The implementation of EU criminal law in the Hellenic Republic

Focus on the new PIF Directive and its implementation in Greece:

Legal and legislative analysis

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A. The implementation of EU criminal law in the Hellenic Republic

The transposition of EU legislation has gone through distinct phases in the Hellenic legal history. The start of EU criminal law presented an obvious challenge for the Hellenic legislators. Until then all of criminal law was neatly placed within the Criminal Code. The notion that criminal law could live outside of the Code was simply outside the ethos of Hellenic legal theory and practice. International agreements within the sphere of criminal law existed but were implemented, to the extent dictated by domestic diplomacy, mainly by means of one-provision laws declaring that the annexed agreement or treaty was now part of the Hellenic legal order. These laws remained foreign to the judiciary that applied them with varied intensity and mainly when prompted by the litigant parties.

When EU criminal law started to form, Hellenic legislators attempted transpose it in the way they knew best: via the incorporation of the new EU instruments to the Criminal Code. To which the EU reacted negatively. From the Commission's point of view, this was not

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enough. EU criminal law instruments tend to include non criminal provisions, which requires incorporation of the criminal offense in the national legal order plus introduction of administrative implementing measures guaranteeing the effectiveness of the substantive criminal provision. Classical example of this negative reaction was the Commission's poisonous response to the introduction of money laundering as a criminal offense in the Hellenic Criminal Code. Although the Hellenic legislator was transposing in a manner that was familiar to the judiciary, and this probably much more effective for the use of the provision by the judges, the Commission was right to point out that the administrative part of the first Money Laundering Directive was completely ignored by the Hellenic legislator. Was this a conscious effort of the Hellenic Parliament and government to ignore EU criminal law and simply introduce a toothless criminal provision? The answer to the Commission's question seems to be no, quite the opposite. The introduction of the offence in the Criminal Code was indeed an attempt to transpose fully and effectively. The accuracy of this perception is strengthened by the lack of any prosecutions and convictions for money laundering in the first few years of the introduction of the special criminal law on money laundering: the law was left on the shelf by our judges who were accustomed to search through the Criminal Code for criminal offences.

The maturity of EU criminal law, which brings us to the current state of affairs, seems a maturity in the legislative approaches for its transposition in the Hellenic Republic. The tale of implementation of the new PIF Directive shows great effort to actually implement, not just transpose, the new instrument in the Hellenic legal order via a holistic review of the current state of EU criminal law provisions within the variety of national legal texts found both in the Criminal Code and in the now familiar special criminal laws.

It would be unfair to present the Hellenic implementation of the new PIF as anything other than a concerted effort to implement fully and effectively. But it would be untrue to state that there is no room for further improvement.

B. Generic frictions arising from the transposition of EU law on the financial interests of the EU

B1. Prescription periods

The Hellenic Penal Code sets generic offence prescription periods starting from the sate when the offence was committed. For felonies the prescription period is 20 years where the law foresees life imprisonment, and 15 years in any other case of felony. Misdemeanours carry a 5 yesar prescription period. For summary offences the prescription period is 1 year after the date when the offence was committed. Prescription periods are suspended for the duration of the criminal trial until a final conviction for a maximum period of 5 years for felonies, 3 years for misdemeanours, and 1 year for minor offences. Prescription periods stop on the date of a final conviction.

The Code also introduces sanction prescription periods. Sanctions are prescribed after 30 years for life sentences, after 20 years for imprisonment between 5 and 20 years, after 10 years from imprisonment and financial penalties, and after 2 years for lower penalties of temporary imprisonment or fines.

The periods of prescription, or limitation, imposed in the Hellenic legal order are far stricter than those introduced by EU criminal law. The friction between the two legal order caused considerable concern after the CJEU's judgement in Tarrico 1 (C-105/14), where the

court applied the principle of supremacy of EU law to give precedence to the periods of limitation introduced by EU ore against those imposed in Italian law. Thankfully, the matter is resolved by Taricco II (C-42/17, MAS and MB), which revokes the obligation of Italian courts to ignore the Italian statutes of limitation in VAT cases as a means of giving full effect to Art.325 TFEU. And so, although the discrepancies between periods of limitation caused implementation issues in the Hellenic Republic, Taricco II finally opened the way for the unhindered application of the generic prescription periods of the Criminal Code.

The relative uncertainty of this position, in view of the fluid nature of CJEU judgements, is further resolved by Directive (EU) 2017/1371, the new PIF Directive, which in Article 12 offers further leeway to Member States in introducing their own prescription periods as part of the "necessary measures" to be taken for the effective investigation and conviction of the offences that affect the financial interests of the European Union. Even in Article 12(3) prescription periods range within those prescribed in the Hellenic Code.

The combination of Taricco II and the new PIF Directive pacifies concerns on prescription periods and smoothens the co-existence of the generic provisions of the Hellenic Criminal Code and EU criminal law.

B2. Monitoring: a multitude of national agencies

Unfortunately, as is frequently the case with the transposition of EU law into the Hellenic legal order, the real issues arise in the administrative processes foreseen within the actually application of the legal provisions in practice.

