

# eucrim

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**THE EUROPEAN CRIMINAL LAW ASSOCIATIONS' FORUM**



## **Focus: EU Criminal Policy**

**Dossier particulier: Politique de droit pénal de l'UE**

**Schwerpunktthema: EU-Strafrechtspolitik**

Guest Editorial

*Francesco de Angelis*

Better Regulation in European Criminal Law:

Assessing the Contribution of the European Parliament

*Wouter van Ballegooij*

European Perspectives on Rights for Victims of Crime

*Dr. Ioannis N. Androulakis*

The Associations for European Criminal Law and the Protection of Financial Interests of the EU is a network of academics and practitioners. The aim of this cooperation is to develop a European criminal law which both respects civil liberties and at the same time protects European citizens and the European institutions effectively. Joint seminars, joint research projects and annual meetings of the associations' presidents are organised to achieve this aim.

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#### Imprint

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# Guest Editorial

Dear Readers,

Since the Lisbon Treaty, the concept ‘Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments’ has acquired a constitutional rank. All the European institutions recognise that, in order for the principle of mutual recognition to become effective, mutual trust needs to be strengthened, and that mutual understanding between the different legal systems in the Member States will be one of the main challenges of the future. The promotion of a European legal culture among judges, prosecutors, and judicial staff is considered to be of paramount importance.

Unfortunately, since the 19th century, legal culture in Europe has been dominated by the assumption that national legislation must be the basis of legal training. The curricula of law schools consider untouchable the specific elements of national penal dogmatics and emphasise national pride for merely internal legal concepts. The national narrowness of legal education in Europe is reinforced by the accent on specific features of national doctrine, on formal dogma, on legal techniques, and on subtle doctrinal distinctions while comparative law, European law, and international law are confined to marginal introductory courses or relegated to specialised seminars. Hence, European lawyers are trained primarily in doctrines and conceptual tools specific to the laws of their own countries. Europe has as many legal sciences as there are legal systems. Academic studies are marked by a nationalism that is unknown to other sectors of higher education. The present *curricula studiorum* tend to promote an attitude on the part of lawyers that is rather hostile to other national systems and to European law, particularly in the criminal law area. Mutual understanding and mutual trust become gruelling.

It is time to reverse mentalities. There is a need to elaborate a *curriculum studiorum* in which national law is presented, first of all, in the context of legal ideas existing in the legislation of other European nations, that is: against the background of principles and institutions that these countries have in common. It is important to demonstrate that a common stock of principles and rules is used throughout the laws of the European nations; in other words, a ‘European common law’ or ‘jus commune’ does exist in Europe, even in England, if it is accepted that the myth of isolation is renounced. It is suggested to stimulate the creation of a common core

movement to draw attention to the common heritage of the European legal systems presently obfuscated by the more eye-catching of concepts, approaches, and languages of national origin. It is proposed to work at two levels.

At the academic level, the subjects that a student has to study in the first and second years of law are essentially national, so that he learns the false lesson that the ‘essence’ of law is national. It would facilitate the implanting of the European cultural basis into the consciousness of lawyers if legal studies were to begin with transnational and European subjects. Young European lawyers would learn first what is common all over Europe and then continue with the study of national laws.

Concerning the criminal law practitioners, the level and standard of cooperation among Member States in criminal matters will, even with the advent of the European Public Prosecutor in the foreseeable future, rest with national judges, prosecutors, police, and other enforcement officers. Mutual trust among these institutions has indeed become a foundation of effective cooperation. A scheme for the creation of an integrated common European legal training is urgently needed. The elaboration of such a scheme could rely on already existing researches in criminal law, such as those at surrounding the Corpus Juris and the Commission proposal for the creation of a European Public Prosecutor and other similar researches that have been carried out by several national institutes on comparative and European criminal law for two decades.

A preliminary note on these topics was discussed by the presidents of the criminal lawyers’ associations for the protection of the financial interests of the European Union during the annual meeting in Vienna on 14 May 2014 and received principle approval, both at the practitioner’s and academic levels. The attending professors intend to concretise the idea at the academic level.



