Guest Editorial eucrim 4/2015

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eucrim
European Law Forum: Prevention • Investigation • Prosecution

EDITORIAL

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CITE THIS ARTICLE

Hadjiemmanuil, C. (2015). Guest Editorial eucrim 4/2015. Eucrim - The European Criminal Law Associations' Forum. https://doi.org/10.30709/eucrim-2015-017

Published in eucrim 2015, Vol. 10(4) p 129

https://eucrim.eu

ISSN:

Dear Readers,

The imposition of tight regulatory controls on banks and other financial intermediaries is a universal characteristic of modern economic systems. The frequency and intensity of legislative and administrative measures affecting financial activities demonstrate the state's incessant concern with the way in which the market operates in this field. However, the precise perimeter of the regulated sector varies from one jurisdiction to another and changes over time. The same is true of the form and direction of the regulatory interventions. This raises important questions about the existence or otherwise of common threads – common objectives and overarching justifications– holding together the edifice of financial regulation.

The discussion on regulatory objectives has both a positive and a normative aspect. The regulatory regime's actual objectives constitute an indispensable element of its description. What purposes does financial regulation serve? Are these the same for all sectors of the financial industry? Is the current regulatory regime a continuation of earlier state interventions in financial markets, in the sense that, despite any technical adaptations of the tools employed, the objectives have remained essentially stable, or something fundamentally different? The answers to these questions are important for understanding the nature and functions of the regulatory regime. An identification of the regulatory objectives is also essential for the correct legal assessment of particular factual situations and ensuing administrative responses.

Equally important is the discussion of the means, or tools, used for achieving the set objectives. Traditionally, the policy debates have focused on the substantive regulatory norms. Questions of optimal enforcement have received a lesser amount of attention. In terms of regulatory tools, the emphasis has been predominantly on administrative supervision, enforcement and sanctions. Of course, there is variation across sectors and issues. In the case of prudential regulation in the banking and insurance sectors, private actions and criminal sanctions are, as a general rule, of marginal, if any, importance. In contrast, in securities regulation the possibility of (and conditions for) private enforcement is a perennially debated issue; and in certain areas, including in particular market abuse and securities fraud, criminal sanctions have always played a central role.

In any event, in the wake of the Global Financial Crisis, the time is opportune for a concerted reassessment of the situation. A host of new regulatory requirements are now in operation; their application and enforcement poses considerable dilemmas and difficulties, both from the perspective of regulatory effectiveness and from a rule-of-law viewpoint. In this context, the actual and potential contribution of criminal law in the smooth operation of banking and financial markets, the protection of their users and the preservation of systemic stability requires explicit and detailed consideration.

Recent legislative developments at the EU level, in particular, may tend to increase the significance of criminal sanctions in this area. Even in the prudential field, the emerging 'single rulebook' is not confined to imposing obligations on financial intermediaries as legal persons, but pierces the corporate veil to place novel regulatory burdens on board members and directors personally. The new provisions thus establish significant behavioural standards for individuals and, in an increasing number of instances, require the penalization of substandard conduct. This is bound to bring familiar concepts and considerations of criminal law to bear on a hitherto distant legal field – thus opening new vistas both for regulatory and for criminal lawyers.

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https://doi.org/10.30709/eucrim-2015-017

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by
the European Union