A classical example of this position is the multitude of national agencies assigned with the task of monitoring the implementation of the protection of the EU's financial interests. Art.6 of Law 4557/2018, which implements the new PIF Directive and brings together all relevant EU criminal laws, splits this monitoring into no less than nine umbrellas. Eleven types of banking, insurance, and exchange service providers are subject to the supervision of the Bank of Greece. Seven types of mainly investement service providers fall under the supervision of the Hellenic Capital Market Commission. Pawn agencies fall under the supervisory umbrella of the Department of Financial Police and Combat of Cybercrime. The Commission for Accounting Standards and Controls monitors chartered accouncy service providers. The Independent Authority for Public Income monitors non chartered accountancy service providers, estate agents and traders and auctioneers of valuable goods (there is no definition of "valuable" in the law). The Commission for Gaming Supervision and Control monitors casinos and gaming agencies. The Ministry of Justice, Transparency and Human Rights monitors notaries and lawyers. The Ministry of Finance and Development, and the respective authority of financing monitor the rest.

Just reading through the many categories and subcategories of persons falling under the supervision of these nine different bodies creates an impression of chaos. One wonders who can classify these entities with an adequate degree of certainty to allow them to become aware of the respective monitoring body. The confusion for both the monitoring and the monitored is inevitable.

Perhaps what is even more worrying is that monitoring of obligations related to the protection of the financial interests of the EU is both a vagaue (general and dynamic) but also a highly specialised task. Where this is piled on top of the already heavy menu of prioritised tasks for each of these entitites, monitoring can not be undertaken with due diligence or due expertise. The excess fragmentation of monitoring duties amongst so many, generic bodies is

a recipe for incomplete and erroneous implementation of the monitoring obligations, as the bodies main tasks take precedence over this secondary monitoring task, which is expected to be completed by non specialised staff.

To make matters worse, the Law's attempt to rationalise this chaos seem rather futile. Indeed the Law introduces a Central Supervisory Body, which is the Ministry of Finance. There are two issues of concern here. One, the Ministry of Finance has little access to and less competence over the Ministry of Justice and the Police. Although one can see how the Ministry of Finance could extend its supervision to the rest of the monitoring bodies that undertake finace related tasks in the widest sense, its competence over another Minsitry or indeed the Police is simply not existent. Being under the elusion that this provision can work effectively in practice, is simply naïve or indeed mal informed. Two, the relevant department of the Ministry of Finance, mentioned in the same article of the Law, is the General Directorate of Financial Policy. But, by definition, this General Directorate deals with strategy and policy, not investigation, monitoring or implementation. The lack of authority and expertise is evident. It is therefore highly doubtful that, even for these bodies that accept to be subject to the monitoring of the Ministry of Finance, monitoring can be effective in practice. A male fide commentator could argue that the assignment of that Directorate to the monitoring duty is either a bad attempt to quickly drop the bombshell on someone within the Ministry or, worse, a devious attempt to undermine monitoring altogether.

Further concerns arise from the express continuaton of thre Strategy Commisson for the combat of money laundering, the financing of terrorism and the financing of weapons of of mass destruction, which was established at the same Ministry of Finance under Article 9 of Law 3691/2008 (A΄166). Similarly, the Mediation Service of the private sector for the combat of money laundering and the financing of terrorism, which was established by Article 11 of Law 3691/2008, remains in action. Moreover, the now renamed Authority for the Combat of

Money Laundering established under Article 7 of Law 3691/2008 remains in action. The parallel existence of no less than four authorities entasked with the same monitoring duties on similar areas can only accentuate the complexity of the monitoring bodies, which in turn may lead either to a duplication of efforts or, worse, to ineffective monitoring from agents who expects another body to pick up the issue.

B3. Investigations and prosecutions: the chasm after monitoring

The assignment of monitoring tasks to the Ministry of Finance as a supervisory body creates concerns on the effectiveness of investigations and prosecutions. This arises from the independence of the judiciary, as introduced by Article 85 of the Constitution and its supplementing provisions on the functioning of the courts and the prosecution service. In application of the principle of the independent judiciary, none of the monitoring bodies introduced by the Law can in any way influence the decision of the prosecution service to initiate an investigation, or to prosecute a monitored person for breaches of criminal law, Hellenic and EU. Therefore, supervision ends with the Ministry of Finance.

Even worse, at the immediately lower level of monitoring, none of the monitoring bodies has any competence to influence the investigation or prosecution of suspected offences against the financial interests of the EU or other EU law offences. And so, monitoring ends with a possible report that a breach of the person's obligation to protect the financial interests of the EU seems to have been committed. This is a rather ineffective end to an already flawed monitoring process.

Thus, the question is what happens after monitoring has been completed and breaches have come to light. The law foresees an obligation of the monitoring bodies to alert the Ministry

of Finance and Development as the supervisory body. The law also foresees the obligation of the prosecuting authorities to alert the monitoring bodies of any prosecutions and convictions, so that administrative penalties can also be imposed. However, there is no obligation of the monitoring bodies to report any alleged breaches to the prosecution authorities, thus allowing the burden of reports to the prosecuting authorities to an inexperienced supervisory body whose main task is policy formulation.

