU doctrine (practical effectiveness), doctrinal level, normative level, deterrence and enforcement level. However, effectiveness in criminal law plays significant role allowing the EU to push beyond traditional limits.

II. Principle of effectiveness in the EU law

The principle of effectiveness is a key element of EU law and can be compared with an engine. Moreover, effectiveness has played a significant role throughout the history of the European Union, initially manifesting through enforcing national laws in line with EU legislation from the early days of EU integration. [23] Over time, the concept of effectiveness has involved within EU doctrine encompassing legislative impact, rhetorical use and sometimes criticism for being just a tool for justifying the expansion of EU competence.[24]

The principle of effectiveness dates to the early stages of the EU genesis. The force of effectiveness was evident from early in the history of the EU. The Court of Justice had to establish the autonomous European legal order; with the basic message that EU law would be deprived of its effectiveness unless EU law was enforced and national law set aside.

Regarding to the development of EU criminal law, the principle of effectiveness has played a key role here also. Before the entry into force of the Lisbon Treaty, there was no legislative competence of in criminal matters in the EU. For a long time, national criminal law was seen as one of the symbols of state sovereignty, showing the moral and social values and legal principles that were most important in a particular state. Moreover, more than three decades ago, the idea of EU criminal law was considered unrealistic, as the Community was seen as a creation solely focused on economic integration and with limited powers.[25] Nevertheless, starting from its early jurisprudence, the EU Court of Justice introduced the principle of effectiveness as a mean to justify the intervention of Union to the national criminal law systems when it was necessary to ensure the effectiveness of EU policies. On the one hand, the content of this concept in ECJ case

[17] Bence Udvarhelyi, 'Criminal Law Competence of the European Union before and after the Treaty of Lisbon' (2015) 11 (1), European Integration Studies 45-69.

[18] Buisman, 'The Future of EU Substantive Criminal Law: Towards a Uniform Set of Criminalisation Principles at the EU Level' (2022) 30 *European Journal of Crime, Criminal Law and Criminal Justice* 161-187.

[19] Samueli Miettinen, *Criminal Law and Policy in the European Union* (Routledge 2012) 1

[20] Treaty on the Functioning of the European Union [2008] OJ C115/47, art 83.

[21]European Commission, *Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies through Criminal Law* COM (2011) 573 final, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (20 September 2011).

[22] Sacha Prechal, *Directives in EU Law* (2nd edn, Oxford University Press 2005).

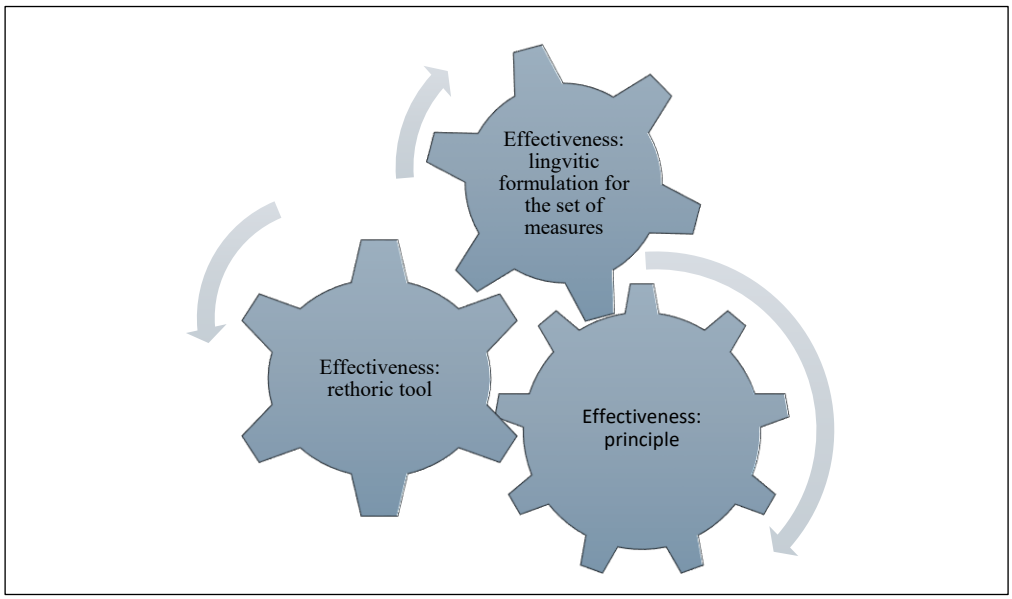
[23] Ester Herlin-Karnell, 'Effectiveness and Constitutional Limits in European Criminal Law' *(2014) 5 New Journal of European Criminal Law 267.*

[24] The Treaty on the Fuctioning of the European Union. Article 83.2 If the approximation of criminal laws and regulations of the Member States proves essential toensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.

[25] Jenia Iontcheva Turner, 'The Expressive Dimension of EU Criminal Law' (2012) 60(2) *American Journal of Comparative Law* 555.

law often varies: as already mentioned, it depends on the context in which the concept is used, so it is reasonable to recognise that, at first glance, effectiveness remains an unclear concept in certain cases, in which it is difficult *to conceptualise* and *contextualise it,* due to the diversity of interpretations presented in the case law of the ECJ.[26] On the other hand, this only supports the assumption that the content of effectiveness varies according to the context and circumstances of interpretation.

EU legal scholars studying manifestations of effectiveness in ECJ case law distinguish between three types of effectiveness. In the *first* case, effectiveness in ECJ case law is seen as a rhetorical tool that gives the ECJ unlimited powers, i.e. justifies the Union's competence even in areas where it does not have such competence.[27] In the *second* case, effectiveness is seen as a linguistic formulation covering all measures necessary to achieve the desired objective .[28] In the *third* case, effectiveness is treated as a fundamental independent principle of the Union's legal system.[29]



This implies a threefold purpose of the principle of effectiveness: effectiveness is a principle of interpretation of law, a principle of application of law, and an independent principle as an objective of the legal system and, at the same time, a rhetorical device involving 'a comparison of the content of the norm with the objective pursued or already achieved'[30] .

