Eclan European Criminal Law Academic Network
Réseau académique de droit pénal européen

Newsletter

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News from the EU

Legislative Instruments

New negotiations

EU agencies and bodies

Proposal for a Regulation of the European Parliament and of the Council establishing a European Union agency for law enforcement training (Cepol), repealing and replacing the Council Decision 2005/681/JHA

On 16 June 2014, the European Commission put forward a proposal (COM(2014) 465 final) for a Regulation establishing a European Union agency for law enforcement training (Cepol), repealing and replacing the Council Decision 2005/681/JHA. The proposal aims to boost CEPOL's role as the European Agency for Law Enforcement training, by providing better and more effective tools to train EU law enforcement officials. The Regulation would give CEPOL the appropriate legal mandate and the necessary resources to implement the EU Law Enforcement Training Scheme which the Commission proposed in March 2013.

On-going negotiations

Approximation of procedural criminal law

Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

On 27 November 2013, the European Commission tabled a proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant (EAW) proceedings (COM(2013) 824 final). This proposal will complement the existing right to access to a lawyer by guaranteeing provisional legal aid. It will also guarantee legal aid for people requested in EAW proceedings.

However, the proposal reflects the limited ambition of the Commission. The criteria of access to legal aid (means and merits tests), key elements of its effectiveness, are set in a separate instrument, the recommendation on the right to legal aid for suspects or accused persons in criminal proceedings. In its opinion, the European Economic and Social Committee highlighted that the rights need to be defined and framed more precisely.

On 26 November 2014 the LIBE committee of the European Parliament adopted its draft report on the proposal (Rapporteur: Dennis de Jong). During the JHA meeting of 12-13 March 2015 the Council reached a general approach on the proposal. The text adopted by the Council contains certain modifications to the proposal submitted by the Commission in order to define more precisely the scope of application of the Directive. In this respect, the directive should not apply to minor offences (Art. 2 (3)) and to situations related to temporary restrictions to liberty of the person, where he/she might not be required or supposed to exercise defense rights and therefore the right to provisional legal aid does not arise (Art. 2 (4)). There is also a new provision allowing for a possibility to grant provisional legal aid in less serious offences when this is required in the interests of justice, as interpreted in the case-law of the European Court of Human Rights (Art. 4 (2a)). The text endorsed by the Ministers will constitute the basis for negotiations with the European Parliament in order to agree on the final text of the directive.

Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

On 27 November 2013, the European Commission submitted a proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings (COM(2013) 821 final). The proposal only applies to natural persons suspected in criminal proceedings (Art. 2). It requires Member States to ensure that, before a final conviction, public authorities refrain from public statements that could damage the person's reputation or influence the jury or the court's final decision (Art. 4). The proposal lays down the principle that everyone has the right to remain silent as regards the facts he/she is accused of and obliges Member States to give sufficient information on the content of this right as well as the consequences of renouncing or invoking it (Art. 7). Finally, it provides that suspects or accused persons have the right to be present at their trial (Art. 8). The possibility to decide on the issue of guilt in their absence is nevertheless possible, under similar conditions to those provided for in the *in absentia* Framework Decision.

The Council adopted its general approach the 4th December 2014, at the end of the Italian Presidency's mandate. It specified the personal and temporal scope of application of the Directive. Not only suspected persons but also the accused are covered. An exception to the prohibition of public statements by public authorities to refer to the suspects or accused persons as if they were guilty has been introduced when disseminating information on the criminal proceedings is necessary for reasons relating to the criminal investigation or for the public interest. More importantly, the Commission's proposal that any reversal of the burden of proof may be rebutted if the defence adduces enough evidence to raise a reasonable doubt regarding his/her guilt has been replaced by a provision according to which "presumptions shall be rebuttable; in any case, they may only be used provided the rights of the defence are respected". Furthermore, the right not to incriminate oneself and the right to remain silent were merged into one provision, which no longer includes a rule on admissibility of evidence. The Commission strongly opposed this deletion.

