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**Author:** Geelhoed, Willem  
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THE EXPEDIENCY PRINCIPLE AND EUROPEAN UNION LAW
A study of the meaning of discretion in criminal procedure within the Europeanised legal order

In order to align the practical enforcement of substantive criminal law with societal needs and to utilize the available capacity of criminal procedural authorities in an effective manner, these authorities have a certain degree of policy freedom at their disposal. In Dutch criminal law, this policy freedom is based on the acceptance of the expediency principle. On the basis of this principle, the exercise of criminal procedural competencies can always be made dependent on the criterion of the public interest, which is the central criterion when applying the expediency principle. In the Netherlands, the exercise of policy discretion in criminal procedure and the interpretation of the public interest is however increasingly brought under pressure as a consequence of the growing importance of European law. The development of the European legal order into an order which covers virtually all aspects of societal life, including the manner in which certain behaviours should be criminalised and enforced, has led to the development of strong interconnections between the national and the European legal order, which is also true in the field of criminal justice. This gives rise to various tensions, of which the tension between European Union law and the Dutch expediency principle is central in this research.

This tension has different problematic manifestations. National authorities may be obliged to institute criminal prosecution for the violation of secrets relating to nuclear energy, or for perjury before the Court of Justice. More generally, the Treaty requirement of loyal cooperation sets preconditions for the manner in and intensity with which member states of the European Union must act against violations of European legislation. This is particularly so for the measures which must be taken for the protection of the financial interests of the Union, such as in the combatting of fraud and corruption with regard to EU subsidies. The harmonization of national substantive and procedural criminal law further raises the question whether this also brings with it the duty to enforce with a certain effectiveness. Similar questions arise in relation to mutual cooperation in criminal matters between the member states of the European Union. This cooperation is based on the principle of mutual recognition, whereby criminal procedural authorities cooperate in a manner which
cannot be deemed noncommittal. The introduction of Eurojust and particularly the possible establishment of a European Public Prosecutor’s Office also results in tensions with the expediency principle, as due to such developments, the degree in which national criminal law enforcement authorities can determine their own priorities in concrete cases as well as shape criminal policy, is strongly diminished.

In this study, these diverse problems, which create a problematic tension between the expediency principle and European law obligations, have been categorized in different groups: they result in dogmatic, legal cultural, constitutional and integration problems. The dogmatic problem is, that the precise content is of the expediency principle as a point of departure of criminal law is unclear. The legal cultural problem is, that it is unclear if the European influence means that underlying values such as toleration and restraint, which resonate in the expediency principle, may be preserved. The constitutional problem is, that it is uncertain to which extent the expediency principle is an essential component of the democratic law-state and what consequences that may have in a European perspective. Finally, the integration problem is that it is unclear what effect European law has in the national legal order and if the expediency principle could give rise to a constitutional conflict between the two legal orders. The central over-arching problem addressed in this study is that, in theory, there is uncertainty about the meaning of the expediency principle in a Europeanised legal order. Therefore, the following main question has been formulated: what is the meaning of the expediency principle in a Europeanised legal order?

The issues which are the reason for this research, the research question and the method followed in order to answer the research question, are all described in the first chapter. Therein, some grounds are given why the research has been limited to the influence of European Union law on the expediency principle. Furthermore, the study was limited to the context of decisions and policy-making in relation to the investigation and prosecution of criminal offences. Potentially, three points of departure can be chosen for discretion in criminal procedure: the legality principle and the expediency principle in two different interpretations. If the principle of legality applies, there is a statutory duty to prosecute, unless exceptions exist. In its negative interpretation, the expediency principle means that a prosecution is the rule if a provable criminal offence has been discerned, unless, by way of exception, there is a public interest in non-prosecution. In its positive interpretation, the expediency principle not only requires that a provable criminal offence has been discerned, but that a reason of public interest also exists for prosecution.