As already mentioned, various concepts dating back to the establishment of the Community are used to define effectiveness. In the 1957 ECJ case law,[31] effectiveness is referred to *effet utile,* which means 'useful

[26] M. Elvira Mendez-Pinedo, 'The Principle of Effectiveness of EU Law: A Difficult Concept in Legal Scholarship' 1 (2021) *Juridical Tribune* 11.

[27] Urska Sadl, 'The Role of effet utile in Preserving the Continuity and Authority of European Union Law: Evidence from the Citation Web of the Pre-accession Case Law of the Court of Justice of the EU 8 1 (2015) *European Journal of Legal Studies* 9.

[28]Olivier Dubos, 'L'effet utile et l'effectivité dans l'Union' européenne : identification normative', in *L'effectivité du droit de l'Union (*Bruylant: 2018):71-90.

[29] Urska Sadl, 'The Role of effet utile in Preserving the Continuity and Authority of European Union Law: Evidence from the Citation Web of the Pre-accession Case Law of the Court of Justice of the EU 8 1 (2015) *European Journal of Legal Studies* 24.

[30] Aude Bouveresse, 'L'effectivité comme argument d'autorité de la norme', in *L'effectivité du droit de l'Union européenne,* ed. Aude Bouveresse and Dominique Ritleng, Droit de l'Union européenne. Colloques (Brussels: Bruylant, 2018), 99.

[31] Dineke Algera, Giacomo Cicconardi, Simone Couturaud, Ignazio Genuardi, Félicie Steichen v. Common Assembly of the European Coal and Steel Community (ECJ, [1957], No. C-7/56, C-3/57, C-7/57).

effect'.[32] In the 1961 case *Steenkolenmijnen Limburg* ,[33] the ECJ sought to draw a line between the sovereignty of Community members and the effectiveness of the Community Treaty, i.e. *effet utile,* with a view to ensuring that the sovereignty of Member States did not undermine the effectiveness of Community treaties. In so-called classic cases, such as *Flaminio Costa v ENEL*[34] or *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen*,[35] the ECJ did not refer directly to *effet utile,* but emphasised the enforceability of Community law, the effectiveness of public enforcement procedures and the protection of individuals through the effective implementation of Community law. Thus, as we can see, effectiveness is indeed a historical principle of the Community and, later, of the Union, although there is some debate in doctrine as to when effectiveness evolved from a general concept into a principle of law.[36]

The principle of effectiveness creates an even closer link with the principle of proportionality, and these two principles often overlap to such an extent that it is difficult to determine the limits of their application. Attention should also be drawn to cases in which the principle of effectiveness is interpreted in terms of uniform legal regulation. In Case C-66/08, Advocate General Y. Bot stated that applying national criminal law provisions contrary to a fundamental Union decision precludes the application of the principle of effectiveness, as effective application of a legal act requires Member States to define grounds for non-compliance in a uniform manner.[37] This opinion of the Advocate General is supported by Advocate General E. Sharpston's statement that national legislation should be interpreted in accordance with EU law wherever possible, bearing in mind the entire domestic legal system and applying the recognised principles of interpretation. Advocate General M. Bobek states in Case C-310/16 of 25 July 2018 that uniformity is the essential criterion for effectiveness: 'The level of uniformity of legal regulation may be applied in accordance with national standards of protection of fundamental rights, provided that the primacy, unity and effectiveness of Union law are not compromised. The application of national standards of protection implies diversity [...] the less harmonisation there is, the more likely it is that effectiveness will be compromised.' Paradoxically, the Union, which respects national diversity, seems to realise that the greater the tolerance of differences in national legal regulation, the lower the degree of effective legal protection is likely to be.

Effectiveness can also be revealed through the concept of ineffectiveness: 'measures should be considered ineffective if, in view of the specific circumstances of the case, they clearly do not allow the objectives set out in the Union's primary and secondary law to be achieved.'[38] The protection of the Union's financial interests, which requires all possible measures to be taken to ensure the achievement of EU policy objectives, is no exception. This statement is illustrated by the ECJ's decision of 16 February 2022 in Case C-156/21: it is stated that the concept of protection of the Union's financial interests is defined as the implementation of the budget in accordance with the principles of economy, efficiency and effectiveness, and includes all legislative, regulatory and administrative measures designed, inter alia, to prevent, detect and correct budgetary irregularities and fraud.[39] This implies that the protection of the EU's financial interests is inseparable from effectiveness, which encompasses all possible measures to ensure the desired result.

Summarising the case law of the ECJ, which refers to the principle of effectiveness, it should be noted that effectiveness can be used as a rhetorical argument, a concept covering a set of measures, or a legal principle. The principle of effectiveness in ECJ case law is inseparable from the objective pursued by the EU legislator, and since the objectives of the EU legislator are oriented towards all Member States as a whole, the

[32] Stefan Mayr, 'Putting a Leash on the Court of Justice? Preconceptions in National Methodology v *effet utile* as a Meta-Rule', *European Journal of Legal Studies* 4, no. 2 (2013), 4,
[33] Steenkolenmijnen Limburg (ECJ, [1961], No. C-30-59).
[34] Flaminio Costa v. E. N. E. L. (ECJ, [1964], C-6/64C).
[35]NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Nederlandse administratie der belastingen (Dutch Internal Revenue Administration) (ECJ, [1963], No. C-26/62).
[36] In academic works, the doctrine of effectiveness, which gradually developed into a legal principle, is considered to be the precursor of the principle of effectiveness in certain cases. For more information, see M. Elvira Mendez-Pinedo, 'The Principle of Effectiveness of EU Law: A Difficult Concept in Legal Scholarship', *Juridical Tribune* 11, iss. 1 (2021): 9, https://www.tribunajuridica.eu/arhiva/An11v1/1.Elvira%20Mendez%20Pinedo.pdf.
[37] Kozlowski (ECJ, [2008], No. C-66/08).
[38] European Commission v United Kingdom of Great Britain and Northern Ireland, Opinion of Advocate General Priit Pikamäe (ECJ, [2021], No. C-213/19).
[39] Hungary v European Parliament and Council of the European Union (ECJ, [2022], No. C-156/21).

result of the actions of Member States in implementing EU law is inseparable from legal regulation characterised by the smallest possible cross-border differences[40].