In turn, the LIBE committee of the European Parliament adopted its draft report on 21 January 2015 and its orientation vote on 31 March 2015 (rapporteur: Nathalie Griesbeck). The committee report was tabled for plenary 1st reading/single reading the 21 April 2015. The EP put forward some important amendments. First of all, it extended the scope of application of the Directive to legal persons and to criminal proceedings in the sense of the ECHR. It provides that the presumption of innocence is undermined if a statement made concerning the accused person reflects an opinion that the person is guilty. It also requires that in the event of breach of that provision measures to be taken amount to effective remedies. Most importantly, it rejected Art. 5 on the burden of proof, by arguing that the reversal of the burden of proof in criminal proceedings is unacceptable, so the principle that the burden of proof rests with the prosecution must be left untouched. Finally, it reinforces the exclusionary rule proposed by the Commission by providing that any evidence obtained in violation of the right not to incriminate oneself and not to cooperate or of the right to remain silent shall be inadmissible..

Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

On 27 November 2013, the European Commission submitted to the European Parliament and the Council a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings (COM(2013) 822 final). This proposal sets out specific minimum rules concerning the rights of suspected or accused children in criminal proceedings to ensure that they are able to understand and follow criminal proceedings, including by having mandatory access to a lawyer at all stages. Therefore children cannot waive their right to be assisted by a lawyer, as there is a high risk that they would not understand the consequence of their actions. The proposal also sets out other safeguards such as being promptly informed of their rights, being assisted by their parents (or other appropriate persons), not being questioned in public hearings and the right to receive medical examination if deprived of liberty. These measures should facilitate the reintegration of children into society after being confronted with the criminal justice system. The sensitive question concerning the age of criminal liability is not covered by the proposal.

In its opinion, the EESC made reference to the narrow definition of the term 'criminal proceedings', which is contrary to the ECtHR case law. In June 2014, the JHA Council reached its General approach. The 19 November 2014 the LIBE committee of the European Parliament adopted its draft report on the proposal (Rapporteur:

Caterina Chinnici). On Wednesday 4 March 2015 the first trilogue of the Council, the EP and the Commission took place on the draft Directive on procedural safeguards for children.

EU agencies

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) n°883/201 as regards the establishment of a Controller of procedural guarantees

On 11 June 2014, the European Commission submitted a proposal for a Regulation amending Regulation (EU, Euratom) as regards the establishment of a Controller of procedural guarantees (COM(2014) 340 final). This proposal aims at further strengthening the procedural guarantees in place for all persons under investigation by the European Anti-Fraud Office and at taking into account the special way in which members of EU institutions were elected or appointed as well as their special responsibilities. For this purpose, the Regulation 883/2013 on investigations by OLAF will be amended. In this respect, a Controller of procedural guarantees is proposed to: first, review complaints lodged by persons under investigation about violation of their procedural guarantees; second, authorise OLAF to conduct certain investigative measures in respect of members of EU institutions.

The Court of Auditors issued its opinion on 21st November 2014. No activity in the Council has been reported, and the proposal is awaiting a decision by the LIBE committee.

Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office

The proposal (COM(2013) 534 final) aims at establishing the European Public Prosecutor's Office (EPPO). It details its scope of competences and the procedure applicable to its investigations. Using the Early Warning System as provided for in Art. 7 of Protocol n°2, 13 national Parliaments issued a Yellow Card against the proposal, which obliged the Commission to reassess it. Nevertheless, considering that a withdrawal or an amendment of the proposal was not necessary, the Commission decided to maintain it. It is worth mentioning that the Treaty expressly foresees the possibility of resorting to enhanced cooperation for establishing the EPPO, in case of lack of agreement among Member States. However, as the German and British Parliaments also emphasize, the idea of enhanced cooperation is completely at odds with the Commission's core argument that EU fraud needs to be combated in a more uniform way "throughout the whole Union".

Debates within the Council have regularly taken place since October 2013 at expert group level (COPEN), within CATS and in the JHA Councils following an article by article approach.

