



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 November 2009**

**16798/09**

**JAI 886  
DROIPEN 163**

**"A" ITEM NOTE**

---

from : General Secretariat of the Council

to : Council

---

No. prev. doc. : 16542/1/09 REV 1 JAI 868 DROIPEN 160

---

Subject : Draft Council conclusions on model provisions, guiding the Council's criminal law deliberations

---

**I. INTRODUCTION**

On 2 July 2009, the Article 36 Committee (CATS) discussed the item of "Criminal law in future negotiations - internal and external aspects" on the basis of doc. 11335/09 JAI 421 CATS 69 DROIPEN 51 JAIEX 44 WTO 122 COASI 110.

Further to these discussions, the Presidency in cooperation with the German Delegation, presented on 9 October 2009 a proposal for draft Council conclusions on guidelines for future criminal law in EU legislation<sup>1</sup>. The Working Party on Substantive Criminal Law discussed the text of the draft Council conclusions during several meeting days.

---

<sup>1</sup> Doc. 14162/09 JAI 654 DROIPEN 118.

This file was brought to the consideration of Article 36 Committee on 11 November 2009. COREPER discussed this file on 26 November 2009 and reached agreement on the text on 27 November 2009.

The text of the draft Council conclusions, as it emerged from the discussions, is set out in document 16452/2/09 REV 2 JAI 868 DROIPEN 160.

Statements to be entered in the minutes of the Council are set out in the Annex to this Note.

## **II. CONCLUSION**

JHA Council is invited to:

- adopt the text of the Council conclusions as set out in document 16542/2/09 REV 2 JAI 868 DROIPEN 160
- take note of and enter in its minutes the statements as set out in the Annex to this Note.

---

**Statements to be entered in the minutes of the Council**

**Statement by the European Commission**

"The Commission fully shares the objective to ensure consistency in European Union legislation relating to criminal law. However, the Commission considers the Guidelines and model provisions contained in the Council's Conclusions are premature and restrict the interpretation of Article 83 of the Treaty on the Functioning of the EU (TFEU). By issuing such guidelines and model provisions the Council unilaterally establishes a framework for future legislation to which neither the Commission nor the European Parliament agreed. The Commission therefore declares that these guidelines and model provisions are without prejudice to its right of initiative in accordance with the TFEU. The Commission also declares that it will exercise this right with due care and based on an impact assessment following appropriate consultations."

**Statement by Greece**

" With regard to the model provision on "inciting ,aiding and abetting and attempt", Greece considers that this provision should have covered also negligent conduct. Furthermore, with regard to the model provision on "Penalties against legal persons", Greece considers that the word penalties includes also sanctions."