In order to determine which of the three possible points of departure for discretion in criminal procedure applies in a European perspective, the research has been oriented on the vertical relationship between Union law and the Dutch legal order. Because the focus is on the Dutch expediency principle,
rather than conduct comparative research, a legal theoretical approach has been chosen as a method in this study. For its theoretical foundations, inspiration has been found in the work of Neil MacCormick, in which law is viewed as an institutional normative order. Within this theory, norms which can rely on a certain societal acceptance are held to be institutionalized in formal systems and to be admitted therein in an ordered manner. The duty to enforce substantive criminal law norms is either absolute, discretionary, or conditional, in which latter case the duty to enforce is dependent on the underlying values of that norm. This theory is characterized by an orientation on the substantive law norm as a starting-point for formalization, and by an inherent pluralism, which also manifests itself on a constitutional level. This constitutional pluralism does not clearly give precedence to European law or a sovereign position to the national legal order. Conflicts between national and European law which may be seen as constitutional conflicts, may however be resolved by evaluating their respective claims to validity under international law. These theoretical points of departure constitute the framework against which the research question has been answered, whereby five sub-questions are distinguished, which have been answered in separate chapters.

In the second chapter an answer is given to the first sub-question: *what is the meaning of the expediency principle in Dutch criminal law, from a historical perspective?* This sub-question is important in order to be able to utilize the origin and development of the expediency principle as a background in the evaluation of the meaning of this principle in a European perspective. In answering this sub-question, particular attention will be paid to the issue whether the evolution of the expediency principle shows that policy freedom continually increases or rather, there is a process in which the room for policy-making alternately grows and diminishes. To that end, the historical overview starts with paying attention to the limited possibilities to control criminal procedural policy discretion before the French period. Whilst the introduction of French law strongly unified Dutch criminal procedure, this did not bring with it the introduction of strong prosecutorial obligations based on the principle of legality, as such obligations had already been removed from the French codes before these were promulgated in the Netherlands.

It has been much debated in literature which point of departure was chosen following the French period, in the Dutch Codes of Criminal Procedure of 1838 and 1886, whether this was one of the two interpretations of the expediency principle or the principle of legality. Although the principle of legality was no longer part of French law, its premises nevertheless were still well-aligned with the legal culture of that time. Ultimately, it must be accepted that nineteenth century criminal procedural law always recognized an expediency principle, whereby it was further never a matter of discussion that in practice, statutory competencies were regularly applied with restraint. In Germany however, that restrained application came under pressure because
of the hazards which were seen in political influence on prosecutorial policy. By accepting a legality principle, it was thought that the need for policy-making would become minimal and as such also that no political responsibility would be required for the actions of criminal procedural authorities. This German choice played a role in the preparation of the Dutch Criminal Procedural Code of 1926. Whilst initially a merger of the expediency principle and the principle of legality was envisioned therein, in the final version, only the expediency principle remained, as it is now laid down in articles 167 and 242 DCCP. The statutory description of these articles is characterized by a choice for the negative interpretation of the principle: the public interest may function as a basis to refrain from prosecution.

In the seventies and the eighties of the previous century, this interpretation came under discussion, as a positive interpretation of the expediency principle came to be seen as desirable. The Public Prosecution Service also acknowledged that such a development was seen as desirable. This did not lead to legislative action, but this interpretation did gain substantial support in literature. As a result, it was held that a requirement for prosecution was not only that it would be feasible, but also in the public interest. In part because of the lack of action on the part of the legislator, it is not entirely clear to which extent this interpretation actually took hold as a legally valid point of departure. It remains difficult to answer the question if that has ever been the case. In any event, the judge has responded to a broadening of policy freedom in the execution of duties by the police and the public prosecution, by developing a framework for evaluating their actions in light of so-called principles of proper procedural order. The concept of broad criminal procedural policy freedom has again been the subject of strong debate in the last decades, due to the existence of enforcement deficits, weak societal acceptance of tolerance policy and the rise of the idea of a law-state in which protection should be offered not only for civilians against actions of the government, but from which also strong enforcement duties may flow forth. One’s understanding of what the duty of law enforcement entails, has direct meaning for the manner in which the public interest is interpreted as a criterion for the application of the expediency principle and for the extent in which criminal procedural policy discretion is thought to be legitimate. Following from this historical overview, the answer to the first sub-question is that no continual increase is to be discerned in the scope of criminal procedural policy discretion. The degree of policy discretion which is derived from the expediency principle does vary somewhat, but from a historical perspective, there is no unequivocal development to be observed therein.