The proposal was developed substantially under the Lithuanian and the Hellenic Presidencies, and on that basis the Hellenic Presidency started to revise the Commission proposal, focusing on 19 Articles concerning mainly the structure and the competence of the EPPO. Some of the other key features of the proposal (in particular investigations measures, admissibility of evidence, procedural safeguards and judicial review) were the focus of the Italian Presidency. The Latvian Presidency of the Council continued the work of the Italian Presidency with a view to finalising the first five chapters of the Regulation and reaching a partial general approach by June 2015. However, in light of the current state of play, it is possible that this goal will not be met by June. The latest state of play of the negotiations was issued in March 2015.

The last JHA Counsellors meeting took place on 27 April 2015. Articles 1-6 (definitions, establishment, tasks, independence and accountability) were re-examined. The meeting focused on the revised text of Articles 20-26a of the draft Regulation, as presented in the note from the Presidency of 13 April 2015. The Presidency considers that sufficient time has been spent on the consideration of these Articles and is eager to reach an agreement on the compromise text. The remaining open issues on this part of the text concern: reporting obligations of Members States to the EPPO, conditions for the evocation of cases by the EPPO, the list of investigative measures and the conditions of judicial control of cross-border investigation measures. The Presidency also issued a note to COREPER urging the delegations to lift any remaining reservations on Articles 7-12, which deal with the status and structure of the Office, and indicate their support for the compromise text. The collegial structure of the Office and the concurrent competence of the EPPO and national prosecution services are of course maintained. The compromise text seeks to strike a balance between the positions and arguments of a number of delegations in relation to the rules of the supervision of the work of the Office in the Member States. Indeed, some delegations wish to ensure a high level of independence in the operational activities of the European Delegated Prosecutors based in the Member States, often on the

basis of efficiency arguments, whereas others wish to give the Permanent Chambers of the Central Office a strong and active role in the supervision of the operational activities of the Office at national level.

In turn, on 12 March 2014, the European Parliament voted in favor of the proposal but proposed several amendments, including a limitation of the European Public Prosecutor's discretion in the choice of forum through binding criteria, or of the competence of the EPPO concerning ancillary offences. Regarding its structure, the Parliament recommended, *inter alia*, that the EPPO ensures at central level the appropriate skills, experience and knowledge of the legal systems of the Member States. The Plenary of the EP adopted its draft interim report the 24th April 2015 reiterating the contents of its March resolution and supplementing it in view of the latest developments in the Council. In the report, the EP states the underlining principles and conditions under which it might consent to the EPPO Regulation as required by the Lisbon Treaty. The EP stresses the need for an independent European Prosecutor, with clear division of jurisdiction between the EPPO and national authorities, and an efficient structure for the effective management of the cases. The EP is moreover concerned with legal review and the rights of the suspect and accused.

Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)

This proposal aims at providing a single and renovated legal framework for Eurojust, streamlining its functioning and structure in line with the Lisbon Treaty. Several objectives are pursued, i.e. providing Eurojust with a new governance structure, ensuring homogeneous status and powers for national Members, or involving the European and national Parliaments in its evaluation. In line with the Common Approach on EU decentralized agencies, its partnership and cooperation with other EU bodies and agencies, and especially Europol, is reinforced, whilst respecting its special role regarding the coordination of criminal investigations. The proposal also ensures that Eurojust can operate closely with the EPPO, once it is established.

During the JHA Council meeting in March 2015, a general approach was adopted. The text as it stands after the general approach of the Council, does not bring any major change as to the tasks of Eurojust and powers of National Members if compared to the current Eurojust Decision. The provisions relating to the EPPO have been excluded, as the negotiations on the regulation are not sufficiently advanced. This general approach will form the basis for discussions with the European Parliament. It is envisaged that a further mandate for discussions relating to the EPPO related provisions shall be sought from COREPER at a later stage in the discussions with Parliament when the draft EPPO Regulation is sufficiently advanced.

The European Parliament has yet to adopt its position on the proposal.

Proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol)

The proposal (COM(2013) 173 final) aims at making Europol more effective at collecting and analysing information, as well as in sharing its analysis with the Member States. This will allow Europol to provide more concrete and targeted support to national law enforcement authorities involved in cross-border investigations. The project of reinforcing the link between training and operational cooperation support, by merging the European Police College (Cepol) with Europol has been abandoned.

