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from:	Presidency
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Subject:	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law.

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**- Strategic questions -**

Since the days of the Council of Europe, criminal law was traditionally dealt with through the concept of intergovernmental cooperation. It was only with the Maastricht Treaty (1993) that it became a subject of the Union as a matter of "common interest".

The Amsterdam Treaty clarified the objective of the EU in the area of justice and home affairs and created the concept of an area of "freedom, security and justice". Through the Treaty the Union was provided with tools that allowed it to take binding measures in the area of criminal law. Until the Lisbon Treaty entered into force, 14 Framework Decisions on cooperation, 16 Framework Decisions on substantive criminal law, and 5 Directives dealing with criminal law related matters were adopted.

Criminal law is a matter of shared competence between the Member States and the Union. It has made the area of freedom, security and justice one of its top priorities. The Treaty provides for specific areas of EU criminal law where the Union can approximate the definitions of offences and sanctions, under certain conditions. Criminal procedural law may also be approximated, and even unified through Regulations in certain cases. As is emphasized in the Communication from the Commission, a specific legal basis has been created for areas which already have been subject to harmonisation measures "if the approximation of criminal laws and regulations of Member States proves essential to ensure the effective implementation of a Union policy" (Article 83:2 TFEU).

The Communication of the Commission purports that it aims to present a framework for the further development of an EU Criminal Policy under the Lisbon Treaty. A coherent and consistent European Criminal Policy could help ensuring enforcement of EU-wide rules, for instance in terms of preventing the manipulation of financial markets and safeguarding European taxpayers' money from fraud. These policies depend on effective implementation by Member States and effective enforcement.

In the light of the Communication, the Presidency therefore would like to ask delegations to reflect on the following questions, on the understanding that the Council will have to come back to these issues in the future:

*A. Which, if any, are the already harmonised EU policy areas where EU criminal law would offer an added value to the enforcement thereof?*

*B. What are the requirements for a policy area to be proven "essential" to ensure the effective implementation of a given Union policy?*

*C. Are delegations in agreement with the methodology that the Commission outlines at 2.2.1 and 2.2.2 in its Communication.*