B4. Ne bis in idem

However, the lack of communication from the monitoring bodies to the prosecuting authorities works both ways. The prosecuting authorities have no obligation to inform the monitoring bodies of any investigations or even prosecutions that have already begun. This may prove detrimental for any investigations on the administrative side. The monitoring bodies have limited powers of investigation and limited access to documentation and information, compared to prosecutors. An administrative investigation would greatly benefit from information from the prosecution. Unfortunately, this exchange of information is not encouraged or secured by the law.

Although the administrative and criminal investigation processes may remain independent, they do have an effect on each other under the re ne bis idem principle. The latter forms part of the Hellenic legal system under Article 5 (2)(b) of the Code of Administrative Procedure, as interpreted and applied by the Council of State judgement 951/2018. However, the principle has its limitations. One, the judgement confirms that the principle applies in the case of an administrative trial after a convicting criminal trial. It is not yet tested whether the principle applies to administrative investigations of the monitoring type undertaken by the

monitoring bodies for the protection of the financial interests of the EU. It remains to be seen whether a monitoring body is obliged to comply with a criminal judgement. Two, the criminal judgement must be final. Criminal trials in Greece may take a number of years, especially if an appeal and then a cassation is sought by the accused. It is quite possible that the administrative process will be completed before the judgement of the criminal courts become final. Moreover, an application to revoke the administrative penalty imposed by the monitoring body after the end of the final criminal trial will be successful in case of non-conviction. As this may come years after the imposition of the administrative trial, the administrative process seems to be further undermined by the law. This position is strengthened by Article 94 (1) of the Constitution, as interpreted by the judgement. Although judgement on administrative matters is assigned exclusively to the administrative judge, and consequently re ne bis in idem does not apply to the imposition of taxes and levies, penalties or fines for administrative breaches are indeed covered by the principle. This position reflects the content of Art.4 (1) of the 7th Protocol of the ECHR and Arts 50 and 52(1) of the Charter of Fundamental Rights. Nevertheless, it clearly allows the criminal judge to have the final say on any penalty imposed by the monitoring bodies, whose competence and power is undermined even further by virtue of an independent process to which the monitoring bodies have no access. In addition, it poses serious obstacles to the implementation of Art.7(1) of the PIF Directive.

C. Frictions from the transposition of the new PIF

C1. The Drafting Instructions: what changes in EU criminal law

The task of the Hellenic legislators lies with the complete and full implementation of the new PIF Directive. The question is what changes in EU criminal law that warrants a change in national legislation. Let us briefly focus on the points of reform, as a means of enabling the assessment of their implementation by the Hellenic legislator.

The Council adopted the PIF Directive on 25April 2017 and the European Parliament approved the Council position in its first reading on 22 June 2017:

- The Directive defines the Union's financial interests quite broadly including infringements of the common VAT systems, to the extent that they are linked to more than two member states and the losses incurred exceed 10,000 Euro. This introduces a broad substantive basis for the offence and a rather light threshold of losses, probably in anticipation of the notorious difficulties in pinpointing the exact level of losses in these cases.
- The Directive provides a number of definitions of offences including active and passive fraud, corruption, the misappropriation of funds, money laundering, and related offences. The breadth of the offences is extensive and it is questionable whether the list is exclusive or not.
- The minimum penalties introduced are now complimented by generous periods of limitation, allowing for sufficient time to investigate, prosecute, and prepare for trial. This is crucial in cases such as the ones envisaged by the Directive, where the volume of the activity in question is large, and the trans-border nature of the relevant actions and therefore the evidence for prosecution is probable.
- The Directive requires that the member states, the Commission, the criminal law agencies, and the Court of Auditors cooperate. The Directive must be read in conjunction with EU criminal law provisions on the European Public Prosecutor, whose

decentralised office is awarded exclusive jurisdiction for investigating, prosecuting, and bringing to judgement crimes against the EU budget.

The Directive is quite ambitious. The breadth of offences, the depth of involvement within national legal orders, and the new EPP are balanced by the high threshold of losses required. Let us now assess how the Hellenic legislator copes with this bombardment of reforms.

C2. A Hellenic holistic review of EU criminal law and the resulting consolidation

At the time of writing, the Hellenic legislator is in the process of passing the implementing law through Parliament. It is draft Law "Preventing and Suppressing Money Laundering and Terrorist Financing (Transposition of Directive 2015/849/EU) and other provisions" has been presented in in Parliament".

In its Introductory Report, the law is described in some detail. The draft Law transposes Regulation (EC) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering terrorism financing, amending Regulation (EU) 648/2012 and repealing Directive 2005/60 / EC and the Council, as well as Commission Directive 2006/70/EC, as transposed in the Hellenic Republic via Law 3691/2008, now under repeal.

