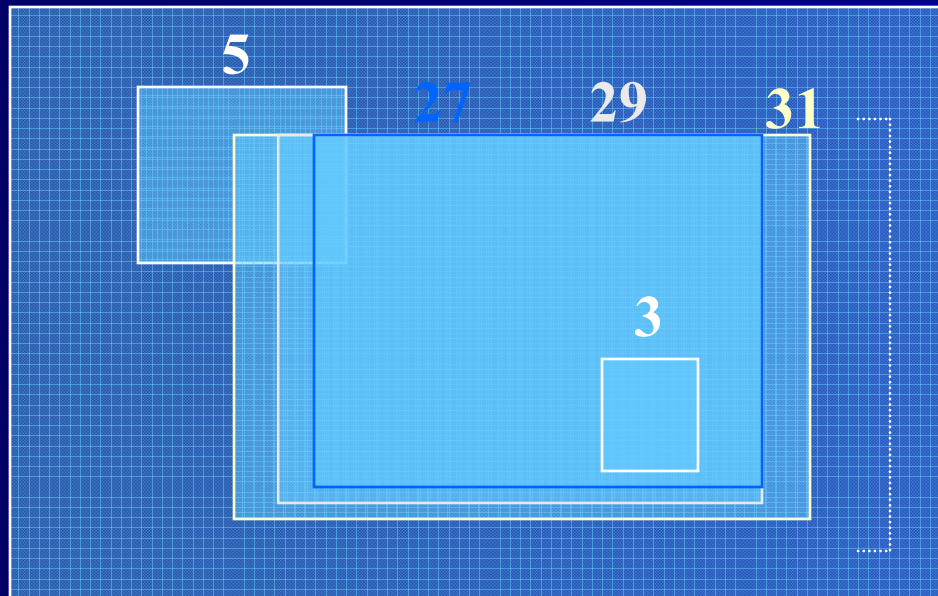


Criminal law and the Lisbon Treaty: a real revolution. An overview of the development of criminal law within the EU

Hans G. NILSSON
Head of Division
Fundamental Rights and
Criminal Justice
Council of the European Union

“Geometrie Variable”

47



47 = Council of Europe

31 = EU + N + ICE + CH + LIE

27/26 = EU

29 = EU - UK/IRL = SCHENGEN

3/5 = Subregional Co-operation

Gradual development

- **Maastricht**
- **Amsterdam**
- **Nice**
- **Lisbon**
- **Impact of Tampere, The Hague and Stockholm Programmes**

Tendencies

- Nation State
 - Sovereignty
 - Co-operation
- Harmonisation/
approximation/
unification
 - European Judicial Area
 - EPP “Corpus Juris”
 - E.C.C.
 - E.C.C.
- Amsterdam:
- Both (compromise)
 - “Socle commun”
 - minimum standards

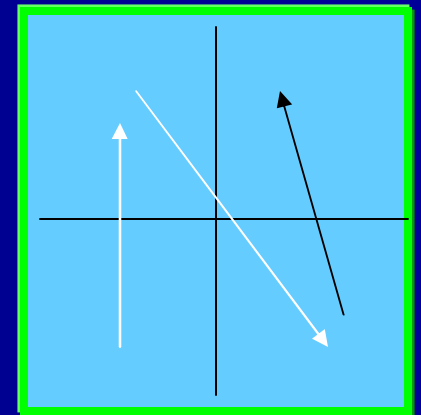
**An Area of Freedom
Security & Justice**

A NEW PARADIGM

COOPER-
ATION

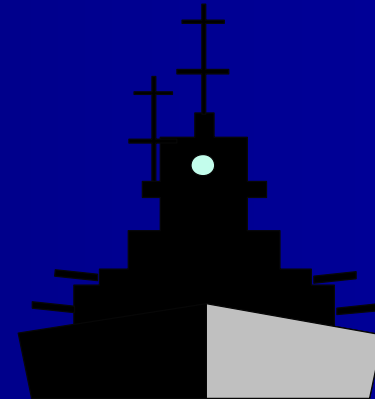


area



THE COUNCIL

- ✂ **Unanimity**
- ✂ **Only MS initiative in Maastricht, and then:**
- ✂ **Double right of initiative**
- ✂ **5 and then: 4 levels**
- ✂ **JHA Council once a month**
- ✂ **Slow**
- ✂ **Lowest common denominator**



Substance

- Cooperation/Mutual Recognition
- Harmonisation/approximation
- Institutions/Networks
- External dimension

Amsterdam 10,5 years

- 35 Framework Decisions; of which
 - 16 Cooperation/MR
 - 14 Substantive criminal law
 - 5 Directives; in addition:
 - 17 Decisions
 - 6 International agreements
 - xxxResolutions/Recommendations/etc