The plenary of the European Parliament adopted its first reading position the 25th February 2014, whereas the JHA Council adopted its General approach in its meeting on 5-6 June 2014. Among the differences between the two institutions' approaches there is OLAF's access to Europol's databases, which the European Parliament has excluded in its first reading position. In October 2014, the Presidency of the Council presented the outcome of the first trilogue with the European Parliament on the draft Europol Regulation. .

The Latvian Presidency has held three technical meetings with the European Parliament on 9, 23 and 26 January 2015 and a trilogue on 4 February, at which provisions relating to information processing, data protection and Europol's relations with partners were discussed. Both the Presidency and the EP presented and defended their respective positions. Certain national parliaments (i.e., British and Dutch) have raised concerns with regard to an amendment of the European Parliament which establishes a Joint Parliamentary Scrutiny Group to monitor Europol's activities. They call for Governments to defend the interests of national parliaments during the trilogue negotiations and ensure that they are not diluted as part of the trade-offs required to secure a deal with the European Parliament.

Processing of personal data for law enforcement purposes

Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

The Commission proposed a new framework for data protection in the EU including two legislative proposals: the first being a proposal for a regulation, setting out a general EU framework for data protection, and repealing the Directive 95/46/EC; and the second a proposal for a Directive on protecting personal data processed for law enforcement purposes, currently organised under Framework Decision 2008/977/JHA (COM(2012) 10 final). The Directive would apply to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Its scope would be broader than that of the current Framework Decision since domestic processing operations would also be covered and not only "cross-border" data.

The European Parliament adopted its first reading position on 12 March 2014. The amendments to the proposal go in the sense of providing stronger safeguards; for instance, an explicit right to erasure has been inserted. Particular protection is endorsed in relation to data transfer to non-EU countries.

Regarding the Council, the proposed Directive has been discussed in the Working Party on information exchange and data protection (DAPIX) under every Presidency since the first semester 2012. In September 2014, the scope of the Directive was the subject of discussion. In December 2014 the last revised draft of the text was released.

The last DAPIX meeting took place the 20 April 2015 under Latvian Presidency. The main issue under discussion concerned the subject matter and objectives in Art. 1(1) and how to delimit this in relation to the General data protection regulation. Linked to this is the question to which bodies the Directive should be applicable. Work on this issue will continue under the Luxembourg Presidency.

Approximation of substantive criminal law

Proposal for a Directive in the fight against fraud to the Union's financial interests by means of criminal law

The proposal for a Directive on the protection of the financial interests (COM(2012) 363 final) of the EU would replace the Convention on the protection of the European Communities' financial interests of 26 July 1995, including its Protocols of 27 September 1996, 29 November 1996 and 19 June 1997. It provides for the obligation to criminalise the behaviours described in the proposal and contains rules on imprisonment thresholds, types of sanctions, liability of legal persons, freezing and confiscation, jurisdiction, etc.

Whereas the proposal was initially based on Art. 325(4) TFEU (prevention of and fight against fraud affecting the financial interests of the Union), the Council changed it last in its general approach of June 2013 for Art. 83 (2) TFEU, which entails the application of specific rules regarding instruments of judicial cooperation in criminal matters (possibility for UK and Ireland to opt-out).

On 16 April 2014 the plenary of the European Parliament endorsed in its first reading position the Council's change of legal basis. Nonetheless, there are some significant differences between the two texts which have to be addressed in the course of inter-institutional negotiations, including the definition of "the Union's financial interests", whether or not VAT offences should be included in the scope of the proposal or the definition of public official, which according to the EP's first reading position is limited to "Members of bodies" and does not cover "institutions, offices and agencies".

Trilogue discussions under the Italian Presidency began in September 2014 focusing on the scope of the directive, the definition and scope of offences covered by the directive and extra-territorial provisions.