In the third chapter, an answer is given to the second sub-question: what is the meaning of the public interest as a foundation for the application of the expediency principle, in light of the European requirement of effectiveness? Here the content of the public interest as a criterion for the application of the expediency prin-
ciple, the reasons which may be hidden in that public interest criterion and the meaning that European law has for the criterion are at issue, in which regard the effectiveness requirement is particularly important. In answering this sub-question, it is taken as a given that in the interpretation of the public interest criterion, the making of a choice between different reasons to act is at issue, whereby this choice is informed by normative viewpoints. As such, two dimensions may be distinguished in the decision regarding the content of the public interest criterion, for which the terms catalogical and axiological have been used in this study, meaning that the decision is firstly oriented on inventorizing relevant perspectives and secondly on making explicit which normative viewpoints are deployed in a choice.

A more concrete view of the interpretation of the public interest criterion, in the context of the application of the expediency principle in Dutch criminal law shows that the normative content of that criterion is, to an important degree, a reflection of theories about the justification for and the goals of punishment, in which retributive and utilitarian elements play a role. The interpretation of the public interest criterion is further dependent on the interpretation of the expediency principle. With a negative interpretation, the public interest functions as a collective term for various reasons why, in a concrete case, criminal procedural competencies are not deployed. With a positive interpretation of the expediency principle, the public interest criterion is the foundation for the decision to prosecute, next to feasibility of conviction. Negative and positive interpretation become manifest in the manner in which the public interest criterion is expressed, respectively in the catalogue of grounds for dismissal which the Public Prosecution utilizes for the cases in which prosecution is not instituted for reasons of public interest, and in the directions and guidelines in which the Public Prosecution gives shape to its prosecutorial policy. That comes most clearly to the fore in the application of automated decision making systems which are used by functionaries of the Public Prosecution Service in making case-ending decisions.

European effectiveness requirements impose standards on law enforcement efforts of the member states, requiring that action against violations of European law is effective, proportionate and deterrent and that action taken against such violations is as effective as action against similar violations of national law. These standards may flow forth from the general Treaty provision on loyal cooperation (Article 4 par. 3 TUE), or from the provision which is specifically concerned with the protection of the financial interests of the European Union (Article 325 TFEU). Such requirements of effectiveness are also laid down in secondary Union law. The latter have led the Court of Justice, amongst other things, to accept a duty to prosecute in cases of facilitating unauthorised entry, transit and residence. Characteristic for the manner in which the Court of Justice applies these requirements of effectiveness is that in the standard of proportionality, there is not only a requirement that government action should not be more invasive than necessary, but that it is also at least as stringent
as to guarantee the effectuation of the underlying goal of the violated norm and therewith the enforcement of Union law.

As there seems to be tension between the preconditions of effective enforcement of European law and an unlimited interpretation of policy discretion, the question is how this should be adequately implemented in the Dutch context. To that end, in this study a comparison was made between the Dutch concept of a general administrative enforcement duty and the expediency principle. This administrative enforcement duty seems to leave much less room for policy discretion to administrative organs than the expediency principle confers upon criminal procedural authorities. The research shows however that the difference between the two principles is not substantial, amongst other things because the scope of the general administrative enforcement duty is mainly limited to planning and environmental law, but also because of exceptions to it, such as in the event of possible disproportionality and that of pending probable legalization. Particularly the recognition of the binding effect of restrictive policy guidelines seems to have taken the sharpest edges off the general administrative enforcement duty. This does not mean to say that the administrative judge always places the public interest served by enforcement on the forefront of his evaluation of non-enforcement decisions vis-à-vis the claim that interested parties have to enforcement.

