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Committee on Civil Liberties, Justice and Home Affairs

2010/2310(INI)

14.3.2012

AMENDMENTS

1 - 47

Draft report
Cornelis de Jong
(PE454.679v02-00)

on an EU approach on criminal law
(2010/2310(INI))

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United in diversity

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Amendment 1
Auke Zijlstra

Motion for a resolution
Citation 1

Motion for a resolution

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular *to* Chapter 4 *thereof on judicial* cooperation in criminal matters,

Amendment

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular *the third part, Title V, Chapter 4, entitled ‘Judicial* cooperation in criminal matters’,

Or. nl

Amendment 2
Auke Zijlstra

Motion for a resolution
Citation 1 a (new)

Motion for a resolution

Amendment

- having regard to the subsidiarity principle set out in Article 5 of the TFEU, which an ‘EU approach to criminal law’ violates;

Or. nl

Amendment 3
Auke Zijlstra

Motion for a resolution
Recital A

Motion for a resolution

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

Amendment

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;

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; ***notes, however, that the free movement of persons is currently causing a cross-border shift in criminal activity, in particular from Central and Eastern European to Western European Member States;***

Or. nl

Amendment 4
Axel Voss

Motion for a resolution
Recital D a (new)

Motion for a resolution

Amendment

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

Or. de

Amendment 5
Monica Luisa Macovei

Motion for a resolution
Recital D a (new)

Motion for a resolution

Amendment

Da. whereas in accordance to Article 82 TFEU the principle of mutual recognition of judgements and judicial decisions shall remain the cornerstone of judicial cooperation in criminal matters, "and

shall include the approximation of the laws and regulations of the Member States in the areas referred to [...] in Article 83";

Or. en

Amendment 6
Monica Luisa Macovei

Motion for a resolution
Recital D b (new)

Motion for a resolution

Amendment

Db. whereas the harmonisation of criminal law in the EU should contribute to the achievement of a common EU legal culture against crime, which adds up to but does not substitute national legal traditions and positively impacts mutual trust amongst EU Member States' legal systems;

Or. en

Amendment 7
Kinga Göncz

Motion for a resolution
Recital E

Motion for a resolution

Amendment

E. 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;

E. 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 conventions that the Member States are signatories of;*

Or. en

Amendment 8
Auke Zijlstra

Motion for a resolution
Recital F

Motion for a resolution

Amendment

F. 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;

deleted

Or. nl

Amendment 9
Cornelis de Jong

Motion for a resolution
Recital G

Motion for a resolution

Amendment

G. 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);

G. 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), ***while accepting that in certain instances it may be justified to provide for corporate liability for certain types of***

offences;

Or. en

Amendment 10
Auke Zijlstra

Motion for a resolution
Recital J

Motion for a resolution

J. *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;

Amendment

J. *regrets that* 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;

Or. nl

Amendment 11
Axel Voss

Motion for a resolution
Recital J a (new)

Motion for a resolution

Ja. whereas the principle of mutual recognition is gaining acceptance in an increasing number of political fields and this principle is based on mutual trust, which requires the harmonisation of protection standards at the highest possible level;

Amendment

Or. de

Amendment 12
Auke Zijlstra

Motion for a resolution
Recital M

Motion for a resolution

Amendment

M. 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;

deleted

Or. nl

**Amendment 13
Cornelis de Jong**

**Motion for a resolution
Recital M a (new)**

Motion for a resolution

Amendment

Ma. whereas in accordance with article 67(1) TFEU 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;

Or. en

**Amendment 14
Auke Zijlstra**

**Motion for a resolution
Paragraph 1**

Motion for a resolution

Amendment

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

1. Stresses that proposals for EU provisions must fully respect the principles of subsidiarity and proportionality; ***emphasises that these principles are frequently violated;***

Or. nl

Amendment 15
Kinga Göncz

Motion for a resolution
Paragraph 1 a (new)

Motion for a resolution

Amendment

1a. Recalls that criminal law must fully respect fundamental rights of suspected, accused or convicted persons;

Or. en

Amendment 16
Auke Zijlstra

Motion for a resolution
Paragraph 2 – introductory part

Motion for a resolution

Amendment

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

deleted

– the criminal provisions focus on conduct causing significant damage to society or individuals,

