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EDITORIAL

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Dear Readers,

When the Union prepares itself to negotiate and adopt new strategic guidelines on the basis of Art. 68 TFEU, probably already in June 2014, it could be useful to consider what the Union should do for the development of its criminal policy (provided it could be said the Union has one). Looking back on the development of the EU criminal law since the entry into force of the Treaty of Amsterdam on 1 May 1999, some useful conclusions can be drawn.

Firstly, the EU criminal law is a very recent phenomenon in the development of EU law in general. It was only with the Treaty of Amsterdam that the Union equipped itself with the legal instruments to begin a process of approximation and more substantial cooperation. According to the Treaty, Decisions and Framework Decisions were binding, although they could not have direct effect. It still took several years for the Court of Justice to explain what the legal effects of Framework Decisions were (indirect effect according to the Pupino doctrine).

Secondly, in the ten and a half years that the Amsterdam Treaty has been in force, the output of the Council was impressive. Some 35 Framework Decisions and a few Directives were negotiated and adopted, about 20 Decisions were taken, and close to ten international agreements were made on the basis of Art. 24/38 TEU (Amsterdam). Most of these instruments were concluded on the basis of unanimity between 15 and later 25/27 Member States.

Thirdly, the quality of some of the instruments adopted could sometimes be questioned – with exceptions, and exceptions to the exceptions, and yet again further exceptions. A typical example is the European Evidence Warrant, which is one of the prime examples of poor legislation during this time.

Fourthly, the Union could have been ashamed of itself for the lack of democratic legitimacy in adopting instruments without the actual involvement of elected parliamentarians. This was not the fault of the Union though, but the fault of the many Member States that did not involve national parliaments in the adoption process. The cursory way in which the European Parliament was treated could, however, be attributed to the Union institutions.

Fifthly, another problem in this period was the lack of implementation of Decisions and Framework Decisions already taken. *Pacta sunt servanda* did not seem to apply to the Ministries of Justice. One can observe that the five-year transition period of the Lisbon Treaty is now bearing its fruits and that a number of Member States are implementing, in particular, the many mutual recognition instruments negotiated during this period. There is, however, a fully logical explanation to the lack of implementation: in many Ministries, the responsibility for implementing legislation lies with the same persons/units that negotiated the instruments in question. This means that when an instrument has been negotiated, the negotiators then move on to a new negotiation instead of concentrating on the implementation process. It is a well-known fact that many Ministries of Justice are lacking resources.

Ultimately, a discrepancy can be observed between the programmes that were adopted, the political discourse of our leaders, and the reality of the negotiations – the challenge was (and still is) the usual protection of national law and the belief that one's own legislation was/is the most perfect one. Moreover, the enlargement of the Union meant that the necessary mutual trust between legislators and negotiators, rightly or wrongly so, suffered a serious dent that may still take years to repair.

These conclusions and how to develop criminal policy in the future is the topic of a longer contribution in this edition of eucrim.

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Author statement

The opinions expressed are those of the author and not necessarily those of the institution at which he is employed or those of any of the Member States of the EU.

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