The answer to the second sub-question is therefore that the public interest may be approached as a concept which contains a decision making system, whereby inventorization and normative appraisal of the reasons to act are placed in a criminal procedural context. The European requirement of effectiveness plays a role herein which cannot be entirely resolved by transplanting a concept such as the general administrative enforcement duty to a criminal law context, but which must be addressed in concrete decision and general policy-making.

In the fourth chapter, an answer is given to the third sub-question: what is the meaning of the expediency principle in its procedural and institutional context within the Europeanised democratic legal order? In answering this sub-question, different themes were discussed relating to the competencies which are connected to the expediency principle and with the manner in which the execution of these competencies can be controlled. With regards to these themes, a European law dimension has been sought.

It must be taken as a point of departure that, as a general principle of Dutch criminal law, the meaning of the expediency principle must not be equated with one or more specific competencies in criminal procedural law, such as refraining from the institution of criminal prosecution, settling criminal offences extrajudicially or limiting the scope of the indictment. It is more desirable to demarcate these different competencies in specific statutory provisions, than to derive their validity from the existence of the expediency principle. A distinction should also be made between the expediency principle
and the monopoly of prosecution: the last point of departure determines who is competent to decide about the institution of prosecution, while the expediency principle holds that in making that decision, the public interest may be utilized as a criterion. This means that, if an expediency principle is accepted, the prosecutorial decision is divided in a component of feasibility and a component of expediency, although these components cannot be strictly distinguished.

Concrete competencies which may be regarded as connected to the expediency principle are the competence of the prosecutor to limit the scope of the indictment, and to choose for extrajudicial settlement of a criminal offence instead of instituting prosecution, such as by way of a conditional dismissal. It was examined how these competencies could be exercised by the European Public Prosecutor’s Office, should such an institution be established. In both cases, its competencies are foreseen to be less broad than the comparable competencies under national law.

Another subject which touches on the institutional and procedural context of the expediency principle regards the position of the victim in criminal proceedings. Although not in a manner that strongly deviates from national needs, European harmonization obligations have noticeably influenced the criminal procedural framework for victims. As of yet, the victim has not been given a decisive vote in prosecutorial decision-making, but his interests must be taken into account. Furthermore, under European law, the obligation does exist to organize criminal procedural law in such a manner that prosecution may be refrained from if victims of offences have also committed criminal offences, which happens for instance in cases of trafficking in human beings.

The competence for investigative officials to drop charges for an ascertained criminal offence is seen as a possibility to express the expediency principle already in the investigative phase of criminal procedure. This possibility has also been codified in the Dutch Code of Criminal Procedure, which specifically states that the Public Prosecution Service supervises the execution of police dismissals. There is also intensive cooperation between the Public Prosecution Service and the police within the context of so-called triangle consultation. As in the practice of mandating decisions within the Public Prosecution Service, these forms show that the spreading of competencies over multiple actors can make the application of the expediency principle less unambiguous, in any event where its procedural framing is concerned.

The more room for policy-making is available in criminal procedure, the more relevant the question is in which manner the application of criminal procedural competences should be made subject to supervision. That is manifest, for example, in the judicial review of the actions of criminal procedural authorities against the principles of a proper procedural order. However, supervision is also possible within the organization of the Public Prosecution Service, and on a political level, the Minister of Justice is accountable to parliament for the use of his competence to instruct the Public Prosecution Service.
A similar construction appears to exist on the European level. The possibility to oblige the national authorities to institute prosecution in the event of perjury before the Court of Justice, or in the event of the violation of secrets in the context of the Euratom-treaty, is comparable to the ministerial instruction competency regarding the Public Prosecution Service that exists on the national level. As such, these instruction competencies do not infringe the expediency principle, but are to be seen as a specific way of distributing the decision to prosecute in a multi-level context.