– there are no other, less severe 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 special 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;

Or. nl

Amendment 17
Axel Voss

Motion for a resolution
Paragraph 2 – introductory part

Motion for a resolution

2. Emphasises that in this respect it is not sufficient to refer to abstract notions or to symbolic effects, but that the *need* for new substantive criminal law provisions must be demonstrated by *substantial* factual evidence making it clear that:

Amendment

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

Or. de

Amendment 18
Kinga Göncz

Motion for a resolution
Paragraph 2 – indent 1

Motion for a resolution

– the criminal provisions focus on conduct causing significant damage to society or individuals,

Amendment

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

Amendment 19
Axel Voss

Motion for a resolution
Paragraph 2 – indent 2

Motion for a resolution

– there are no other, less *severe* measures available for addressing such conduct,

Amendment

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

Or. de

Amendment 20
Axel Voss

Motion for a resolution
Paragraph 2 – indent 4

Motion for a resolution

– there is a *special* 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,

Amendment

– 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,

Or. de

Amendment 21
Auke Zijlstra

Motion for a resolution
Paragraph 3 – indent 1

Motion for a resolution

– 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,

Amendment

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

Or. nl

Amendment 22
Auke Zijlstra

Motion for a resolution
Paragraph 3 – indent 2

Motion for a resolution

– 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,

Amendment

– the **legal certainty principle** (*lex certa*): the description of the elements of a criminal offence must be worded precisely to the effect that an individual **can be informed in respect of which** actions **he or she can be held** criminally liable,

Or. nl

Amendment 23
Axel Voss

Motion for a resolution
Paragraph 3 – indent 3 a (new)

Motion for a resolution

- 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;

Amendment

Amendment 24
Axel Voss

Motion for a resolution
Paragraph 3 – indent 3 b (new)

Motion for a resolution

Amendment

- the principle of the presumption of innocence, which states that every person accused of a crime is deemed innocent until their guilt is established under law;

Or. de

Amendment 25
Kinga Göncz

Motion for a resolution
Paragraph 3 a (new)

Motion for a resolution

Amendment

3a. Encourages the adoption of minimum standards within the criminal justice area in order to strengthen mutual trust;

Or. en

Amendment 26
Kinga Göncz

Motion for a resolution
Paragraph 3 b (new)

Motion for a resolution

Amendment

3b. Calls for effective measures to combat criminal offences against a group of individuals or a member of such a

group defined by reference to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

Or. en

Amendment 27
Auke Zijlstra

Motion for a resolution
Paragraph 4

Motion for a resolution

Amendment

4. 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;

deleted

Or. nl

Amendment 28
Monica Luisa Macovei

Motion for a resolution
Paragraph 4 a (new)

Motion for a resolution

Amendment

4a. Encourages the Commission to put forward measures that facilitate a 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;

Or. en

Amendment 29
Monica Luisa Macovei

Motion for a resolution
Paragraph 4 b (new)

Motion for a resolution

Amendment

4b. 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 the harmonised EU criminal law;

Or. en

Amendment 30
Auke Zijlstra

Motion for a resolution
Paragraph 5

Motion for a resolution

Amendment

5. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, as well as to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law, as well as human rights and fundamental freedoms in general;

deleted

Or. nl

Amendment 31
Sarah Ludford

Motion for a resolution
Paragraph 5

Motion for a resolution

5. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, as well as to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law, as well as human rights and fundamental freedoms in general;

Amendment

5. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, ***to draw on the best practices of Member States with high procedural rights guarantees***, as well as to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law, as well as human rights and fundamental freedoms in general;

Or. en

Amendment 32
Cornelis de Jong

Motion for a resolution
Paragraph 5

Motion for a resolution

5. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, as well as to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law, ***as well as human rights and fundamental freedoms in general***;

Amendment

5. Encourages the Commission to continue to include in its impact assessments the necessity and proportionality test, as well as ***as an evaluation in accordance with its fundamental rights check-list***, and to introduce a test specifying how its proposals reflect the aforementioned general principles governing criminal law;