EU law is inextricably linked to the principle of effectiveness, which delineates the limits of both Member State and Union competence, particularly in the application of the principle of subsidiarity[41]. This principle is relevant when the objectives of a proposed action cannot be sufficiently achieved by Member States acting individually at the central, regional, or local level, but can be more effectively realized at the Union level. It is important to note that the focus on the effectiveness reflects the ideology of rationality, which bases lawmaking on anticipated success and practical impact.[42] According to this doctrine, EU law is inseparable from the achievement of its objectives, relying on uniform application across Member States. Given that the 2010 Stockholm Programme emphasises that the effectiveness of legal measures adopted at the Union level must be assessed, it is essential to consider the relationship between uniform legal regulation and effectiveness with particular regard to effectiveness evaluation. In 2012, in the proposal for criminal law measures to combat fraud affecting the Union's financial interests, the European Commission stated that the Union must protect taxpayer' money as effectively as possible, using all the possibilities offered by the Treaty on the European Union, highlighting the insufficient impact of existing legal measures. To determine whether the EU legislator's objectives, defined in Directive 2017/137, to *strengthen* the protection of the Union's financial interests[43] by transposing this Directive into Member State law have been met, it is also necessary to define the meaning of 'effectiveness' and identify the criterion by which the Directive's success in strengthening protection can be measured. When assessing whether specific measures, mechanisms, and instruments are appropriate for achieving the legislator's objectives, the analysis can draw on philosophical, sociological, and political perspectives. However, from an EU legal perspective, it is widely accepted that the outcome depends primarily on the purpose of the legal act itself and how it is interpreted. This is identified as one of the fundamental principles of lawmaking that determines the effective enforcement of EU law.[44]

The term *'effectiveness of norms* 'was first introduced in H. Kelsen's *Pure Theory of Law*[45]and later influenced J. Carbonnier's 1957 study on the societal impact of legislation.[46] Critics have long questioned this concept: in 1962, it was argued that effectiveness lacked sufficient clarity for use in legal science.[47] By 1985, Swiss scholar L. Mader observed a trend toward basing legislative decisions on anticipated outcomes, such as effectiveness, using law instrumentally to achieve goals regardless of cultural or social considerations.[48]Effectiveness is also often defined as *'the desired real impact of applying a legal norm.'*[49]Scholars such as F. Ostas, M. van de Kerchove, and J. Betaille describe it as *'the ability to orient the behaviour of the addressee of a rule'* [50] or *'a means of moving from a multitude of rules to a unity of norms.'*[51]These definitions show that effectiveness operates as a legal principle, fundamentally tied to a norm's capacity to achieve the legislator's intended outcomes. This broad framing raises questions about the limits of effectiveness as a justification for expanding EU criminal law.[52] Furthermore, Article 83(2) TFEU provides

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[40] Rasa Volungeviciene 'Europos Sąjungos finansninių interesų Europos Sąjungos išlaidų srityje apsaugos nuo sukčiavimo problematika po Direktyvos 2017/1371 įsigaliojimo'. 2024 PhD disertation, Kaunas, Vytautas Magnus university, 99-104.

[41] Treaty on European Union (Maastricht Treaty), amending the Treaty on European Union and the Treaty establishing the European Community [1992] OJ C191/5, art 3(3).

[42] Lauréline Fontaine, *'Effectivité et droit de l'Union européenne sous le regard d'une analyse sociétale'* (Le Droit de la Fontaine, 2016)

[43] 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 [2017] OJ L198/29 ('PIF Directive').

[44] Markus Peifer, *Bessere Rechtsetzung als Leitbild europäischer Gesetzgebung* (Berlin: Logos, 2011) 103–144

[45] Hans Kelsen, *Grynoji teisės teorija* (Vilnius: Eugrimas, 2002)

[46] Jean-Marie Auby, 'L'obligation gouvernementale d'assurer l'exécution des lois' (1953) JCP 1080

[47] Paul Amselek, *Perspectives critiques d'une réflexion épistémologique sur la théorie du droit: essai de Phénoménologie juridique*, 1 vol. (Paris, 1962) 334.

[48] Luzius Mader, *L'évaluation législative. Pour une analyse empirique des effets de la législation* (Lausanne: Payot, 1985) 113

[49] *Vocabulaire juridique*, 8th ed, ed Gérard Cornu (Paris: Presses Universitaires de France, 2007) 345

[50] François Ost and Michel van de Kerchove, *De la pyramide au réseau – pour une théorie dialectique du droit* (Bruxelles: Facultés universitaires de Saint Louis, 2002) 329.

[51] Julien Betaille, 'Les conditions juridiques de l'effectivité de la norme en droit public interne : iliustrations en droit de l'urbanisme et en droit de l'environement' (thèse de doctorat, Université de Limoges, 2012), 22,

[52] Ester Herlin-Karnell, 'Effectiveness and Constitutional Limits in European Criminal Law' (2014) 5 New Journal of European Criminal Law 267.

that harmonisation may be pursued where it is deemed necessary to guarantee the effective enforcement of an EU policy in a field that has already been regulated through prior harmonisation measures. This provision is designed to secure the effective application of EU policies in areas that have already been harmonized through directives, and it concentrates specifically on enforcing the proper implementation of harmonized EU law.[53]So that are the limits to the use of effectiveness as a justification in the development of EU criminal law? As F. Snyder observes, effectiveness involves multiple dimensions, ranging from the enactment of EU policy into legislation; application of EU regulations by Member States, transposition of Directives into national law; implementation of EU secondary legislation; use of EU law by economic undertakings, organisation and individuals; recourse to litigation in the national courts based on EU law; enfacement of EU law by national courts including interpretation of national law in the light of EU law.[54] It appears that in some cases it is difficult to distinguish between these different types which often overlap.[55]

