



**COUNCIL OF
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NOTE

from:	Presidency
to:	Council
Subject:	Non-Paper for 10 June Council - Justice Minister's lunch - Towards an EU Criminal Policy

The European Union has been taking measures in the area of criminal law for more than a decade. Even so, it is still a young and largely unshaped policy field, with a patchwork of legislation in need of greater coherence and consistency. Yet it is evident that EU criminal law provides significant added value. Today, the most serious types of organised crime are committed across borders. There is thus an incentive and possibility for criminals to choose the Member State with the most lenient legal system unless a certain approximation of the national laws (both substantive and procedural) takes place.

EU criminal law has also the potential to foster the confidence of citizens in using their right to free movement through a more efficient fight against crime and the adoption of minimum standards for procedural rights in criminal proceedings as well as for victims of crimes. Common rules strengthen mutual trust between the judiciaries of the Member States. This facilitates cooperation and mutual recognition of judicial measures. And finally, EU criminal law helps to prevent and sanction grave offences against EU law in important policy areas, from trafficking in drugs to protection of the euro and of the financial interests of the Union, crimes against the environment or terrorist acts.

The new legal framework under the Lisbon Treaty provides fresh opportunities to address challenges and to improve the quality of criminal justice across Europe. There is a new institutional dynamic which can benefit the consolidation of a European judicial area. The objective of an EU criminal policy should be to ensure that crime does not pay, regardless of where committed in the EU. And that citizens can have confidence that there are sound legal systems in place which protect their freedom and their security.

Consistency and coherence in EU criminal law

Criminal law is a sensitive policy field with a significant impact on the fundamental rights of individuals and on the sovereign prerogatives of Member States. EU measures on criminal law should therefore only be used as a last resort. Diversity and differences amongst the national criminal law systems remain substantial. This is because, like no other area of law, criminal law reflects the basic values, customs and choices of any given society. For these reasons, it is particularly important to ensure that EU legislation on criminal law is consistent and coherent. A common understanding on the guiding principles (for instance, necessity, proportionality and subsidiarity) leading the legislator would assist in achieving this goal. The European Commission should be encouraged to make criminal law proposals on the basis of such a coherent set of guiding principles.

Achieving the goal of common minimum standards

The Treaty on the Functioning of the European Union provides the possibility of introducing EU-level common minimum rules concerning the definition of criminal offences and criminal sanctions in specific crime areas. The EU has already adopted a number of instruments which include such provisions, both in the form of third pillar Framework Decisions and new Directives.

Similar wording has been used in most of these instruments, obliging Member States to make certain conduct punishable by "effective, proportionate and dissuasive criminal penalties" or requiring certain minimum maximum sanction levels. It should be considered whether these formulas are best suited to achieving the goal of approximating criminal sanctions for the offences concerned and to avoid loop holes for perpetrators. Standard wording for aiding and abetting and for the treatment of legal persons should progressively be developed.

Areas for EU action

Under the Treaty on the Functioning of the European Union, directives approximating the definition of criminal offences and sanctions can be adopted

- on the so-called “**Euro crimes**” which covers terrorism and other crimes such as trafficking in human beings and sexual exploitation of women and children, illicit drug and arms trafficking, money laundering, corruption, counterfeiting of the means of payment (such as euro banknotes), computer crime and organised crime,
- if they are essential to **ensure the effectiveness of a harmonised EU policy**, typically where other measures, such as administrative sanctions, have not been sufficient successful in achieving the implementation of EU rules, or
- or to fight effectively against **fraud to the detriment of the financial interests of the European Union**.
- In order to **strengthen the enforcement** of EU measures in some important policy areas, the EU has already adopted some directives with criminal law measures for the protection of the environment, against ship-source pollution and illegal employment. Yet, there are many other policy areas (for example, protection of fish stocks, waste shipments, the protection of euro banknotes against counterfeiting, fight against fraud to the detriment of the European Union, public procurement, the fight against abusive behaviour on financial markets) which have been in place for many years without always achieving the desired results in terms of enforcement. Bearing in mind these common policies, it will be important to establish criteria for which sectors criminal law could potentially be an important tool to strengthen the enforcement for serious breaches. Effective enforcement in this context can comprise minimum rules both as regards the definition of a crime as well as the level of sanction. In one specific area (the fight against fraud) the Treaty even provides for institutional measures to strengthen enforcement via a reinforcement of Eurojust and, eventually, the creation of a European Public Prosecutor to fight against fraud to the detriment of the financial interests of the European Union and related crimes.

The Presidency invites the Ministers to discuss the following questions:

- **WHAT SHOULD BE THE MAIN POLICY MESSAGE OF AN EU CRIMINAL POLICY?**
- **WHAT CAN THE EU DO TO BRING GREATER CONSISTENCY AND COHERENCE TO EU CRIMINAL LAW?**
- **MINDFUL THAT CRIMINAL LAW IS ALWAYS THE LAST RESORT, HOW SHOULD CRIMINAL LAW SANCTIONS BE USED AT EU LEVEL? WHAT IS THE BEST METHOD TO ACHIEVE THE GOAL OF COMMON MINIMUM STANDARDS REGARDING CRIMINAL SANCTIONS FOR CERTAIN CRIME AREAS THROUGHOUT THE EU?**
- **WHICH AREAS WOULD BENEFIT PARTICULARLY FROM COMMON DEFINITIONS ON EU LEVEL OF CRIMINAL OFFENCES AND SANCTIONS? WHAT ARE, IN YOUR VIEW, THE PRIORITY AREAS IN NEED OF MORE EFFECTIVE ENFORCEMENT?**