Francesco de Angelis

My operational proposal is that the academic and practitioner's levels can work hand in hand. For practitioners, however, there is greater urgency to act. The training manual for them does not need to be developed in great detail and can concentrate on the operational requirements. Results can thus be achieved in a shorter time.

Concretely, the European criminal law associations, in collaboration with training European and national institutions and with the financial support of the European Commission, could take the initiative to extrapolate the most relevant common features, which condition an effective protection of the EU's financial interests – from the national legal orders concerning the general and special part of criminal law and criminal procedure, together with the existing criminal law texts at the European level, the aim being to constitute a European common core of legal principles and rules. The development of common legal material with a common vocabulary as well as common legal literature is also to be elaborated.

It is proposed to have a meeting organised by OLAF with representatives of the main law families in Europe: German law, Roman law, common law, and the law of the Nordic countries. A law practitioner, possibly a public prosecutor working at OLAF or a national institution, should attend the meet-

ing to assist in identifying the real operational requirements. A defense lawyer would also be needed. The objective of the meeting would be to give clear indications for the definition of the main concepts of the terms of reference, which would allow launching a call for a proposal within the framework of the Hercule program in order to identify the organisation that would assume responsibility for implementing the study. The results of the study would be subjected to the scrutiny of all the individual associations to check whether the operational guidelines cover the specificities of the 28 legal orders. The common core of principles and rules combined with the relevant literature would then be finalised.

I am convinced that if European law practitioners were trained according to this framework instead of in the traditional way, mutual understanding would be enormously facilitated, despite allegedly great differences among national systems in their historical development, conceptual structure, and style of operation with regard to national institutions. The principle of subsidiarity would be fully respected, since national law would be taught together with already existing European law.

Francesco de Angelis  
Honorary Director General, European Commission



## European Union\*

Reported by Dr. Els De Busser and Cornelia Riehle

### Foundations

#### Enlargement of the European Union

##### Commissioner Füle Presents 2014 Enlargement

On 8 October 2014, in his last speech as Commissioner for Enlargement and Neighbourhood Policy, Stefan Füle presented an overview of the progress made in accession negotiations with the candidate countries in 2014.

After opening negotiations on chapter 23 on judiciary and fundamental rights and chapter 24 on justice, freedom and security (see eucrim 1/2014, p. 2), Montenegro now urgently needs to focus on its main challenges. These include matters related to the rule of law and strengthening public administration. The appointment of the Supreme State Prosecutor by the parliament in October 2014 is a big step in the right direction for the Montenegrin institutions towards establishing a credible track record of

investigations, prosecutions, and convictions in cases of corruption.

Serbia sufficiently fulfils the necessary political criteria but still needs to implement comprehensive reforms. The country should also continue its commitment to regional cooperation and the normalisation of relations with Kosovo.

The accession process with regard to the Former Yugoslav Republic of Macedonia is at an impasse. Besides the ongoing issue of the name of the country, open questions include the increased politicisation and more shortcomings with regard to the independence of the judiciary and freedom of expression.

A number of successful police operations to fight the cultivation of and trafficking in drugs have confirmed the Albanian government's commitment to act in the fight against organised crime. However, deterioration of the political climate and the boycott of parliament by the opposition remain sources of concern.

Limited progress has been made by Bosnia and Herzegovina in addressing the political criteria crucial to the accession process. Since the Sejdić-Finci judgment of the ECtHR (see eucrim

3/2013, p. 76) has still not been implemented, the country remains in breach of its own international commitment. In addition, the lack of reforms regarding public administration and the judicial system has brought the accession process to a standstill.

Referring to Kosovo's elections of June 2014, the Commissioner pointed out that failure to constitute the new legislature smoothly and in a timely manner has been a setback to the country's reform.

With regard to Turkey, a number of positive steps are apparent in addition to some concerns, e.g., changes to the Internet law and blanket bans on Twitter and YouTube. Although they have been overturned by the Constitutional Court in the meantime, further reform efforts are needed, e.g., regarding the independence of regulatory agencies and the efficiency of the judiciary. (EDB)

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### Schengen

#### Discussions on Integrating Fingerprint Function in SIS II

With the Schengen Information System (SIS II) operational since 2013, the Commission has presented the addition of a new function to the system. Thus far, the existing fingerprints function only allows confirmation of the result of an alphanumeric identity search. Extending this function would allow the identification of a person on the basis of biometric data alone. This would mean integrating a new Automated Fingerprint Identification System (AFIS) that would function as a 10-print identification system.