However, when applied to criminal justice, the principle of effectiveness may extend to criminalisation itself. This can result in the creation of offences and penalties under EU law and impose on Member States the obligation to comply with EU criminalisation standards. In this respect, effectiveness in European criminal law may serve to reinforce state authority rather than limit it in relation to individuals. Its significance is further evident in shaping EU legislation on criminal matters: effectiveness is not confined to national enforcement but also underpins the Union's competence to legislate in criminal law and informs its interaction with other areas of EU law.[56]

There is no doubt that the pursuit of effectiveness faces inherent tension. Enhancing the criminal justice system through measures such as criminalizing specific offenses, exploring investigative methods, or enhancing procedural safeguards, it may be driven by the goal of achieving more efficient justice but also raises questions regarding the level and scope of effectiveness. The directives focus on strengthen of the implementation of EU environment law by harmonising environmental criminal law across Member States[57] or address to strengthen the protection of the Union's financial interests by establishing common standards for definitions of criminal offences and penalties related to fraud, corruption and other illegal activities affecting EU budget[58] or discuss the need for a robust and efficient legal framework to combat cross-border financial crimes.[59] Effectiveness can thus be interpreted differently depending on what the EU aims to achieve, whether it is the justification of EU actions or the practical enforcement at the national level.[60]

At the same time, a key difficulty persists. In most cases, the effectiveness of EU law is closely associated with criminalisation and severity of criminal sanctions. The complex issue was disclosed by new term *crimeffectiveness*, which considers the extent in which criminal law should (or can) be used in order to enhance the effectiveness of EU policies.[61]At the first glance, this appears paradoxical, especially from the point of view of ultima ratio principle- is it true that replacing administrative measures by the means of criminal law

[53] Frank Meyer and Dimitrios Tsilikis, 'Criminal law enforcement of EU law and the impact of Europeanization' in Miroslava Scholten (ed), *Research Handbook on the Enforcement of EU Law* (Edward Elgar 2023) 60.

[54] Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56(1) *The Modern Law Review* 25.

[55] Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56(1) *The Modern Law Review* 25.

[56] Valsamis Mitsilegas, 'From Overcriminalisation to Decriminalisation: The Many Faces of Effectiveness in European Criminal Law' (2014) 5 *New Journal of European Criminal Law* 416, 417.

[57] Directive (EU) 2024/1203 of the European Parliament and of the Council of 15 May 2024 on the protection of the environment through criminal law [2024] OJ L1203 30.4.20224 ('Environmental Crime Directive')

[58] 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 [2017] OJ L198/29 ('PIF Directive')

[59] 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 [2017] OJ L198/29 ('PIF Directive')

[60] If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.

[61] Lorenzo Bernardini, *'From Policy to Punishment—The Rise of 'Crimeffectiveness' in EU Law Enforcement'* (Jean Monnet Network on EU Law Enforcement Working Paper Series, Conference: Enforcement of European Union Law: New Horizons, 19–20 September 2024, King's College London)

we will be able to ensure effectiveness of EU goals? Furthermore, the assumption that simply increasing criminal sanctions will correspondingly raise the level of effectiveness raises a significant conceptual and practical questions.

Effectiveness goes hand in hand with other principles, including legal certainty. How is effectiveness tied with legal certainty? As we see from THEU, for the ensuring the effective implementation of a Union policy, harmonisation of the definitions of criminal offences are used. So, we are faced with a problem, when we are trying to define the criminal offence in uniform way in 27 legal systems using 24 languages. Legislation must be clear and precise so that those affected by it have a clear understanding of their rights and obligations, and can act accordingly. In the domain of criminal law, where stringent imperatives of legal certainty and predictability are imposed on linguistic expressions, this requirement is of the utmost importance. An imprecise formulation could result in an individual receiving the most severe punishment, including imprisonment, without justification. Clearly, the ambiguity surrounding the concept of effectiveness poses a significant threat to legal certainty. The issue under consideration is whether the distinction between EU and national competences in criminal law can be based on a concept that is not specific enough. This predicament creates a self-perpetuating cycle, the resolution of which depends on striking a balance between legal certainty and effectiveness.

III. Criteria of effectiveness in EU criminal law[62]

The principle of effectiveness is noticeable in various aspects of EU criminal law, influencing the design of legislation and the enforcement. Its application ensures that EU policies achieve their intended outcomes, particularly when these policies rely on national criminal measures. The principle of effectiveness is used to define the extent to which EU law is implemented or enforced in national legal systems. Effectiveness also permeates the legal and political discourse on European integration, occupying a grey zone and remaining difficult to define precisely. Nevertheless, the concept forms the basis of EU law, especially since its deliberate flexibility has enabled it to assume different meanings and play various roles.[63] There are several issues with this. Firstly, can effectiveness become a criterion? Some argue that effectiveness is just goal-oriented, while others claim that effectiveness is defined as the degree to which the behaviour of the addressees complies with the established norm.[64] Although the exact content of this principle is somewhat elusive,[65]the situation becomes even more complicated when we ask how to measure effectiveness. Considering that the EU has the competence to act when it is essential to ensure the effective implementation of a Union policy, the question of measurability is more relevant than ever. Regardless of whether it is considered a legal principle, an interpretative tool or an empty formula, the concept of effectiveness has consistently been the subject of academic criticism at both the national and supranational levels. At the national level, it has been judged in relation to the enforcement of EU law. At the supranational level, it has been criticised for justifying EU competence in criminal matters and for its interaction with other areas of EU law. [66] Therefore, the question of how to measure the unmeasurable in some cases seems closer to philosophy than to law.