At the date of the 27 November 2014, the presidency recalled that a few substantive issues remain open, in particular the exclusion of VAT-fraud from the scope of the Directive (Art. 2), the definition of fraud (Art. 3), the inclusion or not of a specific offence of public procurement fraud in the Directive (Art. 4), the level of sanctions provided and the definition of serious offences (Art. 7) and the prescription provision (Art. 12). For these reasons, the Presidency underlines, there is a risk that the adoption of this important Directive may therefore be considerably delayed.

The Latvian Presidency has indicated their intention to push for adoption of the PIF directive during their term. Trilogue discussions restarted in February 2015 focusing on outstanding issues, including VAT.

Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

On 7 February 2013, the Commission presented a package composed of a proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AML Directive, COM(2013) 45 final) and a proposal for a Regulation of the European Parliament and the Council on information accompanying transfers of funds. Their main objective is to further strengthen the EU's system for prevention of money laundering and terrorist financing, by bringing it in line with the Recommendations issued by the Financial Action Task Force (FATF) of February 2012, thus ensuring the soundness, integrity and stability of the financial system. Indeed, in its Conclusions of 22 May 2013, the European Council called for rapid progress and, *inter alia*, stated that the "revision of the third Anti-Money Laundering Directive

On 13 February 2013, the joint report by the European Parliament's LIBE and ECON Committees was adopted, and the European Parliament adopted its position at first reading on 11 March 2014. The Permanent Representatives Committee agreed on a negotiating mandate on the above mentioned proposals on 13 June 2014. On that basis, negotiations took place with the European Parliament and the Commission with a view to an early second reading agreement.

A total of five trilogues took place. On the basis of the mandate given by the Permanent Representatives Committee of 2 December 2014, the Presidency concluded the negotiations with the European Parliament on 16 December 2014, with the two parties agreeing ad referendum on the texts of the Regulation and the Directive. The Presidency submitted the negotiated texts to the Permanent Representatives Committee on 21 January 2015 and to the Council on 27 January 2015. All delegations endorsed the agreement reached with the European Parliament. The LIBE and ECON Committees voted on 27 January 2015 in favour of the agreed texts. On 29 January 2015 the Chairs of the LIBE and ECON Committees addressed a letter to the Presidency indicating that, should the Council transmit formally to the Parliament its position in the form that it was presented in the Annex to that letter, the Chairs of the LIBE and ECON Committees would recommend to the Plenary to accept the Council's position without amendment.

On the 2 February 2015 a political agreement was found within the Council. It resulted into the adoption of the Council's position at first reading on 20 April 2015. On 27 April the Commission issued a Communication positively commenting both the inter-institutional negotiations and the Council's position at first reading.

Adopted texts

Approximation of substantive criminal law

Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offence

On 19 March 2008, the Commission submitted to the Parliament and the Council a proposal for a directive seeking, in essence, to facilitate the exchange of information concerning certain road traffic offences and the cross-border enforcement of the sanctions attached to them. That proposal was based on the powers of the EU in relation to transport safety, namely Art. 91 paragraph 1 letter e) TFUE. On 25 October 2011, the Parliament and the Council adopted Directive 2011/82, using however as a legal basis the EU's competence in the field of police cooperation, namely Art. 87 paragraph 2 TFUE. Taking the view that the directive had been adopted on the incorrect legal basis, the Commission brought annulment proceedings before the Court of Justice.

In its judgment C-43/12 *Commission v Parliament and Council*, the Court states that measures to improve road safety fall within transport policy. In fact, both in respect of its aim and its content, the directive is a measure to improve transport safety and should therefore have been adopted on that basis. Nonetheless, the Court considered that there were important grounds of legal certainty why the effects of that directive should be maintained until the entry into force, within a reasonable period of time — which may not have exceeded twelve months from the date of delivery of the judgment — of a new directive based on the correct legal basis (that is to say, transport safety).

The new Directive, based on Art. 91 paragraph 1 letter c) TFUE, sets up a procedure for the exchange of information between Member States in relation to eight road traffic offences (speeding, non-use of a seat-belt,

failing to stop at a red traffic light, drink-driving, driving under the influence of drugs, failing to wear a crash helmet, use of a forbidden lane and illegally using a mobile telephone). The Member States may thus access each other's national data concerning vehicle registration in order to determine the person liable for the offence.