The draft law consolidates the currently fragmented provisions on the protection of the financial interests of the EU. In doing so, it amends the current regime on a number of points. First, it introduces two new offences, namely intermediary trade and bribery, and bribery in the private sector. Second, it enhances the competence of the Ministry of Justice, as the Central Coordinating Body, for the implementation of the provisions of the enacted law, and sets up a

Strategy Committee to tackle money laundering and terrorist financing. Third, it amends, in compliance with the new PIF Directive, the grounds for liability, the measures for due diligence, and the cases in which the persons liable apply simplified or increased custody of the client. Fourth, it adds leasing companies, third-party asset factoring companies, portfolio investment companies, investment intermediation companies, and e-money institutions to the list of third parties that may apply due diligence measures. Fifth, introduces the obligation to abstain from engaging in transactions that bodies within the field of application of the draft Law know or suspect to be linked to products of criminal activity or to the financing of terrorism. Sixth, the draft Law introduces a requirement to keep a record of earnings per player payouts for persons providing gambling services. Seventh, the draft Law prohibits the processing of personal data for purposes that fall outside those in the draft Law.

In addition to the constituting elements of offences, the draft Law amends the financial penalties imposed on convicted persons. First, the minimum amount of fines imposed is abolished. The maximum fine foreseen by the draft Law is 1,000,000 Euro evidenced as twice the benefit of the offender, and 5,000,000 Euro if the person liable is a credit institution or a financial institution (currently these fines range from 10,000 to 1,000 Euro). Second, a fine of up to 1,000,000 Euro may be imposed on the members of the board of directors, the executive director and other employees of the legal person or entity (currently ranging from 5,000 to 50,000 Euro. Third, the draft Law waives the penalty of imprisonment and replaces it with a fine for cases of breach of the prohibition of data disclosure to affected customers or third parties.

In addition to these substantive law reforms, the draft Law enhances the administrative framework for the actual implementation of the new substantive provisions. First, the draft Law introduces a Special Registry of Real Beneficiaries from corporate and other entities based in

the Hellenic Republic. Failure to comply with this register will result in administrative sanctions such as the suspension of tax evasion of the legal entities and entities and the imposition by the competent authority of a fine of 10,000 euros with a deadline for their compliance. In the event of non-compliance or recurrence, the fine is doubled. This fine is revenue from the state budget. Second, the draft Law introduces a Registry of Real Beneficiaries, to the General Secretariat of Information Systems (GSIS), which is linked electronically to the VAT number of each legal entity or legal entity. This Registry may be linked to the General Commercial Registry (GEMI) of the Ministry of Economy and Development, in which the legal entity or legal entity is registered, as well as to the Securities Depositories. Third, the draft Law introduces a Special Register of Trust-holders Received by Trustees. Fourth, it enhances the framework for cooperation on the exchange of confidential data between the Authority and other competent authorities. Fifth it introduces an independent audit service operated by the persons responsible to verify the implementation of the internal policies, controls and procedures applied by them. And sixth, it introduces an internal procedure for complaints by employees on violations of provisions of the law.

The administrative framework for implementation of the new PIF Directive is detailed in the second part of the draft Law. This establishes a new Anti-Money Laundering Authority within the Ministry of Finance. And organises the processes for international cooperation as introduced in the new PIF Directive. The draft Law appoints the Third Unit for the Control of Asset Statements as participant to European and international organizations, and contact point for exchanges of information between relevant authorities. In fact, for exchange of information with other entities in the Hellenic Republic or abroad, the Units use communication channels that fully safeguard the protection of personal data and, where feasible, state-of-the-art technologies that allow anonymous data comparison. For the fulfillment of their purpose, the

Units may conclude Memoranda of Understanding with authorities and bodies of the public and private sector of the country or abroad.

The scope and overview of the draft Law is clearly expressed in its Reasoned Report. The law regulating the combat of money laundering and the financing of terrorism has been amended numerous times. For example, via Law 3691/2008, which replaced Law 2331/1995 and transposed Directives 2005/60/EC and 2006/70/EC and a list of Recommendations of FATF; its amending Law 3875/2010, which also ratified the UN Palermo Convention against International Organised Crime; Law 3932/2011, which established the current Authority against money laundering and financing of terrorism as an independent authority; and Law 4478/2017, which ratified the 2005 Warsaw Recommendation of the Council of Europe on the same topic. Further lighter amendment include Art.116 of Law 4099/2012; Art.68 of Law 4174/2013; and Art.182 of Law 4389/2016. The picture painted by the great number of these amendments is that of a fragmented regime, with multiple legislative texts applying in parallel, all combining ratifications with transposition and implementing measures of national eccentricities.

This evidences the need for a holistic review of the existing provisions. The opportunity to do so was ideal, as the new PIF Directive also takes into account revised FATF Recommendations and the new models from the UN, the Council of Europe and the Egmont Group. The new EU framework is balanced against the Union's regulatory agenda, which promotes a reduction of be bureaucracy and administrative burdens in new legislative proposals. The Hellenic legislator expresses great trust in the new Directive as a measure of rationalisation of a legislative labyrinth, and of effective regulation without financial or administrative costs. This enthusiasm is evident in the verbatim copying of most provisions by the draft Law, and the mirroring of the provisions of the Directive within the draft Law, as

showcased in the transposition correlation table annexed here. Unfortunately, as is common in the country, the deadline for the implementation of the Directive passed on 22 June 2017, a date acknowledged by the draft Law that has yet to come to effect, let alone be implemented.