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[62] Due to the limited scope of the paper and the lack of capacity to perform an interdisciplinary study, this paper analyzes the effectiveness of legal regulation and enforcement as its outcam. Although it is recognized that the specific characteristics of a society are important in examining the reasons why criminal law systems are formed in a particular way, an analysis using sociological methods would go beyond the scope of this study. Therefore, this paper refrains from analyzing the effectiveness of legal regulation in the second aspect: it does not assess the effectiveness of legal regulation from the perspective of legal sociology (the relationship between social actors and legal norms).

[63] Aude Bouveresse and Dominique Ritleng (eds), *L'effectivité du droit de l'Union européenne*, Droit de l'Union européenne. Colloques (Bruylant 2018) 135.

[64] Edourd Dubout, 'Être ou ne pas être (du droit)? Effectivité et champ d'application du droit de l'Union européenne' in Aude Bouveresse and Dominique Ritleng (eds), *L'effectivité du droit de l'Union européenne*, Droit de l'Union européenne. Colloques (Bruylant 2018) 108.

[65]Uglješa Grušić, 'The Principle of Effectiveness in European Law and European Private International Law: The Case of Transnational Employment in the European Court of Justice and English Courts' in J.-S. Bergé, S. Francq and M. Gardeñes Santiago (eds), *Boundaries of European Private International Law* (Bruylant 2015) 427–446

[66] *Valsamis Mitsilegas, 'From Overcriminalisation to Decriminalisation: The Many Faces of Effectiveness in European Criminal Law' (2014) 5 New Journal of European Criminal Law 416, 417*

Over the past decades, discussions have addressed not only effectiveness but also the level of effectiveness; however, the gap between theoretical approaches and reality still exists. Nevertheless, the main question between legal practitioners and scholars remains the same –'[s]hould the law directly constrain behaviour, or should the law employ the threat of imposition of sanctions to channel behaviour*?"*[67] When we take a closer look at the attempts to measure effectiveness in EU criminal law, we can feel totally surprised by the variety of elements, used to measure the effectiveness. Nevertheless, it is possible to define some main groups, presenting the criteria in the following way.

The difference between the intended and actual outcomes of legal regulation. In this case, effectiveness is defined as the extent to which objectives are achieved. When analysing the effectiveness of legal regulation, it is important to consider the same view of legal scholars in Germany,[68]France[69] and Luxembourg.[70]These scholars identify the objective, set by the legislator, as the most important component of effectiveness. This means that the predefined objective of legal regulation serves as specific criterion to the *individua*l situation which should be solved by first- legal act, and second- enforcement of this regulation. So, the effectiveness is based on the legal norm and can be observed empirically. Furthermore, the quantity of legislation, in terms of both the number of legal acts and their comprehensiveness, should not be considered a separate category, but rather as an aspect of the quality of legislation.[71] According to V.A Rybakov, there is no single approach to the definition of effectiveness of legal norms – it can be understood as an ability of legal tools to produce desired effect, degree of achieved legal objectives or to make a social impact.[72]
So, effectiveness can be evaluated by the help of three independent elements: intent of the legislator, EU legal act and national legal act. For example, when the EU legislator decided to strengthen the protection of EU financial interests against fraud, stating that differences in concepts and sanctions were the main obstacle to ensuring effective protection, we should analyse both the directives and the national legal acts used to implement it from the point of view of effectiveness. After that, we should review the case law and assess the issues that arise from applying these legal acts.

Uniformity of EU law. The next criterion is linked to the previously mentioned criterion and can be defined by analysing the harmonisation of criminal law. From this point of view, N. Reich distinguishes three elements of effectiveness: (a) elimination (rejecting national norms that contradict EU law); (b) hermeneutics (interpreting national law in light of EU law); and (c) protection of rights.[73] The first two elements are directly related to the unification or harmonisation of law. The EU legal model presupposes that effectiveness implies uniformity, thereby ensuring the coherence of the system as a whole and the attainment of its objectives.[74]

When assessing the effectiveness of legal regulation, the problem of data correlation undoubtedly arises. It would be difficult to say this with absolute certainty whether a specific legal norm determines a certain behaviour in society. The outcome of legal regulation may be influenced by the legal norm itself, the intensity of administrative control, the standard of living or unemployment rate in a particular state etc. Bruno-Otto Bryde, who specialises in research of effectiveness, has stated, that shortcomings in the effectiveness of legislation are the rule rather than the exception.[75] On the one hand, specific criterion can be used to identify

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[67] Steven Shavell, ' The general structure of laws and its optimality', *Foundations of Economic Analysis of Law* (Harvard University Press, 2004) 571.
[68]Maximilian Mödinger, *Bessere Rechtsetzung. Leistungsfähigkeit eines europäischen Konzepts* (Studien zum europäischen und deutschen Öffentlichen Recht 30, Mohr Siebeck 2020) 65–72; Lovro Tomasic, *Effet utile: die Relativität teleologischer Argumente im Unionsrecht* (C H Beck 2013)
[69] Olivier Dubos, 'L'effet utile et l'effectivité dans l'Union européenne: identification normative' in Aude Bouveresse and Dominique Ritleng (eds), *L'effectivité du droit de l'Union européenne* (Bruylant 2018) 77–85
[70] Luc Heuschling, 'Effectivité', 'efficacité', 'efficience' et "'ualité' d'une norme/du droit. Analysis of words and concepts' in Marthe Fatin-Rouge Stéfanini, Laurence Gay and Ariane Vidal-Naquet (eds), *The Effectiveness of Legal Norms: A New Vector of Legitimacy?* (Bruylant 2012) 27–59 .
[71] Maximilian Mödinger, *Bessere Rechtsetzung. Leistungsfähigkeit eines europäischen Konzepts*, Studien zum europäischen und deutschen Öffentlichen Recht 30 (Mohr Siebeck 2015) 132
[72] Vladimir A.Rybakov, 'Criteria for determining the effectiveness of the law', *Law Enforcement Review* 3,2 (2019)6.
[73] Norbert Reich, 'The Principle of Effectiveness ', in Norbert Reich, *General Principles of EU Civil Law* (Cambridge: Intersentia, 2013), 89–130
[74] Yann Leroy, 'La notion d'effectivité du droit' (2011) 79 *Droit et société* 715.
[75] Brun-Otto Bryde, *Die Effektivität von Recht als Rechtsproblem* (De Gruyter 1993) 5–12.

