## Table of Contents

Preface and Acknowledgements Table of Cases Table of Treaties, Conventions and other Legislative Instruments			v xiii xvii
			1
I	Inu I.	roduction Introduction	1 1
	ı. II.		3
		Structure of the Book	4
	111.	A. Effectiveness as Enforcement	4
		B. Constitutional Effectiveness	4
		C. The Development of EU Precautionary Criminalisation and	Т
		the Fight against Money Laundering	6
		D. The Lisbon Treaty and Criminal Law: Old Problems and New	Ũ
		Challenges	7
	IV.	Final Remarks	8
า	ть	Lowenow of Criminal Low in the EU	10
Z	I ne	e Journey of Criminal Law in the EU Introduction	10 10
	ı. II.	What is at Stake?	10
	11.	A. The Framework of EU Criminal Law prior to the Lisbon Treaty	13
		B. The Search for Effective Sanctions 15	15
		i. Positive Effect	16
		ii. Negative Effect	18
		iii. The Principle of Legality	19
		iv. Legality: The Fundamentals	20
	III.	The Historic Third Pillar Web and the Concept of Mutual	
		Recognition	22
		A. <i>Pupino</i> and the Quest for 'Depillarisation'/Effectiveness	24
		B. Advocaten voor de Wereld and the EAW	26
		C. Dell'Orto and the Wider Constitutional Question	27
	IV.	Supranational Criminal Law	29
		A. Effectiveness Revised: Commission v Council	29
		B. The Commission's Communication	31
		C. The Ship Source Pollution Ruling	31
		D. The Failed Attempt to Transfer the Third Pillar via a	
		Bridging Clause	33
		E. The Changes brought by the Lisbon Treaty: Introduction	34
		i. Article 82 TFEU: Procedural Criminal Law	34
		ii. Article 83 TFEU: Substantive Criminal Law	35
		iii. Enhanced Cooperation and Emergency Brakes	35

		F. Extended Jurisdiction	36
		G. The Stockholm Programme	37
		H. The ECHR and the Legally Binding Status of the Charter of	
		Fundamental Rights: Comment	38
		I. Criminal Law and the Autonomous European Legal Order	39
	V.	Conclusion	41
3	Cha	asing (Traditional) Effectiveness	42
		Introduction	42
	II.	The Principle of Effectiveness	43
		A. The Concept of Effective Enforcement	44
		B. What is EU Effectiveness?	45
		C. The Fundamentals of Enforcement	47
		i. Short Comment on Non-discrimination and Uniformity	51
		ii. The Enforcement Debate	52
	III.	Effective Enforcement outside the EU's Traditional Borders	53
		A. The Renaissance of the 'Implementation Imbalance' in EU Law	53
	IV.	Effectiveness as a General Principle of Criminal Law	56
		A. The Ultimate Legal Threat – Is it Effective?	57
		B. Effectiveness in the Context of Case C-176/03	57
	V.	Conclusion	60
4	Cor	nstitutional Effectiveness: An Exegesis	62
	I.	Introduction	62
		A. The Effectiveness Criteria, Article 83(2) TFEU: No Limits to	
		Criminalisation?	64
	II.	Conferred Powers and the Objectives of the EU	65
		A. Introduction	65
		B. How it all Began	67
		i. Are <i>Effet Utile</i> and 'Effectiveness' the Same Concept?	70
		ii. And 'Necessity'?	71
		C. Article 352 TFEU – How Flexible is 'Flexibility'?	72
		D. 'Effectiveness' and the History of the acquis communautaire	76
		i. The Curious Case of ex Article 47 TEU	78
		ii. The Objectives of the EU and Pre-emption	80
		E. The New Article 40 TEU	82
		i. Centre of Gravity Post Lisbon	83
		ii. Articles 67 and 75 TFEU: Setting the Scene of Crime	
		Prevention in the EU	84
		iii. (In)Security as the New Acquis Communautaire?	85
		F. The Final Word goes to Article 13 TEU: Institutional Balance	
		and the Effectiveness of EU Law	85
		G. Conclusion	86
	III.	Criminal Law and Market Integration	87
		A. Introduction	87