\* If not stated otherwise, the news reported in the following sections cover the period September – December 2014.

This feature would enable the competent national authorities to perform fingerprint searches, using fingerprints only, against either all records or a subset of the new central AFIS database.

A report on the availability and readiness of the technology required is expected soon. The Commission has distributed questionnaires asking Member States to identify useful functional requirements and how they would use this new function. (EDB)

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## Institutions

### European Parliament

#### European Ombudsman Decides on Complaint Regarding Access to ACTA Minutes

On 6 October 2014, European Ombudsman Emily O'Reilly closed the inquiry into a complaint against the EP on obtaining access to the minutes of meetings relating to negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). The complaint was made by a

transparency NGO on 8 July 2011 under Regulation 1049/2001 and related to the minutes of meetings of the EP's International Trade Committee (INTA), Legal Affairs Committee (JURI), and Constitutional Affairs Committee (AFCO) regarding the negotiation of ACTA as well as related meetings of Committee Coordinators. On 28 July 2011, the EP replied that the minutes of all meetings of its Committees were available on the EP website but that no separate minutes for the Committee Coordinators' meetings were available.

After a lengthy exchange of correspondence with the EP, the complainant turned to the Ombudsman in February 2012, who opened an inquiry into the allegation that the EP fails to register all existing parliament documents in its electronic register of documents, in particular the minutes of meetings of Parliament Committee Coordinators, and the corresponding claim that the EP should register all those documents.

After considering the complaint and the content of Regulation 1049/2001, the Ombudsman found that the EP's failure to include references to the minutes of the meetings of Committee Coordina-

tors in its register of documents amounts to an instance of maladministration and that these minutes should, in principle, be made directly accessible.

Parliament stated that the complaint brought to light certain discrepancies as to the implementation of its Rules of Procedure, which govern the work of Committee Coordinators. Practices do indeed differ from one Committee to another as regards the publication of Coordinators' decisions and recommendations; this gives rise to impression of being contrary to increasing demands for transparency in the legislative field.

In line with the Ombudsman's draft recommendation, the EP has invited the relevant Directorates-General to harmonise practices and to include the recommendations or decisions adopted by the Coordinators, after their endorsement by the full Committee, in the public Committee minutes.

After the complainant pointed out that this still leaves open the question of the existing minutes, the Ombudsman concluded that the EP had taken appropriate measures to implement her draft recommendation. However, a remark was added to the effect that, for the sake of consistency with its new policy, the EP will include in its public register the existing minutes of meetings of Committee Coordinators adopted during the 2009-2014 parliamentary term. (EDB)

►eucrim ID=1404003

### European Commission

#### New Commission Starts Its Five-Year Term

On 1 November 2014, a new European Commission took up its mandate for a five-year term. On 22 October 2014, the EP approved a new college of 27 Commissioners presented that day by its President-elect Jean-Claude Juncker, with 423 votes in favour, 209 against, and 67 abstentions.

During the European Council of 23-24 October 2014, the EU heads of state and

#### Common abbreviations

CEPOL	European Police College
CDPC	European Committee on Crime Problems
CFT	Combating the Financing of Terrorism
CJEU	Court of Justice of the European Union
ECJ	European Court of Justice (one of the 3 courts of the CJEU)
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
(M)EP	(Members of the) European Parliament
EPPD	European Public Prosecutor Office
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings
JHA	Justice and Home Affairs
JSB	Joint Supervisory Body
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs
(A)ML	(Anti-)Money Laundering
MLA	Mutual Legal Assistance
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
SIS	Schengen Information System

government adopted the decision appointing the European Commission. (EDB)