Case Law

End of transitional period

On 01.12.2014, the transitional period as organised by Protocol No 36 on transitional provisions to the Lisbon Treaty (see its Art. 10) has come to an end. Since then, the complete CJ jurisdiction applies, including to « old acts », namely those adopted before the entry into force of the Lisbon Treaty (01.12.2009). This evolution results in changes, which have been long awaited. Among such changes, the availability of infringement actions to sanction MS, which did not transpose or did not transpose correctly the old acts (such as the various mutual recognition framework decisions), should be mentioned. This should give a second breath to those instruments. Use has already been made of this new regime, as it is illustrated for instance by the request for a preliminary ruling referred to by a Bulgarian court on 3 December 2014 (case C-554/14) concerning the interpretation of a provision of the Framework Decision 2008/909/JHA of 27 November 2008 on the transfer of sentenced persons (mutual recognition of custodial sentences and measures involving a deprivation of liberty).

Opinion 2/13 ECJ on the EU's accession to the ECHR, delivered on 18 December 2014

Considering the sensitiveness of the text, especially regarding the relationship between the Strasbourg court and the Luxembourg court, the European Commission submitted a request for opinion on 4 July 2013 on the compatibility with EU primary law of the draft agreement providing for the accession of the EU to the ECHR. On 18 December 2014, the CJEU delivered its much awaited Opinion on the EU's accession to the European Convention of Human Rights (ECHR), required by the Commission according to Art. 218 paragraph 11 TFUE. Whereas in its View of 13 June 2014 AG Kokott concluded to the compatibility of the draft agreement (with some caveats), the CJ reached the opposite conclusion in its Opinion 2/13 of 18 December 2014.

The Court, after noting that the problem of the lack of any legal basis for the EU's accession to the ECHR has been resolved by the Treaty of Lisbon, points out that since the EU cannot be considered to be a State, such accession must take into account the particular characteristics of the EU.

The CJ then presents following main arguments.

Firstly, the draft agreement is liable adversely to affect the specific characteristics and the autonomy of EU law in so far it does not ensure coordination between Article 53 of the ECHR and Article 53 of the Charter, does not avert the risk that the principle of Member States' mutual trust under EU law may be undermined (para. 194), and makes no provision in respect of the relationship between the mechanism established by Protocol No 16 and the preliminary ruling procedure provided for in Article 267 TFEU.

Secondly the draft agreement is liable to affect Art. 344 TFEU in so far as it does not preclude the possibility of disputes between Member States or between Member States and the EU concerning the application of the ECHR within the scope ratione materiae of EU law being brought before the ECtHR. For the CJ, only the express exclusion of the ECtHR's jurisdiction over disputes between Member States or between Member States and the EU (…) would be compatible with Art. 344 TFEU.

Thirdly the draft agreement does not lay down arrangements for the operation of the co-respondent mechanism and the procedure for the prior involvement of the Court of Justice that enable the specific characteristics of the EU and EU law to be preserved.

- Concerning the co-respondent mechanism, when reviewing the conditions for the EU or the Member States to participate as co-respondent, the ECtHR "would be required to assess the rules of EU law governing the division of powers between the EU and its Member States as well as the criteria for the attribution of their acts or omissions". For the CJ, allowing the ECtHR to adopt such a decision would risk adversely affecting the division of powers between the EU and its Member States.

- Concerning the procedure for the prior involvement of the CJ, the draft agreement does not sufficiently ensure that the EU is fully and systematically informed, so that the competent EU institution is able to assess whether the Court has already given a ruling on the question at issue and, if not, to arrange for the prior involvement procedure to be initiated. Allowing the ECtHR to rule on

such question would be "tantamount to conferring it jurisdiction to interpret the case-law of the Court of Justice. Furthermore the draft agreement excludes the possibility of bringing a matter before the Court in order for it to rule on a question of interpretation of secondary law by means of that procedure. Limiting the scope of that procedure solely to questions of validity adversely affects the competences of the EU and the powers of the Court.