In the fifth chapter, an answer is given to the fourth sub-question: how should the expediency principle be understood given the increased strengthening of the institutional structure of cooperation in criminal matters within the European Union? In this regard, two questions are of specific concern. Firstly, to what extent can the expediency principle be seen as a principle which legitimizes refraining from action by national authorities following a request for assistance by another state? Secondly, to what extent has that state of affairs changed through the intensified cooperation in criminal matters which has been developed between the member states of the European Union? The institutional structures relating to criminal law cooperation which have been and will be established on the European level, can also cast light on the evolving meaning of the expediency principle.

The expediency principle should however not be primarily seen as a possibility to refuse requests for assistance in criminal matters. The grounds that exist for refusal do sometimes resemble the public interest as a criterion for the application of the expediency principle, but in most cases, the content of these grounds for refusal is of a different nature. To a certain extent, the ground for refusal which can be described as the territoriality clause may be seen as a method to guarantee the integrity in the application of the expediency principle. Evaluating the meaning of the expediency principle in the field of cooperation in criminal matters is more interesting when it is viewed from the opposite perspective: as a possibility to make policy decisions about requesting assistance and issuing orders. Particularly now that in the European Union, cooperation is based on direct contact between criminal procedural authorities, and political authorities are mostly not involved in legal assistance, this perspective is important. Because of that, decisions of criminal law authorities have legal consequences within the area of freedom, security and justice. Decisions which are more invasive in a punitive sense have more effect than decisions to exercise restraint or to refrain from responding to a criminal offence entirely. Legal effects may for example be seen in the transnational operation of the ne bis in idem principle.

A substantial development in the Europeanization of criminal law is to be seen on the institutional terrain, where Eurojust has been set up and where the establishment of a European Public Prosecution Service is being discussed. These institutions have or will obtain the possibility to make decisions which
as such cannot be ignored by national authorities and which regard the content of the prosecutorial decision. In this respect, Eurojust can request that an investigation or prosecution be instituted, or rather that such a step be left to another member state. These requests can only be refused by a reasoned decision. Where Eurojust relies on the input of delegated members of the national criminal procedural authorities, and therefore can be seen as an organ in which national authorities mutually cooperate and coordinate the exercise of their duties, that is entirely different when it comes to the European Public Prosecutor’s Office which may be established. This institution will be able to give binding directions to certain delegated prosecutors in the national systems, to institute a prosecution before the national courts in cases in which the financial interests of the European Union have been damaged. It can be deduced from the preparatory work that has preceded the establishment of this institution that the European Public Prosecutor’s Office will probably be bound by a duty to prosecute. The legislator’s choice for this duty to prosecute expresses a zero tolerance policy, and the reluctance to appoint a person who will be politically responsible for the exercise of the European Public Prosecutor’s duties. The delegated European prosecutor, who is also placed within the Dutch Public Prosecution Service, is therewith confronted with a situation in which he must be loyal to two masters. His superiors within the Dutch Public Prosecution Service can give him directions on the basis of the policy freedom offered by the expediency principle, and, bound to the principle of legality, the European Public Prosecutor’s Office must direct him to take certain investigative or prosecutorial actions. This could lead to problems when it comes to the allocation of investigative capacity, which is particularly important in the area of combatting fraud, and concerning which, as appears from the preparatory documents, the European Public Prosecutor’s Office cannot exercise clear authority.