► eucrim ID=1404004

### Increase in Requests for Access to Commission Documents

On 8 October 2014, the Commission's 2013 annual report on public access to documents was adopted. This annual report covers the application of Regulation (EC) No.1049/2001 regarding public access to EP, Council, and Commission documents. The Commission remains by far the institution handling the largest number of both initial and confirmatory requests, with a record high in requests in 2013 at a total of 6525 requests, which is an increase of 8.5% over the 6014 document requests in 2012. The Commission handles roughly twice as many requests as the Council and EP together. In 84% of all cases, the requested documents were disclosed at the initial stage. At the confirmatory stage (after appealing the initial decision), either full or partial access was granted in 42% of cases. Also, the number of documents added to the public register has increased. During 2013, 12% more documents had been included compared to 2012. (EDB)

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## OLAF

### Cooperation Arrangement with the Integrity Vice-Presidency of the World Bank Group

On 8 October 2014, the Director-General of OLAF, Giovanni Kessler, and the Integrity Vice President of the World Bank Group (INT), Leonard McCarthy, signed a Cooperation Arrangement. The arrangement outlines the practical framework allowing the two institutions to coordinate their anti-fraud activities more efficiently, within the scope of their respective mandates. This includes the exchange of information, operational assistance, and the option of organising joint investigations. (EDB)

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## Report

### 12th OLAF Conference of Fraud Prosecutors

#### Investigations and Prosecutions of the European Public Prosecutor's Office: What Do Practitioners Think?

From 26 to 28 October 2014, an international conference on 'Investigations and Prosecutions of the European Public Prosecutor's Office: What do Practitioners think?' organised by OLAF took place in Rome, Italy.

Bringing together EU practitioners, the conference aimed at discussing, from different angles, fraud cases from 27 Member States as regards possible impacts of the EPPO establishment on national systems. The discussion points were:

- EPPO competence;
- Investigative measures and the admissibility of evidence;
- Relations with Member States and other European bodies;
- The future perspectives of the ongoing negotiations.

The introductory speeches by the Justice Commissioner, Ms. Reicherts, by OLAF Director General, Mr. Kessler, and by the Italian authorities (the Senior President of the Supreme Court, Mr. Santacroce, the General Prosecutor at the Supreme Court, Mr. Ciani, the Head of Department of the Ministry of Justice, Mr. Mura, and the National Anti-Mafia Prosecutor, Mr. Roberti) made clear that the EPPO should be a truly independent and efficient prosecution body and thus go beyond existing instruments and arrangements.

The practitioners and academics presented rather divergent views on how the EPPO should work in practice. Easy solutions for the issues at stake are not at hand. It is the responsibility of the policy makers and the legislator (Commission, Council, and European Parliament) to listen to these divergent views in order to bring the legislative proposal forward.

The first session – chaired by Mr. Ernesto Lupo, advisor for legal affairs to the President of the Italian Republic – focused on the EPPO's competence and, in particular, on the question of whether the EPPO should have exclusive competence to investigate cases regarding the protection of financial interests (PIF cases) or whether it should be shared with the Member States. Some speakers (e.g., Mr. Perduca, Ms. Jour-Schroeder, and Mr. Zeder) pointed out that exclusive competence for the EPPO is the right way to move forward, as it is easy to handle and avoids parallel investigations. Nevertheless, if another system of competence is chosen (Mr. Schierholt), it must be ensured that the EPPO is always swiftly and fully informed about all cases and that the Office decides on which cases to take (Prof. Sicurella). Regarding material competence, the inclusion or non-inclusion of VAT (value-added tax) fraud was often mentioned. This is a politically sensitive issue for the Member States. However, recent judgments of the ECJ clearly indicate that VAT is part of the EU budget and belongs to the financial interests of the EU. An interesting suggestion was also made: to put the definition of the criminal offences in the regulation itself and not to refer to the PIF Directive.

The second session on investigative measures was chaired by Ms. Inga Melnace, representing the then incoming Latvian Presidency. The third session on admissibility of evidence was chaired by Ms. Donatella Ferranti, Italian MP and President of the Justice Committee of the Chamber of Deputies. These two sessions were closely linked. Many interesting and helpful comments were given during this inspiring intellectual debate.