Amsterdam

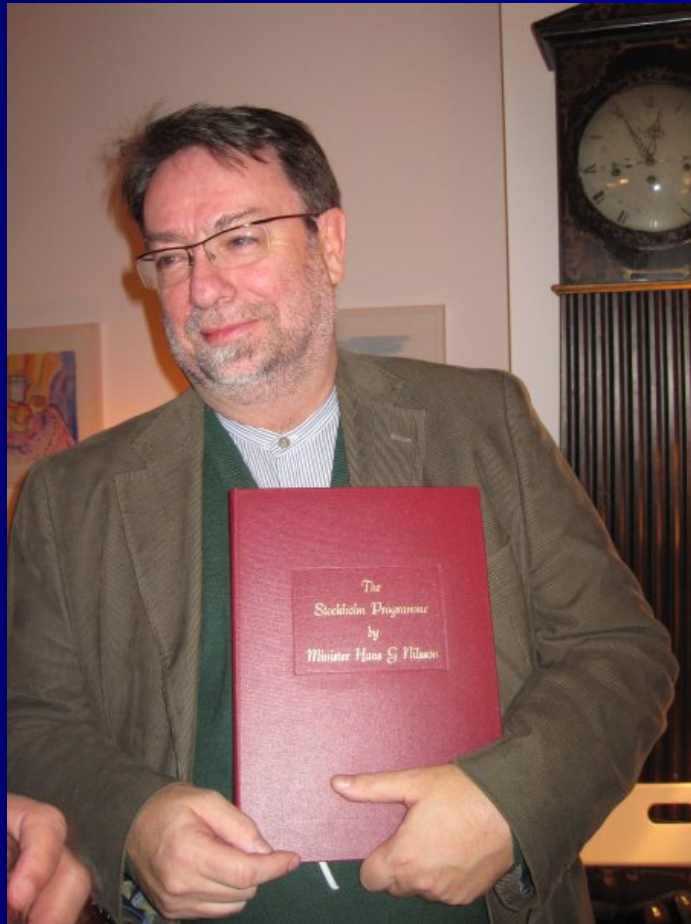
- COM right of initiative
- EP consulted
- Binding Decisions and FD
- Court increased powers, 18 MS recognised prel. requests when Lisbon entered into force

Draft Constitution/Reform Treaty/Lisbon

- No more pillars?
- Shared competence/external relations/HR
- [European laws; European framework laws]
– direct effect – Directives/ Regulations
- Right of initiative COM + 25 % MS
- Role of Court and COM reinforced –
transition 5 years
- QMV and Co-decision – bicameral system
- Opt-outs UK, IE, DK [not in]

The Stockholm Programme







Swedish Presidency of the Council of the EU



Substantive developments

- Stockholm Programme 170 measures
- Priority areas: Serious and organised crime, THB, Sexual exploitation of children and child pornography, cyber crime, economic crime and corruption,
- Drugs, terrorism

The Treaty

- **Art 82 – based on MR “judicial decisions”**
- **Includes approximation**
- **A) Recognition throughout the Union**
- **B) Conflicts of jd**
- **C) Training**
- **D) Facilitate cooperation judicial or equivalent authorities**

The Treaty

- If necessary to facilitate MR
- In criminal matters having a cross-border dimension – NOT “implications”
 - a) Mutual admissibility of evidence
 - b) Rights of individuals in criminal procedure
 - c) Rights of victims of crime
 - d) Any other specific aspects – unanimity, consent, emergency brake

The Treaty

- Art 83 – “minimum rules”, particularly serious crime, cross-border dimension resulting from the nature or impact of such offences or special need to combat on a common basis
- Terrorism, THB, sexual exploitation of women and children, drugs, arms, laundering, corruption, counterfeiting; computer crime, organised crime

Model criminal law provisions

- **Council doc 16542/2/09**
- **“guiding the Council’s criminal law deliberations”**
- **Precedent – conclusions on approximation of penalties – Council doc 9141/02**
- **Contested by some but supported by majority**
- **Adopted on 30 November 2009**

Model criminal law provisions – adopted 30 November 2009

- **Aim – to achieve coherent and consistent criminal law provisions; to avoid unnecessary difficulties in interpretation; problems in national implementation; focus on substantive law**
- **They concern: infringements; criminal offences; inciting, aiding, abetting and attempt; formulation of penalties, liability of legal persons; penalties against legal persons.**
- **Much flexibility – only starting point – further development with COM and EP foreseen**

Roadmap

- Translation and interpretation
- Information on Rights and Information about Charges
- Legal Advice and Legal Aid
- Communication with Relatives, Employers and Consular Authorities
- Special Safeguards for Suspected or Accused Persons who are Vulnerable
- Green Paper on Pre-Trial detention

Budapest Roadmap

- Replacing FD 2001/220/JHA
- Recommendations best practices
- Support, access to justice, coordination, training, awareness raising, data collection and research
- Civil EPO
- Compensation to victims 2004/80/EC
- Female genital mutilation
- Accession to CoE Convention on violence against women CAHVIO
- Specific needs of victims

Other areas

- Evaluations Art 70
- Training
- Financial perspectives
- COSI (new policy cycle, OCTA, West Africa, 29 measures on drugs, PSC - COSI)
- New Europol Decision; Prüm etc
- EPPO?

On the table now

- European Protection Order
- Sexual Exploitation of Children
- European Investigation Order
- Cyberattacks
- Passenger Names Records (PNR)

On the table now

- Crime Statistics
- Victim's Rights
- Letter of Rights
- Access to a Lawyer
- Market Abuse and Insider Trading

Expected proposals

- Confiscation – substantive law
- Confiscation – mutual recognition
- Data protection – horizontal
- Data Protection – police/justice
- Vulnerable Persons
- Drugs Trafficking

Expected proposals

- Protection of the Financial Interests (PIF)
- Eurojust Regulation (parliaments, organisation)
- Data Retention
- Road Traffic Offences (limitation periods)
- Compensation to Victims

Expected proposals

- Freezing of funds of suspected terrorists
- European Terrorist Tracking Financing System (TFTS)
- Protection of the Euro
- Hotlines for Missing Children
- MR of disqualifications

Expected proposals

- Legal Aid
- ECRIS-TCN
- Intellectual Property Rights?
- Sanctions and their Enforcement in Commercial Road Transport

THANK
YOU