both shortcomings and good practices. On the other hand, the existing differences in the interpretation of the principle of effectiveness in EU law confirm the assumption that this principle is indeed very broad and can have different meanings depending on the area in which it is applied.[76] Should this be considered a shortcoming? Since legal principles are usually defined as fundamental, guiding provisions of a general nature that embody the essence of law and influence other elements of the legal system, we must agree that the meaning of effectiveness, like other EU legal principles, is best revealed in a specific situation. German doctrine notes that it is difficult to define what constitutes effective enforcement of criminal law, as both effectiveness and efficiency criteria are often based on judicial and criminal policy guidelines, which are influenced by political debates, crime trends and a host of other variables.[77] In response to the question of whether effectiveness can be measured, it is argued that 'it is necessary to specify which legal entities are being compared: legal systems in general, specific areas of law, certain concepts of norms, approaches, institutions and legal culture, and how the comparability of the data collected, legal processes and procedures will be ensured'[78] when assessing the effectiveness of different objects. However, effectiveness is not just about measuring impact. It also relates to the reality that EU legislation seeks to address.[79] It may therefore be argued that there are no universal criteria of effectiveness in criminal law since the principle of law itself is, by nature, an abstract concept lacking precise boundaries. This involves evaluating both the EU legal act (the Directive) and the national criminal law provisions that implement the objectives established by the EU legislator. In this context, the definition of offence and the associated criminal sanctions become central to the analysis of effectiveness. As the EU legislator has identified the issue of unequal levels of protection within the Union resulting from divergent definitions of criminal offences and sanctions, uniformity of legal regulation emerges as a key aspect of the legislator's objective. However, the given tension between uniformity of regulation and protection of the key elements of national legal systems interact with the minimal measures set out in Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), while it allows Member States to implement potentially stricter legal regimes-uniformity in this context signifies the greatest possible degree of harmonisation, bearing in mind the inherent differences between national legal system. What is more, indirect effect of directives also is linked to effectiveness- the need to ensure that directives are effective and are *effectively* transposed[80]. From a supranational perspective, the enforcement of EU law should operate with equal strength and produce consistent outcomes throughout the Union. Ensuring uniformity is therefore essential to the effective enforcement of criminal law. According to F. Meyer and D. Tsilikis, [s]*imply implementing minimum standards will not be enough to guarantee functionally equivalent results. It is not even clear whether equivalent results must be achieved under EU law, and what this would imply.*[81]

Undoubtedly, a legal norm is more acceptable if it enhances collective welfare, i.e. maximises collective well-being. The priority is given to the safeguarding the Union's interests rather than the interests of an individual Member State. A. Bouveresse and D. Ritleng adhere to this premise by identifying the effectiveness of Union law with uniformity or treating uniformity as a subcategory of effectiveness.[82]They argue that, to ensure the effectiveness of Union law, uniformity must be guaranteed. This position is supported by C. Carugati and B. Deffains[83], who argue that effectiveness in European law presupposes uniformity and is based on systemic coherence.

Thus, uniformity and consistency in legal systems can be regarded as criterion of the principle of effectiveness in EU law, particularly in cases of legal harmonisation. E. Herlin-Karnell also endorses this approach, noting

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[76] Dimitris Liakopoulos, 'The effet utile' in CJEU Jurisprudence' (2020) 7(1) Revista Vertentes do Direito 99–132.

[77] Robin Hofmann, 'Formalism versus Pragmatism – A Comparative Legal and Empirical Analysis of the German and Dutch Criminal Justice Systems with Regard to Effectiveness and Efficiency', *Maastricht Journal of European and Comparative Law* 28, iss. 4 (2021): 452–478.

[78] Ibid.

[79] Edouard Dubout, Être ou ne pas être (du droit) ? Effectivité et champ d'application du droit de l'union européenne. dir. Aude Bouveresse ir Dominique Ritleng, Droit de l'Union européenne. Colloques (Bruxelles: Bruylant, 2018) 108

[80] Judgment of the Court of 10 April 1984, case 14/83 *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*, EU:C:1984:153, para. 15 and 26

[81] Frank Meyer and Dimitrios Tsilikis**,** 'Criminal Law Enforcement of EU Law and the Impact of Europeanization' in *Research Handbook on the Enforcement of EU Law* (Edward Elgar Publishing 2023) 68.

[82] Aude Bouveresse ir Dominique Ritleng, 'Avant-propos', in *L'effectivité du droit de l'Union européenne*, eds Aude Bouveresse ir Dominique Ritleng, Droit de l'Union européenne. Colloques (Bruxelles: Bruylant, 2018), 14

[83] Christophe Carugati, Bruno Deffains, 'Approche économique de l'effectivité du droit européen', in *L'effectivité du droit de l'Union européenne*, eds. Aude Bouveresse and Dominique Rutleg, Droit de l'Union européenne. Colloques (Bruxelles: Bruylant, 2018), 56.

that integrity and uniformity should be considered criteria of effectiveness in EU criminal law, as set out in Article 83(2) of the Treaty on the Functioning of the European Union (TFEU).
It is worth to mention that uniformity of EU law as criteria of effectiveness is tightly connected with deterrent effect of sanctions, so we can say, that uniformity of sanction (as much uniform as it is possible harmonising the laws by the help by minimum rules) can be discussed as a combined criterion of effectiveness.