A crucial issue under discussion during the conference was the question of what a single legal area means. In the discussions, the arguments presented by the speakers Prof. Vervaele, Ms. Constantinescu, Mr. Gonzalez-Herrero Gonzalez, and Prof. Panzavolta (in the third session) as well as Prof. Allegrezza, Mr. Tsogkas, Prof. Ligeti, and Mr. Camaldo (a mix of academics and practitioners) confirmed that the EPPO needs a minimum of harmonised rules at the European level in order to work properly. It is indispensable that the EPPO be a truly European body, namely a single office.

The fourth session, chaired by Mr. Lothar Kuhl, OLAF Head of Unit and formerly responsible for the EPPO file in OLAF, was on the relationship between the EPPO and its partners, in particular the Member States, Eurojust, and OLAF. Ms. Pomponio and Ms. Polito, from the Italian Court of Auditors, explained the tight relations that the EPPO should have with this entity, as already practiced with OLAF today. Other speakers who took the floor (Ms.

Ullrich, Mr. Chatziapazarlis, and Mr. De Moor, all OLAF or former OLAF staff) made clear the need for ensuring complementary and constructive working relations between these bodies. The relationship between the EPPO and Eurojust also depends on how the competence question is resolved.

In the last panel, chaired by Mr. Carlin of the Secretariat of the Council of the EU, a comprehensive update of the state of play of negotiations in the Council and in the European Parliament was provided. In particular, Mr. Lorenzo Salazar, on behalf of the Italian Presidency, which undertook significant efforts and time to advance the negotiations on the EPPO proposal, stressed a few 'red lines' regarding the independence and efficiency of the EPPO. The other speakers, representing other institutions involved in the ongoing negotiations (Ms. Stiegel of OLAF, Mr. Csonka of DG Justice, Ms. Chinnici MEP, and, in addition, Mr. Lo Voi, Italian national Member of Eurojust) confirmed the opinion that the negotiations should establish an EPPO with added value.

The conference was closed by Ms. Hofmann, Policy Director at OLAF, who assured the conference participants that the Commission, OLAF, and DG Justice stood ready to support the Italian Presidency and also the following Presidencies in any effort to bring the EPPO proposal substantially forward – establishing an independent and efficient EPPO, with added value in national and cross-border investigations of PIF cases.

*Andrea Venegoni and Elisa Sason (OLAF)*

### OLAF Reports on Euro Counterfeiting

In September 2014, the Commission presented two reports prepared by OLAF on counterfeiting the euro currency. First, on 3 September 2014, a one-time report was presented to the EP and the Council evaluating the effects and operation of Regulation (EU) 1210/2010 concerning the authentication of euro coins and the handling of euro coins unfit for circulation. Second, on 19 September 2014, the Commission presented its annual report to the Economic and Financial Committee on developments and results concerning the same regulation.

Both reports conclude that European citizens are well protected against such counterfeiting because Member States' authorities and financial institutions have taken appropriate measures to prevent and deter the use and circulation of counterfeit euro coins. (EDB)

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### Operation Replica on Counterfeit Goods Coordinated by OLAF

On 6 October 2014, the results of a large operation focusing on counterfeit goods were released by OLAF. The international joint customs operation called 'Operation Replica' was coordinated by OLAF and targeted the import of coun-

terfeit goods (cigarettes, perfumes, car parts, fashion items, etc.) by sea.

Physical and X-ray controls of selected containers resulted in the seizure of more than 1.2 million counterfeit goods and 130 million cigarettes. The operation involved all the EU Member States, Norway, Switzerland, Interpol, Europol, and the World Customs Organisation. In addition, 11 international partners cooperated, including China, the Russian Federation, Thailand, Indonesia, and Japan. For the first time, a Chinese Customs Liaison Officer also worked from the operational headquarters at OLAF. (EDB)

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## Europol

### Largest-Ever Operation against Organised Crime in the EU

From 15 and 23 September 2014, law enforcement authorities from 34 countries, coordinated and supported by Europol, joined forces in Operation Archimedes. The operation targeted organised criminal groups and their infrastructures across the EU in a series of raids and other interventions taking place at hundreds of locations, including airports, border-crossing points, ports, and spe-

cific crime hot spots in towns and cities. Operation Archimedes saw the participation of law enforcement officers from all 28 EU Member States as well as from Australia, Colombia, Norway, Serbia, Switzerland, and the USA. Furthermore, Eurojust, Frontex, and Interpol cooperated in the event.