In the sixth chapter an answer is given to the fifth sub-question: what is the relationship between the expediency principle and substantive criminal law in light of the obligations to implement European Law? In this chapter, the perspective shifts from the criminal procedural point of view that was taken in chapter four and five to a substantive law approach. The scope of policy discretion in criminal procedure has meaning for the division between substantive and procedural law in their combined efforts to ensure that behaviour which is not deemed to merit prosecution will not receive any formal reaction from the criminal justice system. If extensive policy freedom exists, it is not necessary that substantive criminal law determines the scope of criminal liability in a highly accurate manner, because behaviours which do not merit a criminal law response can be excluded from intervention by a restrained exercise of criminal procedural competencies. When less extensive policy freedom exists, the situation is the opposite: in that case, it is mainly the substantive criminal law which determines if and if so, which criminal law response is suitable.
In this study, the connection between substantive criminal law and the expediency principle was researched via different themes. The most evident connections are to be found in some issues which can, by their nature, be positioned in between procedural and substantive law. Amongst other things, they regard the age limits for criminal liability, the statute of limitations and offences which may only be prosecuted on the basis of a complaint. A shift is regularly to be seen with regards to these subjects, whereby sometimes the expediency principle is deployed and sometimes a substantive law solution is chosen. Such shifts are recognizable in many themes, such as also in the definition of criminal law jurisdiction. There, the most important issue concerns the Dutch provisions for extraterritorial jurisdiction for offences of international criminal law, which have a specific jurisdictional requirement that the suspected person must be present on Dutch territory. According to some, this requirement may better be seen as an expediency argument, although a disadvantage of that line of thinking can be that many procedures will be instituted complaining about non-prosecution.

A reciprocal relationship with the expediency principle was also researched with regards to themes which more clearly belong to the core of substantive criminal law. Extensive interpretation of general doctrines or of specific offence definitions can be compensated by following a restrained prosecutorial policy. In doing so, criminal procedural authorities act in a manner which is compensatory in relation to the legislator, who has created a broad definition of criminal liability. If substantive criminal law is to be seen as directing law enforcement, it is important for the manner in which the norms are enforced in practice to take into account the quality of legislation, the preceding parliamentary deliberations, and the democratic legitimacy of the substantive law norms which flow forth from that. In that regard, the attitude of the Public Prosecution Service can be dependent on the interpretation of the expediency principle: with a positive interpretation, it can position itself quite independently vis-à-vis the legislator, whilst with a negative interpretation it must, in principle, take the legislator’s lead. Another form of tension between state powers can become relevant when government organs can be held criminally liable, certainly when international or European law obligations are put forward in order to justify the institution of prosecution.

A relationship of reciprocity between substantive criminal law and the expediency principle is also to be recognized in the operation of defences. Particularly when the expediency principle is interpreted negatively, logically, it connects to the functioning of defences in criminal law: by way of an exception, no prosecution is instituted in the public interest, where that would nevertheless have been possible. Also, the expediency principle has its meaning for the general conditions for criminal liability of unlawfulness and culpability. This is also demonstrated in the suggested, but never entirely accepted theme of so-called subsociality as a doctrine of substantive criminal law. Reasons why criminal law authorities refrain from prosecution through application
of the expediency principle could be explained by the absence of subsociality as a third element of the offence, next to unlawfulness and culpability. That such a vision has never been accepted, shows that in Dutch criminal law, the application of the expediency principle is placed primarily in criminal procedural law and that its relevance for substantive law is seldom inquired into. That also holds true for the importance of procedural policy freedom for the interpretation of offence definitions. Through a choice for the expediency principle, some difficult choices in legal interpretation can be evaded, because no prosecutions are instituted in borderline cases. That possibly obscures that an interpretative triangle relationship can be seen, in which the legislator, the judge and the Public Prosecution Service have their own role and all contribute to the development of substantive criminal law, whereby the latter of these three most can most visibly involve the expediency principle in that activity.