C3. Implementation of the new PIF

However, it is worth stating that the approach of consolidation chosen by the Hellenic legislator for the transposition of the PIF Directive is a rather bold one. This is a unique opportunity for the jurisdiction to assess what worked in the past and whet needed to be revised. And to promote the interrelation between the great number of legislative texts in the field of the protection of the financial interests of the Union, which in the past led to a user unfriendly, dysfunctional framework with clashing provisions, duplication of regulation, and gaps. This approach, as described in the Reasoned Opinion of the draft Law, is evidenced by the addition of mechanisms that are not foreseen in the Directive but enhance the achievement of its objectives, such as the Strategic Commission and the Agency of Mediation of the Private Sector.

However, one wonders whether the opportunity was indeed seized to its fullest. There are a number of new Committees overseeing a great number of aspects of transactions, all contributing to the objectives of the Directive. But these Committees lack concrete tasks, and perhaps more importantly lack coordination. One wonders if there is indeed need for so many new bodies, all looking after fragmented aspects of a puzzle, which is notoriously difficult to put together anyway. How this great number of fragmented bodies will combine their fragmented data to work with the already fragmented EU agencies and bodies from other

member states remains to be seen. But, in view of the plague of fragmentation within the country and the equally destructive plague of fragmentation at the EU level, one wonders whether compartmentalisation is indeed the approach needed for trans-border crimes.

An additional point of criticism lies with the close adherence to the text of the Directive within the draft Law. One understands that it feels safer to stick with what the EU has decided to place in the Directive. But surely provisions of the Directive inviting member states or Commissions to take the necessary measures to achieve the Directive's aims cannot remain unaltered in the implementing national measures. These are the places where these national measures will be introduced, listed, and foreseen in a manner that is exhaustive, detailed, and administratively supported. And the draft Law fails to do that. What remains is a list of requests to national bodies to do whatever is necessary. But on the basis of which criteria? And in consultation with whom? Or will this remain yet another transposition without full implementation, as has been the case with laws of the Republic in the history of its EU membership?

In addition, the draft Law misses the golden opportunity to insert the EPPO in the web of national criminal law. In reviewing the whole system of processes for the protection of the financial interests of the EU and the financing of terrorism, the Hellenic legislator has missed the unique chance to weave into it the forthcoming EPPO and its tasks. Although it would be premature to do with immediate effect, a transitional provision to how the Law will bring the EPPO into the national legal order would have worked well.

Conclusions

Timely, complete and effective implementation is a generically weak point in Hellenic legislation. This also applies to the transposition of EU legislation. EU criminal laws, with their inherent ineffectiveness[2], struggle for timely, complete and effective implementation even further. The transposition pattern observed in the parliamentary process of transposition of EU criminal laws in the Hellenic Republic is as follows. The Hellenic Republic rushes to transpose EU criminal law Directives. This usually takes places after the expiry of the transposition deadline. Implementing measures are taken, nonetheless. However, they tend to copy the provisions of the instruments in a manner that renders full implementation rather debatable.

Transposition of EU criminal laws takes place at the last possible minute before infringement proceedings begin. This prevents the drafters of the Hellenic Republic from the opportunity to fully comprehend the content of EU criminal law measures as supplementing existing EU criminal law; to compare them in depth with the existing provisions of Hellenic legislation as interpreted and applied by the courts; to conclude what elements of the EU measure need to be added in Hellenic legislation; and to ensure the smooth incorporation of the new law to the legal order by identifying and curing, where needed, the effect of the new law to previous laws and provisions. Putting the administrative measures for a timely, complete and effective implementation after transposition is al[3]so missed.

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[2] Helen Xanthaki, "Improving the Quality of EU Legislation: Limits and Opportunities?" in Sasha Garben and Inge Govaere (eds) The Better Regulation Agenda: A Critical Assessment (2018, Hart, Oxford) pp.28-47.

[3] Helen Xanthaki, "Good criminal laws and how to draft them" in C. D. Spinellis, N. Theodorakis, E. Billis, G. Papadimitrakopoulos (eds) Europe in Crisis: Crime, Criminal Justice, and the Way Forward – Festschrift fur Nestor Kourakis (2017, Ant. N. Sakkoulas, Athens), pp.273-287, http://en.crime-in-crisis.com/

Instead, what one observes is a rushed transposition by a quick passing of a copy-pasted text. This has detrimental effect to the effectiveness of the Hellenic transposing measure: this cannot be a good criminal law. In its concrete, rather than abstract conceptual sense, effectiveness requires a legislative text that can (i) foresee the main projected outcomes and use them in the drafting and formulation process; (ii) state clearly its objectives and purpose; (iii) provide for necessary and appropriate means and enforcement measures; (iv) assess and evaluate real-life effectiveness in a consistent and timely manner.[4] Within this context, criminal regulation is the process of putting criminal policies into effect to the degree and extent intended by government.[5] Criminal legislation, as one of the many regulatory tools available to the regulators[6], is the means by which the production of the desired regulatory results is pursued. In application of Stefanou's scheme on the policy, legislative, and drafting processes[11], legislative quality is a partial but crucial contribution to regulatory quality.[12]