Operation Archimedes resulted in the arrests of 1027 individuals, the seizure of 599 kg of cocaine, 200 kg of heroin, and 1.3 tonnes of cannabis. Furthermore, 30 children were saved from human trafficking. (CR)

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### Second Interpol-Europol Cybercrime Conference

From 1-3 October 2014, the second Interpol-Europol cybercrime conference took place in Singapore. This conference, themed 'Cybercrime investigations – the full cycle,' aimed to identify new threats and trends in cybercrime as well as ways to track cybercriminals online. The conference was attended by 230 specialists from law enforcement, the private sector, and academia from 55 countries. (CR)

►eucrim ID=1404010

### Europol Signs Memorandum of Understanding with Kaspersky Lab

On 24 October 2014, Europol signed a Memorandum of Understanding (MoU) with Kaspersky Lab, a Russian multinational computer security company developing secure content and threat management systems. The MoU allows for the exchange of knowledge and support between both parties, such as the provision of expertise, statistical data, identification of trends, and other strategic information. (CR)

►eucrim ID=1404011

### Association of Law Enforcement Forensic Accountants Network Meets at Europol

From 22-24 October 2014, Europol hosted the inaugural plenary meeting and conference of the Association of

Law Enforcement Forensic Accountants (ALEFA) Network.

The ALEFA Network has been established to bring together specialists who are qualified accountants directly employed in law enforcement. It aims at developing the quality and scope of forensic accountancy throughout law enforcement agencies and at better assisting courts, victims, witnesses, suspects, defendants, and their legal representatives in relation to the investigation of alleged fraud as well as fiscal, financial, and serious organised crime.

Currently, all 28 EU Member States – as well as representatives from the USA, Australia, Canada, and other European countries, together with organisations including Europol, Eurojust, and OLAF – are involved in the network. The lead partner in the ALEFA Network project is Ireland's National Police Service 'An Garda Síochána,' via the Criminal Assets Bureau in Ireland. Other project partners include the Dutch National Public Prosecutor's Office for Serious Fraud and Environmental Crime, Her Majesty's Revenue and Customs (HMRC) of the UK, the UK's National Crime Agency (NCA), the Scottish Crown Office and Procurator Fiscal Office, the Swedish National Bureau of Investigation as well as the German Federal Criminal Police Office. (CR)

►eucrim ID=1404012

### Memorandum of Understanding Between EC3 and Mnemonic

In October 2014, Europol's European Cybercrime Centre (EC3) and Mnemonic, one of the largest providers of IT information security services within the Nordic Region, concluded a Memorandum of Understanding to enhance their cooperation in the fight against cybercrime. The MoU allows for the exchange of expertise, statistics, and strategic information on cyber threats between the two parties. Further areas of cooperation already identified include the potential to expand the sharing of cyber threat intelligence as well as the examination of

passive DNS data and malware analysis through Mnemonic's role with the Norwegian Gjøvik University College and the Norwegian Center for Cyber and Information Security (CCIS). (CR)

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### Europol Review 2013

On 3 September 2014, Europol published its review 2013, giving an overview of Europol's work in 2013 and showing the main developments which have affected the agency.

According to the report, in 2013, Europol provided support in more than 18.000 cases, 15% more than in 2012. Novelties of the year 2013 include the opening of the European Cybercrime Centre (EC3) at Europol and the establishment of the new EU serious and organised crime threat assessment 'SOCTA.' Further highlights include the growing use of the Europol Platform for Experts (EPE), with 4000 users operating in 33 online communities, and the annual meeting of European police chiefs (at which around 200 high-level law enforcement officers participated) to find solutions regarding modern technology, witness protection, police leadership, and data protection.

Looking ahead, the review underlines two important issues:

- First, to enhance cooperation with the private sector in order to make greater use of expertise on issues like cybercrime, money laundering, and intellectual property crime.

- Second, to centralise resources in various fields of law enforcement expertise as already initiated in the area of cybercrime by creating the European Cybercrime Centre at Europol. (CR)

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### Eurojust

#### New Portuguese National Member at Eurojust

On 22 October 2014, Mr. António Francisco de Araújo Lima Cluny took up his

duties as new National Member for Portugal at Eurojust.