Or. en

Amendment 33
Auke Zijlstra

Motion for a resolution
Paragraph 6

Motion for a resolution

6. Stresses the need for a more coherent

Amendment

deleted

and high-quality EU approach to criminal law and deplores the fragmented approach followed so far;

Or. nl

Amendment 34
Rolandas Paksas

Motion for a resolution
Paragraph 6

Motion for a resolution

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

Amendment

6. Stresses the need for a more coherent and high-quality EU approach to criminal law and deplores the fragmented approach followed so far; ***calls on the EU, when providing for follow-up mechanisms which would control the effectiveness of European criminal law, to weigh the policy's purpose against the means to attain it;***

Or. lt

Amendment 35
Axel Voss

Motion for a resolution
Paragraph 6 a (new)

Motion for a resolution

6a. Stresses the need to establish uniform standards of protection for suspects and defendants in criminal proceedings in connection with the harmonisation of material criminal law;

Amendment

Or. de

Amendment 36
Monica Luisa Macovei

Motion for a resolution
Paragraph 6 a (new)

Motion for a resolution

Amendment

6a. Encourages the Commission and the Member States to also consider non-legislative measures that consolidate trust among the different legal systems in the Member States, enhance the coherence, and encourage the creation of a common EU legal culture against crime;

Or. en

Amendment 37
Auke Zijlstra

Motion for a resolution
Paragraph 7

Motion for a resolution

Amendment

7. 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;

deleted

Or. nl

Amendment 38
Auke Zijlstra

Motion for a resolution
Paragraph 8

Motion for a resolution

Amendment

8. Calls for the designation of one Commissioner responsible for the coordination of all proposals which contain criminal law provisions, in order to ensure a coherent approach;

deleted

Or. nl

Amendment 39

Axel Voss

Motion for a resolution

Paragraph 8

Motion for a resolution

Amendment

8. Calls for *the designation of one Commissioner responsible for the coordination of* all proposals which contain criminal law provisions, in order to ensure a coherent approach;

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

Or. de

Amendment 40

Auke Zijlstra

Motion for a resolution

Paragraph 9

Motion for a resolution

Amendment

9. *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;*

9. *Notes* the existence of a Council Working Party on Substantive Criminal Law;

Amendment 41
Auke Zijlstra

Motion for a resolution
Paragraph 10

Motion for a resolution

Amendment

10. 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 with a view to ensuring coherence in EU criminal law;

deleted

Amendment 42
Sarah Ludford

Motion for a resolution
Paragraph 10

Motion for a resolution

Amendment

10. 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 with a view to ensuring coherence in EU criminal law;

10. 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, ***the Parliament*** and ***independent experts*** can draw up such an agreement and discuss general matters with a view to ensuring coherence in EU criminal law;

Amendment 43
Sarah Ludford

Motion for a resolution
Paragraph 10 a (new)

Motion for a resolution

Amendment

10a. The inter-institutional working group should help in defining a proper scope and application for criminal law sanctions at EU level as well as examining existing legislation with a view to reducing the current fragmented approach and conflicting jurisdictions;

Or. en

Amendment 44
Auke Zijlstra

Motion for a resolution
Paragraph 11

Motion for a resolution

Amendment

11. Instructs its Bureau 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 as well as to the important potential role of its Legal Service;

deleted

Or. nl

Amendment 45
Sarah Ludford

Motion for a resolution
Paragraph 11

Motion for a resolution

11. **Instructs its Bureau** 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 as well as to the important potential role of its Legal Service;

Amendment

11. **Calls on the European Parliament** 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 as well as to the important potential role of its Legal Service;

Or. en

Amendment 46
Axel Voss

Motion for a resolution
Paragraph 11 a (new)

Motion for a resolution

Amendment

11a. Emphasises the importance of establishing an information service for Parliament that can support the individual Members of Parliament in their daily work, thus ensuring the quality of the work of Parliament as a co-legislator.

Or. de

Amendment 47
Auke Zijlstra

Motion for a resolution
Paragraph 12

Motion for a resolution

12. Points out that a coherent approach requires Parliament, before adopting any legislative proposal on substantive

Amendment

deleted

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;

Or. nl