There is no doubt that such legislative quality cannot be achieved by means of copy-pasting a generic, and consequently already ineffective for the purposes of national legal orders[7], EU criminal law. And before being accused of a purely academic analysis on this point, it is worth showcasing the issues in practice. One, the Hellenic transposing texts repeat verbatim the EU provisions on the obligation of national authorities to take all necessary measures to achieve the objectives of the EU text! But the provision is simply an invitation of the EU legislator to its Hellenic counterparts to identify these necessary measures and to list

[4] See M. Mousmouti, 'Operationalising quality of legislation through the effectiveness test' (2012) 6 Legisprudence 191, 202; also, W. Voermans, 'Concern about the Quality of EU Legislation: What Kind of Problem, by What Kind of Standards?' (2009) 2 Erasmus Law Review 59, 223 and 225; and R. Baldwin and M. Cave, Understanding Regulation: Theory, Strategy and Practice (Oxford, Oxford University Press, 1999).
[5] See National Audit Office, Department for Business, Innovations and Skills, 'Delivering regulatory reform', 10 February 2011, para 1.
[6] Tools for regulation vary from flexible forms of traditional regulation (such as performance-based and incentive approaches), to co-regulation and self-regulation schemes, incentive and market based instruments (such as tax breaks and tradable permits) and information approaches. See Better Regulation Task Force
[7] See Helen Xanthaki, "Quality of Legislation: Focus on Smart EU and post-Smart Transposition" 2 [2015] TPLeg 329-342.

them in the transposing text. The generic EU provision has no place whatsoever in the national measure. Two, the Hellenic measures annex to the law the correspondence table between the EU and national criminal provisions! But this is an internal affair between the Hellenic Republic and the Commission. It has no place in the Hellenic text. Even if one supported the view that it is included so that the user can read the EU and Hellenic text together, it fails to serve its purpose without an annex of the EU text, to which the user is allegedly referred. Perhaps more importantly, what is the value of referring the user to provisions that are identical? Three, recent Hellenic transposing texts, including the new PIF Law, attempt to holistically transpose a number of EU criminal laws that have remained on the shelves of the Parliament for a number of years. Although, it is commendable to finally see Hellenic drafters taking the interrelation of different EU laws into account for the purposes of transposing them, the use of the copy/paste transposition method results in a mosaic of legal provisions that lack coherence and therefore effectiveness. Four, the selective treatment of older EU provision in the process of creating this omnibus Hellenic transposition laws leads to a partial transposition. For example, in the omnibus new Law transposing the new PIF Directive, there is no mention of the European Public Prosecutor, an issue that is completely ignored despite its express mention in the EU text.

To conclude this analysis, it would be fair to state that the transposition of EU criminal laws in the Hellenic Republic is far from perfect. The combination of a superficial approach to legislative drafting and the consequently unsurprising use of the copy paste method of transposition results in ineffective national texts with prominent gaps and equally obvious frictions. This picture, which is not at all unique amongst EU Member States, reflects a focus on formal transposition as opposed to effective implementation. It seems like the focus of the Hellenic legislator is to simply tick the boxes put forward by the Commission and waive any liability for non compliance. There is unfortunately little focus on actual implementation for

the purposes of yielding the regulatory results pursued by the EU by means of EU criminal laws.

It would be unfair to find fault on the national legislators exclusively. There is an element of fear of infringement proceedings in the use of the copy paste method, which is often seen as safer than creative transposition. This perception seems to be finding fertile ground in the Commission's formalistic approach to post-legislative monitoring, which seems to be stopping at corresponding tables rather than in depth analysis of the predicted regulatory results at the national level. An example of this is the stern opposition of the Commission to the Hellenic Republic's choice of the Criminal Code as the host of the first Money Laundering Directive, as opposed to a fully inclusive special criminal law. Here full correspondence was prioritised against effectiveness. The result was a complete ignorance of the special criminal law by the Hellenic judges and prosecutors, resulting to a lack of prosecutions and convictions for money laundering over a period of a few years. The Commission failed to acknowledge that criminal lawyers would look at the Criminal Code for any offence at a time when special criminal laws were an unknown beast in the Hellenic criminal order.

If anything, this analysis demonstrates the need for a change in the transposition mentality both of the Hellenic legislator and of the EU monitoring agency, the Commission. A new focus on effective implementation by both sides would ensure minimisation of the current ineffectiveness in the transposition of the criminal laws for the protection of the financial interests of the EU both in the Hellenic Republic and beyond.

