

Sarah Summers, Christian Schwarzenegger, Gian Ege and Finlay Young, *The Emergence of EU Criminal Law. Cyber Crime and the Regulation of the Information Society*. Oxford: Hart Publishing, 2014. 372 pages. ISBN: 9781841137278. GBP 45.

This very fine book is an excellent work on how the EU competence in criminal matters can be exercised in a significant way in order to regulate one of the most topical issues of our modern times: the information society. The four authors discuss several issues in relation to this topic in a very comprehensible style. Even if the book remains essentially descriptive, it attracts the attention of the reader on the most important aspects and flaws of Union legislation concerning new technologies, their uses and abuses.

The book starts with two chapters explaining the emergence of EU criminal law, while the remaining chapters focus on specific aspects of the legislation relating to the information society. The first chapter is a clear and rather exhaustive account of the birth and evolution of the

EU competence in the field of criminal law before the Treaty of Lisbon. It explains the impact both of the case law of the ECJ and the Treaty reforms on the criminal law of the Member States. The second chapter continues the narrative and analyses the extent to which the competences granted by the Member States to the Union in the Treaty of Lisbon have actually affected national criminal law. The chapter explains how the supranational institutional framework for EU law applies in the fields of policing and criminal law. In particular, the authors discuss the existence of two major areas of competence in criminal matters concerning the harmonization of national criminal law i.e. the criminalization of serious crime with a cross-border dimension pursuant to Article 83(1) TFEU and the competence to ensure the effective implementation of EU policy pursuant to Article 83(2) TFEU. The chapter very usefully classifies and summarizes the legislation adopted so far under these competences. Some interesting comments are also made with respect to the relationship between the principle of mutual recognition and the harmonization of criminal law. On a more critical note, one may regret the absence of a more accurate study of the impact of Lisbon in the field of fundamental rights, which provide essential guarantees in criminal matters.

Chapter three addresses some of the most relevant EU legal developments in the field of information and communications technology (ICT). It surveys several pieces of legislation adopted before the entry in force of the Treaty of Lisbon in order to liberalize the telecommunication market. New technologies are constantly evolving, which explains why the EU legal framework in these sectors is highly fragmented. The authors show that this framework, mainly established in application of the old First Pillar competence, has only an indirect impact on the criminal law of the Member States. The reader's attention is brought to two issues: firstly the increasing awareness of the risks posed by the new technologies (such as threats to personal data, protection of minors or network security) and the need to protect citizens against them; secondly, the issue of criminal jurisdiction in respect of these subject matters, which are, by definition, cross-border.

The focus of the fourth chapter lies in the impact of the international and EU legislation on the protection of intellectual property rights. There is no doubt that this subject is very topical and relevant considering the rapid expansion of issues relating to the infringement of copyright on the Internet. The authors clearly show that even though progress has been made by the EU in order to address the issue of copyright, the principal aim of the directives discussed in this chapter is not the harmonization of criminal law, but the protection of the proper functioning of the internal market. Most interestingly, the chapter ends by describing the developments concerning international agreements on the enforcement of copyright law. Amongst other agreements, the very contested Anti-Counterfeiting Trade Agreement (ACTA) is analysed and its possible impact on EU criminal law uncovered.

The fifth chapter discusses the relationship between the criminalization of certain behaviour (terrorism, child pornography, racism) at EU level and the new technologies. The authors first explore the constitutional environment within which the criminalization of such behaviour takes place. They explain how difficult it is to strike a balance between the freedom of expression and the need to protect certain public interests and values. The chapter then turns to a thorough analysis of the legislation adopted in the field of terrorism, child pornography, racism and xenophobia, its implementation and its significance within the field of information and communications technologies.

Chapter six addresses critical issues relating to the protection of privacy through criminal law in the information society. It explains how personal data are (or not) protected through EU legislation. The focus lies on three case studies that all affect in one way or another individuals' privacy on the Internet: cookies, cyberstalking and spam. In particular, the regulation of spam is detailed. A thorough analysis of the EU legislation addressing spam such as Directive 95/46, the E-commerce Directive and the E-Privacy Directive is made. The latter Directive obliges the Member States to ensure that unsolicited emails are not sent without the prior consent of the recipient. Consequently, Member States must regulate spam, but retain the freedom to choose either civil or criminal sanctions. This is the first time that criminal sanctions are specifically mentioned in the sphere of data protection. The research also pins down the essential features of

the legislation and reveals its flaws. The assessment of Member State legislation implementing the E-Privacy Directive shows a great diversity in the treatment of spam. The authors reveal that the criminal regulation of this issue has actually proved unsuccessful. This conclusion casts doubt on the number of areas where harmonization of criminal law in application of Article 83(2) TFEU in order to ensure the implementation of Union policies will be efficient.

Cybercrime – another topical issue – is addressed in Chapter 7. The analysis begins with a description of the legislation adopted in order to fight criminal offences hindering the good functioning of information systems (“hacking”). This includes the 2005 Framework Decision on Attacks against Information Systems and the 2013 Directive replacing the Framework Decision. Then EU reaction to the use of the Internet in order to commit criminal offences, in particular online fraud or identity theft, is explained. These developments are followed by a discussion on how the current EU legislation on terrorism and on information systems may be read as covering offences relating to “cyber-terrorism” such as large scale targeted attacks (“botnets”). The focus of the last case study is that of “cyber” money laundering. Finally, the chapter discusses the limits to EU harmonization in the field of criminal matters. For example, EU instruments adopted in order to harmonize the criminal legislation of the Member States do not define essential concepts of the general part of criminal law, which remain within the ambit of the Member States’ competence. The study shows, in particular, that divergences in the definition of concepts such as intent, participation and attempt between EU Member States lead to differences in the scope of criminalization of certain offences relating to ICT that have been harmonized at the EU level.

The conclusion sheds interesting light on the evolution of the body of EU criminal law since the entry in force of the Treaty of Lisbon. All in all, a captivating book – interesting for academics as well as practitioners.

Tony Marguery
Utrecht