

A Europe of Costs and Values in the Criminal Justice Area

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Article

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The notion of the “cost of non-Europe” brings us back to 1988, when a report bearing his name was published by Professor *Paolo Cecchini*, who had been asked at the time by the *Delors Commission* to investigate and quantify the untapped potential of the Single Market and to make the economic case for the removal of physical, technical, and fiscal barriers between the, then, twelve Member States of the European Communities.¹

Now, in 2016, the Internal Market is perceived by citizens and politicians as a done deal, while the European Union is seen as a complex entity of a somehow different nature. Indeed, the Community evolved into the Union – as prescribed by the Member States via the subsequent Treaties² – incorporating competences in the field of justice and home affairs and aiming at the creation of an area of freedom, security and justice for EU citizens.

The multiannual programmes of Tampere, The Hague, and Stockholm served as roadmaps to guide the efforts of Member States in moving from an intergovernmental approach to the “community method” (including the role of the European Parliament as a co-legislator) in fields such as police and judicial cooperation, asylum, border control, and the free movement of people. The process has been driven by the firm conviction of the need to find common solutions to common problems and has brought about remarkable achievements.

Nowadays, in the context of global economic and humanitarian crises, many voices are questioning the role and the very existence of the Union. It is therefore time to look back on Professor Cecchini’s report and reflect on the cost of non-Europe in the area of freedom, security and justice in order to calculate its economic value – not always an easy task³ – and the cost to citizens in terms of their fundamental rights and freedoms.

The European Parliament, namely its Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee), contributes in its day-to-day work to the creation of an area of freedom, security and justice for EU citizens and to the development of EU criminal law. In terms of the fight against organised crime, corruption and terrorism, and the protection of the EU’s financial interests, the work of the LIBE Committee is particularly relevant. The following gives an overview of the costs of non-Europe and the values in the various fields of the area of freedom, security and justice, and it highlights the European Parliament’s contributions to its creation.

I. Fight Against Organised Crime and Corruption

The fight against organised crime and corruption has been a recurrent concern for the European Parliament. In 2012, a Temporary Parliamentary Committee on Organised Crime, Corruption and Money Laundering (known as the CRIM Committee) was created to investigate the misappropriation of public funds, infiltration of the public sector, and the contamination of the legal economy and financial systems that threaten the EU. The Committee completed its work in 2013 and the European Parliament adopted a resolution with a number of policy recommendations⁴. During the 8th Parliamentary term (2014-2019) the LIBE Committee has been following the work of the CRIM Committee on the related issues, in cooperation with the Anti-Mafia Commission in the Italian parliament. In 2015, MEP *Laura Ferrara* (EFDD) was appointed rapporteur to draft a further report on the fight against organised crime and corruption and which would follow up on the CRIM Committee resolution⁵.

During the preparation of the report, the LIBE Committee called upon the European Parliament’s research service to commission a study on the cost of non-Europe in the area of organised crime and corruption to the European Added Value Unit in the European Parliament. The conclusions of the study show that losses to

the European economy due to corruption range from €179 to €990 billion every year, depending on different scenarios.⁶ In the area of organised crime, the economic losses are extremely difficult to quantify but the social harm cannot be denied.

In this regard, it is clear that to tackle corruption, the EU Member States should increase their efforts to implement existing legislation at the international and EU levels, including recommendations from the Council of Europe's anti-corruption monitoring body GRECO (Group of States against Corruption). Membership of the EU itself to GRECO has been put on the table in several parliamentary resolutions. A missing element in EU law, which would further contribute to strengthening the fight against corruption, is the protection of whistle-blowers. It is worth noting in this respect that the Council of Ministers of the Council of Europe adopted a Recommendation on this particular issue in 2014.⁷

The Anti-Corruption Report published by the European Commission for the first time in 2014⁸ introduced a monitoring mechanism that should be maintained and enhanced. The cross-border nature of organised crime in terms of environmental crime, drug trafficking, counterfeiting, and cybercrime necessitates coordinated action by Member States to face the different threats. In their respective competences, Europol and Eurojust have brought about important progress in joint actions and operations.

The cost of non-Europe in police and judicial cooperation in the EU is directly related to the ability of citizens to fully enjoy their fundamental rights and freedoms in a society free of corruption, where the justice system can be trusted. In this regard, it is worth noting the work currently being carried out in the LIBE Committee by MEP *Sophie in 't Veld* (ALDE) on a legislative own-initiative report with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law, and fundamental rights, which stresses access to justice as an indicator of rule-of-law standards.⁹

II. Fight Against Terrorism

It is difficult to justify a "non-European" approach to the fight against terrorism, a multifaceted phenomenon that needs to be tackled at the global level – from local communities to the international community, including action by Member States and the EU itself. Member States should join forces in different policy fields, with an emphasis on prevention. While criminal justice is only part of what should be a comprehensive approach, the EU needs a solid criminal justice response to terrorism, covering investigation and prosecution of those who plan terrorist acts or are suspected of recruitment, training, and financing of terrorism as well as incitement to commit a terrorist offence. In July 2016, the LIBE Committee adopted its mandate to start negotiations with the Council on the proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA.¹⁰

III. Money Laundering

Money laundering is closely related to organised crime and terrorism and has become an increasingly sophisticated activity. As with many other forms of criminality, technology has turned the cross-border element into an advantage for the perpetrators. The EU has a solid legal framework for tackling money laundering: Directive (EU) 2015/849 "on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing" (the fourth anti-money laundering directive) was adopted in May 2015 with the involvement of the Committee on Economic Affairs and the LIBE Committee. In July 2016, before the entry into force of the Directive, the European Commission proposed that some amendments on the following be taken:

- Enhanced due diligence measures regarding high-risk third countries;

- Virtual currency exchange platforms;
- Prepaid instruments.

