An EU approach to criminal law

P7_TA(2012)0208

European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI))

(2013/C 264 E/02)

The European Parliament,

— having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular to Part Three, Title V, Chapter 4 thereof, entitled ‘Judicial cooperation in criminal matters’,

— having regard to the Charter of Fundamental Rights of the European Union, and in particular to Title VI thereof on justice,

— having regard to the Commission Communication of 20 September 2011 entitled ‘Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law (COM(2011)0573),

— having regard to the Council conclusions of 30 November 2009 on model provisions, guiding the Council’s criminal law deliberations,

— having regard to its resolution of 25 October 2011 on organised crime in the European Union (1),

— having regard to its recommendation of 7 May 2009 to the Council on development of an EU criminal justice area (2),

— having regard to its studies on ‘Harmonization of criminal law in the EU’ (3) and on ‘Development of an EU criminal justice area’ (4),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0144/2012),

A. whereas in accordance with Article 3(2) of the Treaty on European Union (TEU) the Union shall offer its citizens an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to, inter alia, the prevention and combating of crime;

B. whereas Parliament and the Council may, in accordance with Article 83 TFEU, establish minimum rules concerning the definition of criminal offences and sanctions;

C. whereas at the same time Article 83(3) TFEU introduces an emergency brake procedure in the case of a member of the Council considering that the proposed legislative measure would affect fundamental aspects of its criminal justice system, thus recognising that criminal law often reflects the basic values, customs and choices of any given society, albeit in full respect of international human rights law:

D. whereas the principles of subsidiarity and proportionality, as mentioned in Article 5 TEU, are therefore particularly relevant in the case of legislative proposals governing criminal law;

E. whereas the criminal law and criminal proceedings systems of the Member States have evolved over centuries, whereas each Member State has its own characteristics and special features, and whereas, as a consequence, key areas of criminal law must be left to the Member States;

F. whereas the principle of mutual recognition is gaining acceptance in an increasing number of political fields, in particular in relation to judgments and judicial decisions, and whereas it is a principle based on mutual trust, which requires the establishment of minimum protection standards at the highest possible level;

G. whereas the harmonisation of criminal law in the EU should contribute to the development of a common EU legal culture in relation to fighting crime, which adds up to but does not substitute national legal traditions and has a positive impact on mutual trust amongst the legal systems of the Member States;

H. whereas criminal law must constitute a coherent legislative system governed by a set of fundamental principles and standards of good governance in full respect of the EU Charter of Fundamental Rights, the European Convention on Human Rights and other international human rights conventions to which the Member States are signatories;

I. whereas in view of its being able by its very nature to restrict certain human rights and fundamental freedoms of suspected, accused or convicted persons, in addition to the possible stigmatising effect of criminal investigations, and taking into account that excessive use of criminal legislation leads to a decline in efficiency, criminal law must be applied as a measure of last resort (ultima ratio) addressing clearly defined and delimited conduct, which cannot be addressed effectively by less severe measures and which causes significant damage to society or individuals;

J. whereas EU criminal legislation should, as a general rule, only prescribe penalties for acts which have been committed intentionally or, in exceptional circumstances, for those involving serious negligence, and must be based on the principle of individual guilt (nulla poena sine culpa), although in certain instances it may be justified to provide for corporate liability for certain types of offence;

K whereas in accordance with the lex certa requirement the elements of a criminal offence must be worded precisely in order to ensure predictability as regards its application, scope and meaning;

L. whereas in the case of directives, Member States retain a certain measure of discretion on how to transpose the provisions into their national legislation, which means that in order to meet the lex certa requirement, not only EU legislation itself, but also its transposition into national legislation must be of the highest quality;

M. whereas the introduction of EU criminal law provisions is not confined to the area of freedom, security and justice but can relate to many different policies;

N. whereas so far the European Union has often developed criminal law provisions on an ad hoc basis, thus creating the need for increased coherence;

O. whereas there is a need for Parliament to develop its own procedures in order to ensure, together with the co-legislator, a coherent criminal law system of the highest quality;
P. whereas in order to facilitate cooperation in the field of criminal law between the Commission, the Council and Parliament, an inter-institutional agreement is called for;

Q. whereas Article 67(1) TFEU provides that the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States;

1. Stresses that proposals for EU substantive criminal law provisions must fully respect the principles of subsidiarity and proportionality;

2. Recalls that criminal law must fully respect the fundamental rights of suspected, accused or convicted persons;

3. Emphasises that in this respect it is not sufficient to refer to abstract notions or to symbolic effects, but that the necessity of new substantive criminal law provisions must be demonstrated by the necessary factual evidence making it clear that:

   — the criminal provisions focus on conduct causing significant pecuniary or non-pecuniary damage to society, individuals or a group of individuals;

   — there are no other, less intrusive measures available for addressing such conduct,

   — the crime involved is of a particularly serious nature with a cross-border dimension or has a direct negative impact on the effective implementation of a Union policy in an area which has been subject to harmonisation measures,

   — there is a need to combat the criminal offence concerned on a common basis, i.e. that there is added practical value in a common EU approach, taking into account, inter alia, how widespread and frequent the offence is in the Member States, and

   — in conformity with Article 49(3) of the EU Charter on Fundamental Rights, the severity of the proposed sanctions is not disproportionate to the criminal offence;

4. Recognises the importance of the other general principles governing criminal law, such as:

   — the principle of individual guilt (nulla poena sine culpa), thus prescribing penalties only for acts which have been committed intentionally, or in exceptional cases, for acts involving serious negligence,

   — the principle of legal certainty (lex certa): the description of the elements of a criminal offence must be worded precisely to the effect that an individual shall be able to predict actions that will make him/her criminally liable,

   — the principle of non-retroactivity and of lex mitior: exceptions to the principle of retroactivity are only permissible if they benefit the offender,

   — the principle of ne bis in idem, which means that a person who has been convicted or acquitted by a final judgment in one Member State cannot be prosecuted or punished for the same matter in criminal proceedings in another Member State,

   — the principle of the presumption of innocence, which states that every person accused of a crime is deemed innocent until his or her guilt is established under law;
5. Welcomes the recognition by the Commission in its recent Communication on an EU criminal law policy that the first step in criminal law legislation should always be to decide whether to adopt substantive criminal law measures at all;

6. Encourages the Commission to put forward measures that facilitate more consistent and coherent enforcement at national level of existing provisions of substantive EU criminal law, without prejudice to the principles of necessity and subsidiarity;

7. Stresses that harmonisation measures should be proposed primarily with a view to supporting the application of the principle of mutual recognition in practice, rather than merely expanding the scope of harmonised EU criminal law;

8. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, to draw on the best practices of those Member States with a high level of procedural rights guarantees, to include an evaluation based on its fundamental rights checklist and to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law;

9. Stresses the need to establish uniform minimum standards of protection at the highest possible level for suspects and defendants in criminal proceedings in order to strengthen mutual trust;

10. Encourages the Commission and the Member States also to consider non-legislative measures that consolidate trust among the different legal systems in the Member States, enhance coherence and encourage the development of a common EU legal culture in relation to fighting crime;

11. Stresses the need for a more coherent and high-quality EU approach to criminal law and deplores the fragmented approach followed so far;

12. Welcomes the existence of an inter-service coordination group on criminal law within the Commission and asks the Commission to provide Parliament with more specific information on its mandate and functioning;

13. Calls for a clear, coordinating authority within the Commission for all proposals which contain criminal law provisions, in order to ensure a coherent approach;

14. Welcomes the existence of a Council Working Party on Substantive Criminal Law and asks the Council to provide Parliament with specific information on how it relates to other Council working groups dealing with criminal law provisions in policy areas other than justice and home affairs;

15. Calls for an inter-institutional agreement on the principles and working methods governing proposals for future EU substantive criminal law provisions and invites the Commission and the Council to establish an inter-institutional working group in which these institutions and Parliament can draw up such an agreement and discuss general matters, where appropriate consulting independent experts, with a view to ensuring coherence in EU criminal law;

16. Believes that this inter-institutional working group should help to define the proper scope and application of criminal-law sanctions at EU level, as well as examining existing legislation with a view to reducing the fragmentation and conflicts of jurisdiction characterising the current approach;

17. Resolves to examine how a coherent approach to EU legislation on substantive criminal law can best be ensured within Parliament, and points in this respect to the current lack of a coordinating committee and to the important role that its Legal Service could potentially play;

18. Emphasises the importance of establishing an information service for Parliament that can support the individual Members in their daily work, thus ensuring the quality of Parliament’s work as a co-legislator;
19. Points out that a coherent approach requires Parliament, before adopting any legislative proposal on substantive criminal law, to have at its disposal a legal analysis of the proposal showing whether all the requirements mentioned in this Resolution have been fully met, or which improvements are still necessary;

20. Instructs its President to forward this resolution to the Council, the Commission, the national parliaments of the Member States and the Council of Europe.

Strengthening the rights of vulnerable consumers
P7_TA(2012)0209

European Parliament resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers (2011/2272(INI))

(2013/C 264 E/03)

The European Parliament,


— having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (⁴),


— having regard to Directive 2004/113/EC of the Council of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (⁶),

— having regard to its resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (⁷),

²) OJ L 304, 22.11.2011, p. 64.