Άρθρα Οδηγίας (ΕΕ) 2015/849	Άρθρα νομοσχεδίου
-	**Άρθρο 1** (εθνική διάταξη)
Άρθρο 1	**Άρθρο 2**
Παράγραφοι 1-5	Παράγραφοι 1-4
Παράγραφος 6	Δεν ενσωματώθηκε - καλύπτεται από το άρθρο 177 παρ. 1 του Κώδικα Ποινικής Δικονομίας
Άρθρο 2	-
Παράγραφος 1	**Άρθρο 5** Παράγραφος 1
Παράγραφος 2	**Άρθρο 6** Παράγραφος 5
Παράγραφοι 3-8	Διακριτική ευχέρεια - δεν έγινε χρήση
Παράγραφος 9	Δεν ενσωματώθηκε
-	**Άρθρο 5** Παράγραφος 3 (εθνική διάταξη)
Άρθρο 3	**Άρθρο 3**
Στοιχείο 1	Στοιχείο 2
Στοιχείο 2	Στοιχείο 3
Στοιχείο 3	Στοιχείο 1
Στοιχείο 4	**Άρθρο 3** Στοιχείο 23, **Άρθρο 4**
Στοιχείο 5	Δεν ενσωματώθηκε
Στοιχείο 6	Άρθρο 3 Στοιχείο 17
Στοιχείο 7	Δεν ενσωματώθηκε
Στοιχείο 8	Άρθρο 3 Στοιχείο 13
Στοιχείο 9	Άρθρο 3 Στοιχείο 9
Στοιχείο 10	Άρθρο 3 Στοιχείο 10
Στοιχείο 11	Άρθρο 3 Στοιχείο 11
Στοιχείο 12	Άρθρο 3 Στοιχείο 18
Στοιχείο 13	Άρθρο 3 Στοιχείο 16
Στοιχείο 14	Άρθρο 3 Στοιχείο 19
Στοιχείο 15	Άρθρο 3 Στοιχείο 4
Στοιχείο 16	Άρθρο 3 Στοιχείο 20
Στοιχείο 17	Άρθρο 3 Στοιχείο 8
-	Άρθρο 3 Στοιχεία 5,6,7,12,14,15,21, 22 (εθνικές διατάξεις)
Άρθρο 4	-
Παράγραφος 1	**Άρθρο 5** Παράγραφος 1 στοιχείο ια'
Παράγραφος 2	Δε χρήζει εσνωμάτωσης
-	**Άρθρο 6**
-	Παράγραφοι 1, 4, 7 (εθνικές διατάξεις)
Άρθρο 5	Παράγραφος 3 στοιχείο α'
Άρθρο 6	Δεν ενσωματώθηκε - αφορά διαδικασία της Επιτροπής
Άρθρο 7	**Άρθρα 7 και 8**
-	**Άρθρο 9** (εθνική διάταξη)
-	**Άρθρο 10** (εθνική διάταξη)
Άρθρο 8	**Άρθρο 35**
Άρθρο 9	Δεν ενσωματώθηκε - αφορά διαδικασίες της Επιτροπής
Άρθρο 10	**Άρθρο 11**
Άρθρα 11 και 12	**Άρθρο 12**
Άρθρο 13	-
Παράγραφος 1	**Άρθρο 13** Παράγραφος 1
Παράγραφος 2-4	**Άρθρο 13** Παράγραφος 9
Παράγραφος 5	**Άρθρο 13** Παράγραφος 4, **Άρθρο 14** Παράγραφος 4
Παράγραφος 6	**Άρθρο 13** Παράγραφος 8

Άρθρα Οδηγίας (ΕΕ) 2015/849	Άρθρα νομοσχεδίου
-	**Άρθρο 13** Παράγραφοι 3,5,6 (εθνικές διατάξεις)
Άρθρο 14	-
Παράγραφοι 1 - 3	**Άρθρο 14** Παράγραφοι 1 -3
Παράγραφος 4	**Άρθρο 13** Παράγραφος 2
Παράγραφος 5	**Άρθρο 13** Παράγραφος 7
-	**Άρθρο 14** Παράγραφος 5 (εθνική διάταξη)
Άρθρο 15	**Άρθρο 15**
Παράγραφος 1 - 3	Παράγραφος 1
Άρθρο 16	Παράγραφος 2
-	Παράγραφος 3 (εθνική διάταξη)
Άρθρο 17	Δεν ενσωματώθηκε - αφορά διαδικασία των ΕΕΑ
Άρθρο 18	**Άρθρο 16**
Παράγραφος 1	Παράγραφοι 1-2
Παράγραφος 2	Παράγραφος 3
Παράγραφος 3	Παράγραφος 4
Παράγραφος 4	Δεν ενσωματώθηκε - αφορά διαδικασία των ΕΕΑ
-	Παράγραφος 5 (εθνική διάταξη)
Άρθρο 19	**Άρθρο 17**
μία παράγραφος	Παράγραφος 1
Άρθρο 24	Παράγραφος 2
Άρθρα 20-23	**Άρθρο 18**
Άρθρο 25	**Άρθρο 19**
μία παράγραφος	Παράγραφος 1
Άρθρο 26	Παράγραφος 2
Άρθρα 27	Παράγραφος 3
Άρθρο 28	Παράγραφος 4
Άρθρο 29	Παράγραφος 5
-	Παράγραφος 6 (εθνική διάταξη)
Άρθρο 30	**Άρθρο 20**
Παράγραφοι 1-9	Παράγραφοι 1-4, 6-10, 12
Παράγραφος 10	Δεν ενσωματώθηκε - αφορά διαδικασία της Επιτροπής
	Παράγραφοι 5, 11(εθνική διάταξη)
Άρθρο 31	**Άρθρο 21**
Άρθρο 32	-
Παράγραφος 1	**Άρθρο 47** Παράγραφος 1
Παράγραφος 2	Δε χρήζει ενσωμάτωσης
Παράγραφος 3	**Άρθρο 47** Παράγραφος 2
Παράγραφοι 4 -6	**Άρθρο 34** Παράγραφος 1
Παράγραφος 7	**Άρθρο 48** Παράγραφος 2 στοιχείο δ'
Παράγραφος 8	**Άρθρο 48** Παράγραφος 2 στοιχείο γ' υποστοιχεία δδ' και εε'
Άρθρο 33	-
Παράγραφος 1	**Άρθρο 22** Παράγραφος 1
Παράγραφος 2	**Άρθρο 22** Παράγραφος 3
Άρθρο 34	-
Παράγραφος 1	**Άρθρο 29**
Παράγραφος 2	**Άρθρο 22** Παράγραφος 2
-	**Άρθρο 22** Παράγραφος 4 (εθνική διάταξη)
Άρθρο 35	**Άρθρο 23**