The proposed amendments aim at enhancing the powers of EU Financial Intelligence Units (FIUs) and facilitating their cooperation.¹¹

IV. Protection of the Union's Financial Interests

If there is an area where “non-Europe” should be ruled out, it is that of the protection of the financial interests of the Union. Fraud and related illegal activities pose a serious problem to the detriment of the Union budget and therefore of taxpayers, who are urgently calling on the European institutions to ensure that public money is devoted to structural growth, fiscal consolidation, and job creation. When it comes to fraud to the Union's budget, the differences between the Member States' legal systems and levels of sanctions is a matter of concern. The *acquis communautaire* in the field of fight against fraud has been insufficiently implemented by the Member States and this fragmented legal framework may create incentives for *forum shopping*. The Union and the Member States should be united in their response to fraud and any other illegal activities affecting the financial interests of the Union via deterrent measures and, in this way, provide effective and equivalent protection throughout the EU. In 2012, the European Commission presented a proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law (known as the PIF Directive) in order to approximate the definition of offences against the EU budget and the level of sanctions applied. The negotiations between the European Parliament and the Council have not been easy, as is usually the case with criminal law instruments and, in this particular case, a disagreement about the inclusion of VAT-related fraud in the scope of the Directive has kept the proposal on hold since June 2015.¹²

The adoption of the PIF Directive is the *sine qua non* for the creation of a European Public Prosecutor's Office (EPPO) with the power to investigate, prosecute, and bring to judgment the perpetrators of the criminal offences affecting the financial interests of the Union and thus protecting the EU budget. The establishment of the EPPO represents an ambitious step and a revolution in terms of judicial cooperation in the development of the European area of freedom, security and justice.

The EPPO proposal was submitted by the Commission in 2013. It has undergone fierce criticism, prompted a “yellow card” from national parliaments, and has had to justify its European added value in every step of the procedure. While negotiations in the Council continue, the European Parliament has repeatedly encouraged Member States to proceed with their efforts and to keep it fully involved and informed. In its two resolutions of March 2014 and April 2015, the Parliament called for a fully independent and efficient EPPO, ensuring a high level of protection of the rights of defence and providing for a clear division of competence between the EPPO and national authorities. Once the Council reaches a final agreement, it will be for the Parliament to give or to refuse its consent to the new EPPO.¹³

V. A Way Forward in Procedural Rights

With agreement on the proposal for a Directive on the right to legal aid, the 2009 procedural rights roadmap is now complete, providing solid and harmonised protection for suspects and accused persons in criminal proceedings and persons subject to an EAW – irrespective of the Member State in which they are caught. It is now time to look at the existing gaps in legislation, propose other legal measures that could bring real added value to the area of freedom, security and justice, and to improve the mutual trust between Member States. The latter is particularly difficult in a time that is characterised by severe terrorist attacks in the EU. In addition, a frank discussion on the situation of prisons and prison conditions throughout the EU is needed.

VI. Conclusion

In the current political climate, the need to reflect on the cost of non-Europe in the area of freedom, security and justice is more important than ever. Given the obvious costs involved, the LIBE Committee pledges to continue its work to ensure the development of EU criminal law, to strengthen cooperation in the EU's fight against organised crime, corruption and terrorism, to protect the EU's financial interests, and to create an area of freedom security and justice for each and every European citizen.

We will continue carry out this role via key ongoing legislation which will help to tackle organised crime and corruption, establish a solid criminal justice response to terrorism, covering investigation and prosecution of those who plan terrorist acts, prevent money laundering and fraud in order to protect the financial interests of the Union, and pursue further measures to demonstrate the added value of the area of freedom, security and justice in the EU.

1. Cf. P. Cecchini, M. Catinat, A. Jacquemin, *The European challenge: 1992: the benefits of a single market*, Aldershot 1988. ↵
2. For an overview, cf: <http://europa.eu/eu-law/decision-making/treaties/index_en.htm>. ↵
3. See also the article by W. van Ballegoij at: <<https://eucrim.eu/articles/measuring-added-value-eu-criminal-law>> = eucrim 2/2016, 90. ↵
4. European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI)), <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0444+0+DOC+PDF+V0//EN>>. ↵
5. Report on the fight against corruption and follow-up of the CRIM resolution, <<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/2110%28INI%29&l=en>>. ↵
6. Cf. eucrim 1/2016, p. 10. ↵
7. Recommendation CM/Rec(2014)7 on the protection of whistleblowers. ↵
8. COM(2014) 38 final. ↵
9. Report on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/2254%28INL%29&l=en>. ↵
10. For the proposal and the legislative procedure, see: <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0281%28COD%29&l=en> ↵
11. COM(2016) 450 final of 5.7.2016. See also the news section on "European Union – Money Laundering" in this issue. ↵
12. For the state of play, cf.: <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0193%28COD%29&l=en>. ↵
13. See: <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0255%28APP%29&l=en>. ↵

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