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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Council Conclusions on 'The future of Union criminal law:  
recommendations on the way forward'  
- Draft submitted by the Presidency

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Following the informal exchange of CATS delegations in Ghent on 9 April and the replies of a majority delegations to the Presidency questionnaire<sup>1</sup>, the Presidency is submitting a draft of Council conclusions to delegations for examination. JHA Counsellors and experts are invited to comment on them at their meeting on 24 April.

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<sup>1</sup> WK 2615/2024.

*(draft)***Council Conclusions****‘The future of Union criminal law: recommendations on the way forward’****Introduction**

- a) The development of the criminal law of the European Union and the principles governing it have been discussed for several decades, both within the institutions and among academic experts<sup>2</sup>. The discussions gained momentum during the run-up to the entry into force of the Lisbon Treaty, which introduced new legal bases for Union criminal law were introduced. A set of dedicated Council conclusions *on model provisions, guiding the Council’s criminal law deliberations* was adopted in 2009, and a Commission communication<sup>3</sup> “Toward an EU criminal policy: Ensuring the effective implementation of EU policies through criminal law” followed in 2011.
- b) An important number of Union instruments in the area of criminal justice have been adopted since then under the legal bases introduced by the Lisbon Treaty. These instruments have notably addressed particularly serious crime with a cross-border dimension, based on in Article 83(1) TFEU, introducing measures to ensure the effective implementation of a Union policy (Article 83(2) TFEU) and creating criminal procedural law based on Article 82 (TFEU). In addition to this, the ground-breaking European Public Prosecutor’s Office has been set up.

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<sup>2</sup> See, for example, The Manifesto on the EU Criminal Policy in 2011 of 2009 ([www.crimpol.eu](http://www.crimpol.eu)) and A Manifesto on European Criminal Procedure Law of 2010 ([www.zis-online.com](http://www.zis-online.com))

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0573>

- c) The Council and the Parliament, as co-legislators, as well as the Commission have throughout this time strived to ensure the highest possible quality of the criminal legislation. In this sense, the following issues have appeared particularly important:
- that the Union legislator should take into account the commonly agreed principles of criminal law, such as the principle of legality, the principle that criminal law should only be used as a last resort (*ultima ratio*) and the protection of fundamental rights.
  - that the internal coherence of the Union criminal law acquis is safeguarded,
  - that Union criminal law instruments give Member States the necessary flexibility to implement them in a way that does not interfere with the system and consistency of the national criminal laws.
- d) It has however become evident that the high number of proposals in different policy areas that include criminal law elements makes it challenging for the co-legislators to ensure that all these aspects are systematically and fully taken into account.
- e) In this transition between two legislative cycles, it appears timely to address the future of the Union criminal law in a horizontal manner, so that the quality of the criminal legislation can be enhanced.

## **Conclusions of the Council**

### **General considerations**

1. The Union has an obligation to ensure that its actions in the area of criminal justice respect the principles of subsidiarity and proportionality, taking into account specific principles governing this area, such as the legality principle and the principle of *ultima ratio*.

2. In particular, criminal law instruments and provisions should only be adopted when necessary to achieve the objective behind the instrument cannot be achieved through other means and when there is a clear legal basis for them.
3. Except in cases of urgency, the need for and appropriateness of any criminal law measure needs to be based on evidence.
4. Union criminal law, and in particular the core provisions on penalties, criminal responsibility, jurisdiction and limitation periods, is bound to be clear and coherent.
5. Union criminal measures need to be elaborated in a manner that makes it possible for the Member States to implement them in the existing system of national criminal laws, and in particular in their general part.

#### **Actions to be taken by Council**

1. The Council will, with starting point in the 2009 Council conclusions on model provisions, initiate work on the establishment of modernised model provisions for the Union criminal law, in particular as regards penalties for natural and legal persons, liability of legal persons, aggravating and mitigating circumstances, incitement, aiding and abetting and attempt, jurisdiction, limitation periods and investigation tools that should be made available.
2. The Council calls on the Union institutions involved to reach a common understanding between the European institutions involved in the legislative procedure on the main principles of the Union criminal law and on the model provisions.
3. The Council will promote the use of the model provisions, once they have been agreed upon, during legislative work, except where there are strong reasons to diverge from them.

## **Institutional**

1. The Council invites the Commission to continue:
  - to ensure that any proposal with a criminal law element is based on evidence that such legislation is necessary to achieve the objectives,
  - to elaborate thoroughly prepared and detailed impact assessments that are made available before the start of the examination of the proposal in Council.
2. The Council invites the Commission and the Parliament to take the need of Member States to ensure the consistency of their national legal orders into account with a view to future legislative negotiations.
3. The Council invites the Commission and the Parliament to engage in a structured and comprehensive joint reflection on all aspects of the future of the Union criminal law, including the possibility of having common model provisions.
4. The structured joint reflection mentioned in the preceding point should, where appropriate, involve also academia, practitioners and other external experts.