Άρθρα Οδηγίας (ΕΕ) 2015/849	Άρθρα νομοσχεδίου
Άρθρο 36	**Άρθρο 24**
-	**Άρθρο 25** (εθνική διάταξη)
Άρθρα 37-38	**Άρθρο 26**
Άρθρο 39	**Άρθρα 27 και 28**
Παράγραφος 1	Άρθρο 27 Παράγραφος 1
Παράγραφος 2	Δεν ενσωματώθηκε
Παράγραφος 3	Άρθρο 28 Παράγραφος 1
Παράγραφος 4	Άρθρο 28 Παράγραφος 2
Παράγραφος 5	Άρθρο 28 Παράγραφος 3
Παράγραφος 6	Άρθρο 27 Παράγραφος 2
-	Άρθρο 28 Παράγραφος 4 (εθνική διάταξη)
Άρθρα 40 και 42	**Άρθρο 30**
Άρθρα 41 και 43	**Άρθρο 31**
Άρθρο 44	**Άρθρο 32**
-	**Άρθρο 33** (εθνική διάταξη)
Άρθρο 45	**Άρθρο 36**
Παράγραφοι 1-5, 8,9	Παράγραφοι 1- 6
Παράγραφοι 6,7,10,11	Δεν ενσωματώθηκαν - αφορούν διαδικασίες των ΕΕΑ και της Επιτροπής
Άρθρο 46	-
Παράγραφος 1 εδάφια α' και β'	**Άρθρο 37** μία παράγραφος
Παράγραφος 1 εδάφιο γ'	**Άρθρο 5** Παράγραφος 2
Παράγραφος 2	**Άρθρο 6** Παράγραφος 3 στοιχείο γ'
Παράγραφος 3	**Άρθρο 48** Παράγραφος 2 στοιχείο γ' υποστοιχείο γγ'
Παράγραφος 4	**Άρθρο 38** Παράγραφοι 1-2
-	**Άρθρο 38** Παράγραφος 3 (εθνική διάταξη)
Άρθρο 47	-
Παράγραφοι 1-2	Δε χρήζουν ενσωμάτωσης
Παράγραφος 3	**Άρθρο 6** Παράγραφος 3 στοιχείο η'
Άρθρο 48	-
Παράγραφοι 4 και 5	**Άρθο 6** Παράγραφος 3 στοιχείο στ'
Παράγραφοι 6 και 7	**Άρθρο 6** Παράγραφος 2
Παράγραφος 8	**Άρθρο 6** Παράγραφος 3 στοιχείο α'
Παράγραφος 9	Διακριτική ευχέρεια - δεν έγινε χρήση
Παράγραφος 10	Δεν ενσωματώθηκε - αφορά διαδικασία των ΕΕΑ
Άρθρο 49	**Άρθρα 7 και 8**
Άρθρο 50	**Άρθρο 6** Παράγραφος 8
Άρθρο 51	Δεν ενσωματώθηκε - αφορά διαδικασία της Επιτροπής
Άρθρο 52	**Άρθρο 48** Παράγραφος 2 στοιχείο γ' υποστοιχείο ββ'
Άρθρο 53	-
Παράγραφος 1	**Άρθρο 34** Παράγραφοι 2 και 3
Παράγραφος 2	**Άρθρο 34** Παράγραφος 2
Παράγραφος 3	**Άρθρο 34** Παράγραφος 3
Άρθρα 54-55	**Άρθρο 34** Παράγραφος 4
-	**Άρθρο 34** Παράγραφοι 5-7 (εθνικές διατάξεις)
Άρθρο 56	**Άρθρο 49**
Άρθρο 57	**Άρθρο 34** Παράγραφος 7 εδάφιο β΄
Άρθρα 58-59	**Άρθρα 39, 40, 41, 42, 43, 45, 46**
	Άρθρο 44 (εθνική διάταξη)