Finally, the draft agreement fails to have regard to the specific characteristics of EU law with regard to the judicial review of acts, actions or omissions on the part of the EU in CFSP matters in that it entrusts the judicial review of some of those acts, actions or omissions exclusively to a non-EU body. The ECtHR would indeed be empowered to rule on the compatibility with the ECHR of certain acts, actions or omissions performed in the context of the CFSP, notably those whose legality the Court cannot, for want of jurisdiction, review in the light of fundamental rights.

ECJ, Joined Cases C 317/13 and C 679/13 European Parliament v Council of the European Union and Case C 540/13 European Parliament v Council of the European Union, delivered on 16 April 2015

On 16 April, the Court ruled on two actions for annulment brought by the Parliament against three Council Decisions adopted after the entry into force of the Lisbon Treaty: two were adopted in implementation of Council Decision 2005/387/JHA and one of Council Decision 2008/633/JHA. Both the latter Decisions are pre-Lisbon EU criminal law acts. The ruling is crucial since the Court had the chance to interpret Protocol no. 36 on Transitional Provisions in relation to the validity of former third pillar measures in the post-Lisbon era.

The Parliament argued, *inter alia*, that the legal basis provided for in Council Decision 2005/387/JHA and Council Decision 2008/633/JHA, used to adopt the contested implementing decisions, was unlawful since it eased the detailed rules for the adoption of implementing legislation laid down in the Treaties by not requiring the European Parliament to be consulted. In the Parliament's view, those provisions had become inapplicable following the entry into force of the Lisbon Treaty and its use contrary to Art. 9 of Protocol no.36, which merely provides that acts under the former 'third pillar' are not automatically repealed by the entry into force of that treaty (§§34-36).

The Court dismissed this argument, and held that if the Parliament's argument were accepted that the repeal by the Treaty of Lisbon of specific procedures for the adoption of implementing measures in the field of police and judicial cooperation in criminal matters would make it impossible to adopt such measures before general acts adopted in connection with that cooperation had been amended so as to adapt them to the Treaty of Lisbon, that would have the effect of complicating or even preventing the effective application of such acts, thus jeopardising the attainment of the objectives pursued by the authors of the Treaty (§55).

The Court thus concluded that a provision of an act duly adopted before the entry into force of the Treaty of Lisbon which lays down detailed rules for the adoption of measures for the implementation of that act continues to produce its legal effects until it is repealed, annulled or amended and permits the adoption of implementing measures in accordance with a procedure established by that provision (§57).

However, the Luxembourg Court annulled the Council implementing acts on the ground that the Council should have consulted the European Parliament. It reasoned that the cross-reference to the repealed Treaty rules in the valid secondary legal basis used retained those rules in force. The Court maintained the effects of the annulled decisions until the entry into force of new acts inserted to replace them.

Academic activities

Research Projects

"Study on minimum sanctions in the EU Member States" JUST/2013/JPEN/PR/0047/A4

ECLAN is involved in this project with Ecorys NL.

With a view to the new legal framework for criminal law legislation under the Lisbon Treaty, the objective of the study is to achieve a better understanding of the basic legislative structure and – based on statistics – of the practice of the national criminal law systems on minimum sanctions in the 28 Member States.
The result of the study will assist the EU legislator in ensuring added value and improving consistency and coherence whenever the adoption of minimum criminal sanctions is considered.
The second interim report, containing the first results derived from all national reports, was submitted to the Commission on 10 October 2014. The core team deepened the analysis and delivered the draft final report to the Commission in January 2015.

Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law

The project tackles one of the most important legal problems within transnational criminal law. It aims at developing a new legal framework for the prevention and resolution of conflicts of exercise of jurisdiction.
The Working Group – which is composed of practitioners and academics in the private and criminal law domain coming from different EU countries – will begin by carrying out a comparative study of different national provisions concerning conflicts of law in EU Member States. Based on the results of this work and also taking existing research into account, the Group will conduct an analysis of the existing means by which conflicts of jurisdiction are prevented and resolved. Following that, the project will move onto the second, developmental stage in which a new legal framework will be elaborated. While exploring the solutions to the problem of conflicts of jurisdictions in criminal law, the Group will give due consideration to the principles already used in that regard in the field of international private law.
This research is the first project funded under the OPEN Programme by the Fonds National de la Recherche (Luxembourg) and by the European Law Institute (ELI).
The Eli rapporteurs are Prof. K. Ligeti (Project Leader, University of Luxembourg), Prof. A. Klip (University of Maastricht) and Prof. J.A.E. Vervaele (University of Utrecht).
The work on the project commenced in November 2014 and will run until February 2017. Besides scientific research done by members of the Project Team and other members of the Working Group, four meetings are envisaged to discuss the results of the scientific research and the related practice, and to elaborate the legal framework. The kick-off meeting was hosted by the University of Luxembourg on the 4 and 5 November 2014. During the two days in Luxembourg, the Working Group intensively analyzed the state of the art on the matter and discussed the objectives and the methodology of the research. The work on the project will run until February 2017.

Publications

Fiona de Londras, Josephine Doody (eds.), *The Impact, Legitimacy and Effectiveness of EU Counter-Terrorism,* Routledge, forthcoming May 2015, 256 pages

Carole McCartney and Saskia Hufnagel (eds.), *A question of trust: Socio-legal imperatives in international police and justice cooperation*, Hart, forthcoming 2015

Michele Simonato, *Deposizione della vittima e giustizia penale: una lettura del sistema italiano alla luce del quadro europeo*, CEDAM, 2014, 162 pages

Luca Lupària (ed.), *Victims and criminal justice: European standards and national good practices*, Wolters Kluwer, 2015, 342 pages

European Criminal Policy IntitativeInitiative (ECPI), *The European Public Prosecutor's Office: legal and criminal policy perspectives*, Jure, 2015, 303 pages

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Carlos Gómez-Jara Díez, *European Federal Criminal Law: The Federal Dimension of EU Criminal Law*, Intersentia, forthcoming May 2015, + 300 pages

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Valsamis Mitsilegas, Maria Bergström and Theodore Kostantinides, *Research Handbook on EU Criminal Law*, Edward Elgar Publishing Limited, 2015, 610 pages

Michiel Luchtman (ed.), *Sharing Sovereignty in the European Union?*, Intersentia, forthcoming July 2015

Upcoming Events

Conference, *5th of the State of the Union*, EUI, 6-9 may 2015, Firenze (Italy) [the main results of the "Surveille Project" will be presented at this occasion]

Conference, *Chasing criminal money in the EU: new tools and practices?*, Université du Luxembourg, 15-16 June 2015, Luxembourg (Luxembourg) [for info click here]

Seminar, *The Role of the National Judge in EU Judicial Cooperation in Criminal Matters*, EIPA Luxembourg - European Centre for Judges and Lawyers, 25-26 June 2015, Luxembourg (Luxembourg) [for info click here]

Summer School, *The EU Area of Criminal Justice*, co-organised by ECLAN and the IEE - ULB, 29 June – 3 July 2015, IEE – ULB, Brussels (Belgium) [for info click here]

Seminar, *Enhancing Cross-border Law Enforcement Cooperation to Reduce Drug Supply*, ERA, 16-17 April 2015, Trier (Germany) [for info click here]

Conference, *European Criminal Law and Justice: Prospects and Problems*, University of Copenhagen with ECLAN, 30 September 2015, Copenhagen (Denmark) [for more info, please contact Professor Jørn Vestergaard]

ECLAN PhD Seminar 2015, *European Criminal Justice – Trends and Research Methodology,* 1-2 October 2015, University of Copenhagen and ECLAN, Copenhagen (Denmark) [deadline for the submission of papers is 8 June 2015; for more information please contact Professor Jørn Vestergaard]

ECLAN 2015 annual conference, ECLAN's 10th anniversary: *The required balances of EU criminal law: past, present and future* (provisional title), co-organised by ECLAN and IEE - ULB, 26-27 November 2015, Brussels (Belgium)

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