	B. The Establishment and Functioning of the Internal Market	89
	C. The Market Concept: Obstacles to Trade and Distortion	
	of Competition	91
	D. Disparities between Laws of Member States as Obstacles	93
	E. Obstacles and Market Access	94
	F. Preventive Market Creation	95
	G. Distortion of (Appreciable) Competition	97
	H. Normative Concerns or Why Article 114 TFEU is Difficult	
	to Reconcile with the Attribution of Powers Axiom	99
	i. Centre of Gravity and Article 114 TFEU	101
	ii. Article 114 TFEU in Relation to ex Article 47 EU	102
	iii. Non-market Values as Reasons for Harmonisation	105
	I. Confidence in the Market is as Slippery as Effectiveness	106
	J. Conclusion	108
IV.	Subsidiarity and Proportionality	110
	A. Introduction	110
	B. Subsidiarity and Proportionality: The Basics	110
	i. The Classic Effectiveness Criteria	112
	ii. The Concept of Subsidiarity Proper	113
	iii. Why Subsidiarity?	115
	iv. National Identity as the New 'Safeguard Clause'	116
	C. The Concept of Proportionality	116
	i. The Court and Proportionality	117
	D. Will the National Parliaments do the Trick?	118
	E. Subsidiarity and Proportionality in EU Criminal Law	121
	i. The <i>ultima ratio</i> of Criminal Law and the Principle of	
	Subsidiarity	124
	ii. Subsidiarity and EU Criminal Law: The Paradoxes of	
	Efficiency and Legitimacy	125
	iii. The Impact of Proportionality in EU Criminal Law	127
	iv. The Bigger Question of Balancing in the AFSJ	128
	v. Will the Participation of National Parliaments in Subsidiari	ty
	Monitoring increase Penal Populism?	129
	F. Conclusion	130
V.	Enhanced Cooperation and Loyalty	131
	A. Introduction	131
	B. The Concept of Enhanced Cooperation	132
	C. Emergency Brakes and Accelerators	133
	D. Loyalty, Yes but in What <i>Direction</i> ?	136
	E. Conclusion	137
VI.	The Constitutional Debate In Brief	138
	A. Introduction	138
	B. On the Preservation of Broad Competence Provisions	139
	C. The Beginning of <i>de lege feranda</i>	142

## x Table of Contents

ision	143	
onclusion	143	
Case Study I: EU Financial Crimes		
on	146	
undering	147	
uction	147	
d Money	147	
e History of Anti-money Laundering Legislation	150	
ve 2005/60/EC	152	
gulation No 1889/2005	155	
nancing of Terrorism and the Link with Money		
ering	157	
ort Comment on the Former Third Pillar Dimension	160	
ultifaceted Threat of Organised Crime and its		
nship with Money Laundering	160	
e Tangled Web of EU Anti-corruption Policy	162	
'Risk' Important in EU Anti-money Laundering?		
l Suspicious Reporting	164	
k-based Approach to Money Laundering and		
rrorist Financing	164	
nat is Risk in EU Law?	167	
k Assessment from an EU Criminal Law Perspective	170	
Security	172	
tersection of Risk, Security and Effectiveness: The		
pment of Precautionary Criminal Law at the EU Level	175	
cent Initiatives: Final Test Case	177	
terfeiting and Piracy Directive	179	
piration to Create EC Criminal Law prior to the Lisbon		
	179	
minal Liability for Legal Persons	182	
dence Path – Supranational Criminal Law	185	
alism and Market Failure	185	
otective Regulation, for Whom?	186	
n	189	
What Happens in Practice? The Implementation of the		
Laundering Directive in the UK and Sweden	190	
on	190	
Implementation of the EU Money Laundering Directives	191	
uction	191	
History of the EU's Anti-money laundering Rules		
UK	192	
CA 2002	194	
05 Directive and the UK	195	
UK 0CA 2002		

		i. The UK and a Risk-based Approach	197	
		E. Gold Plating, Money Laundering and Suspicious Reporting	197	
		F. The Ever-expanding Anti-terrorism Network in the UK	202	
		i. Judicial Review	205	
		G. Conclusion: the UK	208	
	III.	Sweden's Implementation of the Anti-money Laundering Directives	209	
		A. Introduction	209	
		B. The Swedish Legislature	210	
		C. The Money Laundering Directives in Sweden	211	
		i. The 1991 and 2001 Directives	212	
		D. The 2005 Directive – Confidentiality and Swedish Law	214	
		i. Corporate Criminal Liability, the Swedish Problem	215	
		ii. Risk-based Approach	217	
		E. Sweden and the Financing of Terrorism	218	
		F. Brief Overview of Denmark and Finland	220	
		G. Conclusion: Sweden	221	
	IV.	General Conclusion	221	
7	The Lisbon Treaty: Anything New Under the Sun?		223	
	I.	Introduction	223	
	II.	The Emergency Brake – It Looks Safer	224	
		A. A European Public Prosecutor?	225	
	III.	The Embryonic Concept of a 'General Part' of EU Criminal Law	226	
		The Court of Justice and Criminal Law	227	
		A. Expedited Procedure	229	
		B. Accession to the ECHR and the Legally Binding Status of the		
		Charter of Fundamental Rights	231	
	V.	Citizenship and Citizen Initiative	232	
	VI.	Conclusion	234	
8	Cor	nclusion	235	
U	I.	Conclusion	235	
	II.	EU Supranational Criminal Law, the (Grand?) Finale	236	
			230	
Bi				
		ner sources	257	
		b-links	258	
	FA	IF Country reports:	258	
In	Index			