Deterrent effect. A couple of theories have been proposed for measuring the effectiveness by the means of deterrent effect of certain legal regulation. In early 1977 EUCJ placed Member States under a duty to take necessary measures including sanctions in criminal nature.[84] V. Mitsilegas sees it as criminal law may be used to achieve as a means to an end, the use of 'criminal law means ensuring effectiveness of EU law at EU level'.[85]Scandinavian scholars have made the most progress in this area. They have identified the preventive (deterrent) effect as the main criterion and linked it effectiveness to sanctions – impact of sanctions on society that can deter criminal activity. S. Melander[86] specifies the content of this criterion, suggesting that effectiveness should be assessed exclusively through the prism of punishment. The scholar argues that the effectiveness of different theories of punishment is most clearly demonstrated in deterrence theories, which emphasise the consequences of criminal punishment. Finish scholar Anika Suominen agrees that effectiveness is often used as a measurement for criminal law, however, when it comes to harmonisation of substantive EU criminal law, effectiveness is not as easy to measure. [87] She describes three different ways to measure the effectiveness, and the first one is deterrence – prevention from committing crimes emphasise the consequences of criminal punishment.[88] As I have noted previously, this criterion is mainly connected with penal sanctions; We can easily find both supporters of harsher punishments and those who advocate criminal law as the ultimate ratio. The first one escale penalties for repeat offenders proposing higher sanctions for repetitive offenders.[89] The second argues that *sanctions should be employed first, and then imprisonment only after monetary sanctions cannot be used because a person's wealth has been exhausted.*[90] However, there is a lack of scientific studies on how harsh penalties are related to deterrence from the point of view of EU criminal law. Talking about criminal law, we can agree with the statement that harm-based sanctions fail to effectively prevent harm, and measures focused on prevention or the act itself seem more attractive, society faces the broader challenge of identifying which actions genuinely pose a danger[91]. But from the point of view of EU criminal law, especially when we are talking about harmonised criminal law, we should note, that EU has a competence to act when national measures are not able to ensure the effectiveness , so it means that existing sanctions cannot control the social behaviour . Additionally, one society uses methods to prevent undesirable actions that differs from another EU Member State. It is also worth mentioning that neither criminal sanctions nor the level of criminal sanctions has an evident and positive impact on actual crime rates. It is the inevitability of punishment that has a real effect on crime, rather than the punishment itself. Furthermore, attempting to measure the effectiveness of legal regulations by their deterrent effect is like trying to measure the undefined with even more undefined means.
As a general matter, legal technique also plays a key role by informing individuals about dangerousness of their acts and according to S. Shavell, 'if individuals have a good understanding of the nature of their acts, harm-based sanctions should function well, '[92] so the deterrent effect depends on individual's education, social

[84] *Case 50/76 Amsterdam Bulb [1977] ECR 137, paragraph 32.*
[85] Valsamis Mitsilegas, 'From Overcriminalisation to Decriminalisation: The Many Faces of Effectiveness in European Criminal Law' (2014) 5 *New Journal of European Criminal Law* 418
[86] Sakari Melander, 'Effectiveness in EU Criminal Law and Its Effects on the General Part of Criminal Law', *New Journal of European Criminal Law* 5, iss. 3 (2014): 275
[87]Annika Suominen, ' 'Effectiveness and Functionality of Substantive EU Criminal Law' (2014) 5 New Journal of European Criminal Law L 402-403.
[88] Sakari Melander, 'Effectiveness in EU Criminal Law and Its Effects on the General Part of Criminal Law' (2014) 5 *New Journal of European Criminal Law* 275
[89] Endres, Alfred, and Bianca Rundshagen. 2016. "Optimal Penalties for Repeat Offenders – The Role of Offense History." BE Journal of Theoretical Economics 16:545–78.; Alex Raskolnikov, 'Deterrence Theory: Key Findings and Challenges', in The Cambridge Handbook of Compliance, 79–92. Cambridge Law Handbooks. Cambridge: Cambridge University Press, 2021
[90] Steven Shavell, *Foundations of Economic Analysis of Law* (Harvard University Press 2004) ch 25, 'The General Structure of the Law and Its Optimality' 578
[91] Ibid 584
[92] Steven Shavell, 'The Optimal Structure of Law Enforcement' (1993) 36 JL & Econ 264

status etc. Furthermore, he discovers that the effectiveness of a sanction depends on the individual's well-being: deterrence is weak in the criminal realm not only because the likelihood of sanctions is low, but also for two other important reasons. First, many of those who commit crimes are poor, so monetary sanctions are ineffective'.[93] The less wealthy someone is, the less likely it is that a sanction equal to their wealth will be sufficient to deter them. As a result, the more probable outcome is that imprisonment will be necessary to deter them.[94] The same point of view this scholar has on probability of imposition of sanctions – if sanctions are less likely to be imposed, then the monetary sanction needed to deter will be higher. This, in turn, means that imprisonment will be more likely to be needed as a deterrent. So, in general, deterrent effect of the law is dependent on the many factors, including the sanctions. However, the deterrent effect differs in each state even in different social groups depending on individuals wealth, education. Turning to the EU criminal law, we can suppose that situation is completely different- can we talk about pure wellbeing of criminals in cases of EU fraud, drug and trafficking? I'm sceptical of that interpretation. First, in EU cross bord crimes typically are involved managers of companies and criminals in this case differs from the car thief. Second, deterrent effect differs in each legal system of the EU because of its cultural, legal and social differences. It is questionable about possibility to create uniform deterrence in all EU Member states when we can find an answer what is really deterrent in one state. Based on F. Meyer and D. Tsilikis, 'deterrence and general prevention both depend on effective prosecution and adjudication leading to severe criminal sanctions and moral condemnation', [95]so in this case effectiveness constitute moral condemnation, criminal sanctions and prosecution have common roots of effectiveness.
It worth to mention, that deterrent effect and moral condemnation often overlap. As stated by F. Meyer and D. Tsilikis, criminal law should enhance effectiveness not only criminal punishment but also by moral condemnation, so 'this enhanced moral or social stigma is indispensable to underscore the gravity of wrongdoing against EU law'.[96]But as the main criticism I would like to point out that to describe the boundaries of deterrence or condemnation is quite difficult in national criminal law. So can we find the common formula for all EU Member States?

