The Principle of Legality in European Criminal Law

• Is the principle of legality sufficiently safeguarded at European level and where lies room for improvement?

• Do directives and notably their transposition into national law create extra hurdles for this principle (especially for the lex certa principle)?
former § 2 German StGB (1935 !)

“Any person who commits an act which the law declares to be punishable or which is deserving of penalty according to the fundamental conceptions of a penal law and sound popular feeling shall be punished. If there is no penal law directly covering an act, it shall be punished under the law of which the fundamental conception applies most nearly to the said act.”

1. The principle of legality in general
2. Legal certainty as to future supranational criminal law
3. Legal certainty as to harmonising measures
4. Suggestions for improvement
nullum crimen, nulla poena sine lege

- prohibits retroactive criminal law
- prohibits customary criminal law
- bans legal analogies to the detriment of the perpetrator
- demands legal certainty
Regulation must be precise

Member State

Directive
- binding as to result
- can be imprecise

Member State
Art. 4 II Directive of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims.

Member States shall take the necessary measures to ensure that an offence concerning trafficking in human beings is punishable by a maximum penalty of at least 10 years of imprisonment where that offence was committed by use of serious violence or has caused particularly serious harm to the victim.
Manifesto on European Criminal Policy (ECPI)

“The smaller the margin of freedom at the level of implementation, the more important it is that the European legislative acts satisfy the lex certa requirement. If a certain European legal instrument seeks to fully harmonise the proscriptions in the Member States, it should satisfy the lex certa requirement in the same way as if it were a criminal law provision.”
Thank you very much for your interest!

For further information on the European Criminal Policy Initiative and the Manifesto on European Criminal Policy see

www.crimpol.eu

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