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

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"Geometrie Variable"

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

COOPERATION

area

HELLO
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
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
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 20004/80/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