Enforcement of EU law. Another way to measure effectiveness is based on enforcement (policing, prosecution, and sentencing), which affects potential offenders and reflects the overall approach of the criminal justice system. This type of measurement suggests collecting statistic data in different legal systems and make comparative analysis. One of the weaknesses of this approach is the undeniable differences in how the statistic is collected, which must be considered when interpreting the results.[97] At first glance, the number of detected crimes could serve as an indicator; however, statistical methods differ among Member States (e.g. in Germany data on detected crimes are included in statistics when proceedings being carried). Commenting this situation, S. Buisman suggests that the results of criminal prosecutions should not be used as a criterion of effectiveness, since the outcome also depends on the available resources, and the quality of work carried out by law enforcement agencies. He also argues that, in EU law, the meaning of effectiveness and the qualitative parameters vary depending on the EU's objectives in a given case.[98]The same position reveals S. Melander, when assessing effectiveness based on the actual number of imprisonments, he asks which legal system is more effective: one that guarantees longer prison terms for fewer people or one that provides shorter prison terms for more offenders?[99] F. Snyder's view is that the effectiveness of implementation, enforcement and compliance is dependent on various factors. These differences must be based on objective criteria and the effective

[93] Frank Meyer and Dimitrios Tsilikis, 'Criminal law enforcement of EU law and the impact of Europeanization' in Miroslava Scholten (ed), *Research Handbook on the Enforcement of EU Law* (Edward Elgar 2023) 60.
[94] Steven Shavell, 'The Optimal Structure of Law Enforcement' (1993) 36 JL & Econ 264
[95] Frank Meyer and Dimitrios Tsilikis, 'Criminal law enforcement of EU law and the impact of Europeanization' in Miroslava Scholten (ed), *Research Handbook on the Enforcement of EU Law* (Edward Elgar 2023) 60.
[96] Frank Meyer and Dimitrios Tsilikis, **'**Criminal Law Enforcement of EU Law and the Impact of Europeanization' in *Research Handbook on the Enforcement of EU Law* (Edward Elgar Publishing 2023) 57.
[97] Annika Suominen, ' 'Effectiveness and Functionality of Substantive EU Criminal Law' (2014) 5 *New Journal of European Criminal Law* 402-403.
[98] S Buisman, 'The Future of EU Substantive Criminal Law: Towards a Uniform Set of Criminalisation Principles at the EU Level' (2022) 30 *European Journal of Crime, Criminal Law and Criminal Justice* 161-187.
[99] Sakari Melander, 'Effectiveness in EU Criminal Law and Its Effects on the General Part of Criminal Law' (2014) 5 *New Journal of European Criminal Law* 275

application of EU law, which serves as the binding element.[100]According to A. Raskolnikov, perfect enforcement is unrealistic and errors are unavoidable: on the one hand, wrongful acquittals (failures to assign liability when it should be imposed) and wrongful convictions (imposing liability when it should not be) both weaken deterrence. On the other hand, the wrongful imposition of liability can have the opposite effect, as individuals who would have met the legal standard under perfect enforcement may refrain from engaging in the activity altogether, fearing an erroneous finding of liability.[101] It is important to note, that in both cases applying the sanctions we should about the society which endeavours to control undesirable behaviour and employs methods that differ in fundamental ways–why it has made the choices that it evidently has and why should they sometimes be monetary in nature and at other times take the form of imprisonment?[102]

Effectiveness is a relative concept, and, from a teleological point of view, it must always be assessed in relation to a specific objective or purpose. However, it is a one-dimensional criterion used to achieve a specific objective as effectively as possible and thus appears to be more of a description of the complex problem of interpreting the relationship between Union and national law than a solution.

Conclusions

There is no one single formula referring neither to the principles in EU law, nor the principle of effectiveness. Different wording is used to express the content of effectiveness, and it would be difficult to come up with an exhaustive list of possible meanings. Nevertheless, the principle of effectiveness is crucial in EU criminal law because it ensures that EU law isn't just words on paper but works in practice, especially in such a sensitive field as criminal justice. However, the lack of precise meaning and elusive content face a problem when this principle is used as a main argument for the expansion of EU competence in criminal matters. Effectiveness is a relative concept, and, from a teleological point of view, it must always be assessed in relation to a specific objective or purpose. However, it is a one-dimensional criterion used to achieve a specific objective as effectively as possible and thus appears to be more of a description of the complex problem of interpreting the relationship between Union and national law than a solution. To continue, the content of effectiveness differs in ECJ case law, (it has at least trifold content), in doctrine of EU criminal law and in enforcement context. There are some criteria of effectiveness in EU legal doctrine which overlaps measuring effectiveness by deterrence, uniformity of laws and quality of enforcement. In some cases, they are more or less undefined as the concept we are going to measure. The criterion that assesses the difference between the intended and actual outcomes of legal regulation is the most precise measure of effectiveness and can be adapted to each situation. This demonstrates that there is no universal measure of effectiveness and that individual criteria must be defined for each situation considering the fact, that these criteria should be universal for all EU Members states which differs in cultural, historical and legal aspects. Therefore, the effectiveness in EU criminal law has its own dimension and can be evaluating by the achieved result from the point of view if of the aim of the EU legislator. One of the main obstacles for effectiveness in EU criminal law is based on the differences in legal regulation (sanction and definitions of criminal offences) in Member States, so it is necessary to assess effectiveness in a comprehensive manner – taking into account the results of all Member States as a whole, rather than those of a single Member State. With 27 different legal systems within the EU, it is worth considering whether common, universally applicable criteria can be established to assess the effectiveness of criminal law in every Member State.

[100] Francis Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques', *The Modern Law Review* 56, iss. 1 (1993): 27,
[101] Alex Raskolnikov, 'Deterrence Theory: Key Findings and Challenges', in *The Cambridge Handbook of Compliance,* 79–92. Cambridge Law Handbooks. Cambridge: Cambridge University Press, 2021.
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