

Laws as a Causing Factor for Crime?

The Criminogenic Potential of Legislation
and Regulation

- Introduction: Legislation as a facilitator of crime?
- Two recent examples of criminal exploitation of deficient regulations
- Crime proofing as a tool for anticipating crime risks in the law drafting procedure
- Concept for a systematic analysis of relevant regulatory areas

Introduction: Legislation as a Facilitator of Crime?

"Organised crime groups operate in a criminal economy dictated by the laws of supply and demand. Individual criminals and criminal groups are flexible and quickly adapt [...] to evade countermeasures or identify new criminal opportunities. Political and legislative changes – such as the introduction of new free trade agreements and a further enlargement of the EU – are certain to impact on the activities of criminal groups in the EU."

*EUROPOL,
Exploring tomorrow's organised crime (2015)*

- Laws have a potential to generate, increase, shift, or relocate opportunities or incentives for crime
- Plenitude, complexity, inconsistency, rapid ad hoc amendments (often driven by media pressure, public opinion, political/ideological preference)
- Gaps and contradictions
- Under-/overregulation
- Correlations, interaction effects
- Attraction or dislocation effects
- Prohibition, financial or de facto constraints of services and goods
- Deregulation, reduction of transaction costs (e.g., abolition of border controls)

- In principle: unintended effects
- But also unpredictable?

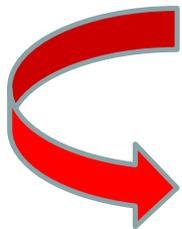
- In focus: Any kind of legislation and regulation
 - Sectoral laws (primary, secondary)
 - Technical regulations and specifications (legal, administrative)
 - National, EU, international
- There are potentially dozens of crime-relevant regulatory areas which carry a risk of producing such unintended effects
- Tax law is a prime example

Two Recent Examples

Examples (1)



- Large scale fraudulent speculation with multiple refunds of dividend taxes that in fact were paid only once
- Estimated damage: ca. US-\$ 62.9 billion (\$ 36.2 billion with the German treasury alone)
- Modus operandi: transborder short sales and re-sales in shares of large companies between participants of an informal international network, carried out around the record date for the dividend payment
 - Transfers were carried out via the stock deposit accounts at major international banks
 - Dividend tax paid – once – out of the deposit in which the share was accounted at the record date
 - Several refund claims were paid back to any pretended owner (damage: over-payments)

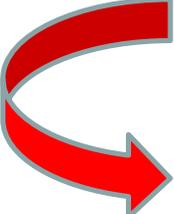


- Fraudulent activities triggered by a legal gap in the related tax regulations
 - Until 2009 the German Ministry of Finance had issued several official announcements stating that this method is considered to be, at least formally, in accordance with the wording of the law – and thus not ipso jure illegal
 - Supported by rulings of the Supreme Fiscal Court of Germany holding that (interim) stock owners are entitled to claim for re-payment even if the related share is not (not yet, or not anymore) in their deposit
 - In 2009 the regulatory gap was closed through EU directive 2009/65/EC (2012 in Germany)

Examples (2)



- Corpus delicti: Switch-off device, integral part of the electronic motor control system
- Technical configuration: automatic deactivation of the emission control system in situations of low outside air temperature
 - Can be necessary for engine protection
- In principle permitted by the related technical regulations (EU, domestic)
 - Abstract regulation leaves space for application
 - No clear statutory specification of 'low temperature'
 - Flexible transposition, to be adjusted according to the individual configuration of the car and engine type

- Starting point: Creative exploitation of the legally provided range of interpretation
 - Facilitated by deficient regulation
-  Fraudulent expansion by additional software adjustments with the purpose to manipulate emission tests
 - End users as victims (car owners)

Crime Proofing as a Tool for Anticipating Crime Risks in the Law Drafting Procedure

- Anticipatory risk assessment focusing on unintended crime-related effects of legislation/regulation (e.g., Savona 2017, TRANSCRIME 2012, Albrecht/Kilchling/Braun 2002, Albrecht & Kilchling 2002)
- Many legislatures regularly apply environmental impact assessment, technical impact assessment and assessment of financial consequences (direct and indirect costs) when drafting new laws and regulations
 - » crime risk assessment rarely included
- Primary (and secondary) crime prevention
- Good governance
- Evidence-based policy
- Cost-benefit relation: balance between risk and the costs of risk avoidance

Concept for a Systematic Analysis of Relevant Regulatory Areas

- Focus on laws and regulations that are relevant for the emergence of organised and economic (corporate) crime
 - Their profit orientation makes such crimes more predictable than ordinary crimes
- Two dimensions of analysis
 1. From regulation to crime
 - Identification of relevant areas of regulation/legislation which may have a potential to provide (new) opportunities for crime
 2. From crime to regulation
 - Lessons learned from 1.
 - Development of standard instruments/procedures to be applied in the drafting phase of new laws and regulations

- Taxes
- Healthcare, the medical sector in general
- Substances
 - Pharmaceuticals
 - Tobacco
 - Alcohol
 - Drugs and doping
- Environment
 - Waste
 - Pollution from industry
 - Pollution from transport
 - Fishery
 - Agriculture and farming

- Food industry
 - meat industry as an exemplary sub-sector
- Finance sector
 - Banking and investment
 - Insurance
 - Stock market
- Trade and retail
- Firearms and explosives
- Military equipment as weapons
- Zooning, urban development/planning, real estate
- Construction
- Transportation

Relevant regulatory areas

- Mining
- Gambling
- Travel and hotel sector
- Heritage (antiques) and art
- Sports
- Private security industry
- ...
- ...

Thank you for your attention !

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