A final theme in which the relationship between substantive criminal law and the expediency principle comes to light regards the Dutch policy relating to coffee shops, in which the European dimension is strongly present. The coffee shop policy forms the clearest illustration of a far-reaching application of the expediency principle. In prosecutorial policy, a policy of tolerance is explicitly chosen, in which a restrained application of criminal law is thought to be desirable for reasons other than relating to the capacity of the criminal justice system. The tightening of this policy of tolerance has led to European jurisprudence with regards to its compatibility with free movement rights applying within the European Union, but this jurisprudence has not led to the Netherlands having to adapt its policy. European legislation has had effect on the Dutch Narcotics Act, through amendments of penalty levels and the introduction of new, penalty increasing circumstances. In light of the duty of loyal cooperation and the European obligations regarding effective enforcement which flow forth from that, it is not unthinkable that the Dutch coffee shop policy will come under stronger pressure. It will particularly be difficult to follow a restrained policy if the aims of the European Union in the area of combatting illegal drugs are jeopardized. With that, an illustration is given of the manner in which European law has its effect on the relationship between substantive criminal law and the expediency principle.

In the seventh chapter, the answers to the sub-questions are brought together and an answer is given to the main research question. Thereby, it must be put to the fore that in the discerned cases of conflict between the Dutch and the European legal orders, whereby the existence of the expediency principle stands in the way of an effective enforcement of the law of the European Union, that latter law is the victor in that constitutional conflict, due to the international law principle of *pacta sunt servanda*. This means that, when the Constitution cannot accommodate the European enforcement requirements by excluding the competence to dismiss criminal offences, criminal procedural authorities are nevertheless limited in their policy freedom. Besides this special
meaning that European law can attain, an obligation to prosecute which leaves even less policy room could also be created if a European Public Prosecutor’s Office is established which the Netherlands joins. This all means that the question which of the three points of departure of criminal procedural policy discretion, namely the principle of legality and the negative and positive interpretation of the expediency principle, applies in a Europeanized legal order cannot be answered categorically. Instead, the scope of policy freedom is dependent on the specific institutional context. The manner in which, in MacCormick’s legal theory, the application of substantive norms is dependent on their institutionalization, offers starting-points to interpret the scope of policy freedom in a differentiated manner. Depending on the manner in which substantive criminal law norms are institutionally and procedurally embedded, these should be seen as of absolute application, conditional application or discretionary application. This state of affairs calls for incorporation in the model of the prosecutorial decision: besides feasibility and expediency, a decision should also be made about the scope of policy freedom, as a separate component.

Such an approach relies to an important extent on the findings from the different chapters of this study and the answers to the sub-questions which are given therein. From the historical overview, it was apparent that the development of the expediency principle does not show an ever widening scope of policy freedom, for which reason changes in interpretation should not necessarily lead to a departure from the backgrounds of the expediency principle. The discussion of the public interest criterion and the European law requirement of effectiveness has shown that the enforcement claim is indissolubly connected with norms of European origin. The suggestion has been made that decisions about the deployment of criminal law should be seen as having been taken after an inventorization of all relevant viewpoints and a choice from a normative perspective. The discussion of cooperation in criminal law matters showed that expediency choices operate within the area of freedom, security and justice, for which reason a centralized criminal law jurisdiction, in which a rational prosecutorial policy can be followed in an autonomous manner, increasingly becomes illusory, particularly in the event that a European Public Prosecutor’s Office is established. Finally, the discussion of the relevance of substantive criminal law showed a strong connection to the expediency principle. A differentiated interpretation of this principle, in which the interpretation thereof varies in accordance with the institutionalization of substantive criminal law norms, can therefore be informed by the interconnection of the application of the expediency principle with substantive criminal law.

The answer to the main research question is therefore that the expediency principle should be interpreted in a differentiated manner. In concrete decisions in which the expediency principle is applied and in policy-making, criminal procedural authorities must be aware of the scope of policy freedom they have
in the exercise of their duties and the degree in which this is influenced by the law of the European Union.