Prior to joining Eurojust, Mr. Cluny worked as Deputy Prosecutor General on behalf of the Prosecutor General at the Portuguese Supreme Courts: Court of Auditors. He has also held positions as Chief Prosecutor in the Judicial Court of Sintra and in the Judicial Court of Cascais. His international work experience includes positions as expert of the GRECO (Group of States against Corruption) Committee on the European Council, as former President of the Portuguese Association of Prosecutors, and as President of MEDEL (Magistrats Européens pour la Démocratie et les Libertés). He is also editorial board member of several law magazines and book author. (CR)

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#### New German National Member at Eurojust

On 1 September 2014, Mr. Meyer-Cabri took up his duties as German National Member at Eurojust. Before joining Eurojust, Mr. Meyer-Cabri had been the Head of the Office for EU Justice Policy and International Cooperation at the German Federal Ministry of Justice and Consumer Protection. Furthermore, Mr. Meyer-Cabri has worked for many years as a Legal Councillor at the Permanent Representation of the Federal Republic of Germany to the EU in Brussels. (CR)

►eucrim ID=1404016

#### New Irish National Member at Eurojust

On 1 September 2014, Mr. Francis Cassidy took up his duties as new Irish National Member at Eurojust. Prior to joining Eurojust, Mr. Cassidy worked in Ireland as Head of Criminal Appeals at the Office of the Director of Public Prosecutions. His professional career has also included positions as Bureau Legal Officer at the Irish Criminal Assets Bureau (CAB) and as Head of the Superior Court Section at the Office of the Director of Public Prosecutions. (CR)

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## Operation against Counterfeit Medicines

On 1 September 2014, simultaneous operations were conducted by law enforcement authorities from Austria, Belgium, Cyprus, Hungary, and the United Kingdom with the aim of stopping the distribution of counterfeit, prescription-only medicines (mainly erectile dysfunction pills), the laundering of related proceeds, and of addressing the impact of these counterfeit medicines on public health in the EU. The operations were supported by the Spanish National Desk at Eurojust by setting up a coordination center with the assistance of the National Desks of all countries involved, Eurojust's Case Analysis Unit, and Europol. Additionally, Europol deployed a mobile office.

The operations resulted in the seizure of several million pills with an estimated value well in excess of €10 million, a large amount of cash, and several vehicles (including luxury models) as well as the freezing of more than €7.5 million in bank accounts and assets. In addition, 12 suspects were arrested. (CR)

► eucrim ID=1404018

## Eurojust News Issue on the European Arrest Warrant

In September 2014, Eurojust published its 12th news issue, dedicated this time to the European Arrest Warrant (EAW). On the occasion of the EAW's 10th birthday, this news issue presents an overview of its history, outlines Eurojust's role in EAW cases, and describes practical and legal issues identified with the EAW. Furthermore, the newsletter gives a report on the European Criminal Bar Association's (ECBA) spring conference that focused on the EAW and includes interviews with the following opinion leaders:

- Baroness Sarah Ludford, a former MEP for the UK;
- Professor Anne Weyembergh, professor at the ULB's (Université libre de Bruxelles) Institute for European Studies (IEE) and co-founder and coordinator of the European Criminal Law Academic Network (ECLAN);

- Professor Valsamis Mitsilegas, Head of the Department of Law and Professor of European Criminal Law and Director of the Criminal Justice Centre at Queen Mary University of London;

- Judge Lars Bay Larsen, Judge at the ECJ since 2006. (CR)

► eucrim ID=1404019

## Frontex

### Operation Triton Launched

On 1 November 2014, Frontex finalised all preparations for the launch of Joint Operation Triton. The operation was established in response to the extremely high migratory pressure in the Central Mediterranean area, covering the maritime area south of Sicily and the Pelagic islands as well as the coastal areas around Calabria, southern Italy. Under the command of the Italian Ministry of Interior, in cooperation with Guardia di Finanza as well as the Italian Coast Guard, Frontex will coordinate the deployment of three open sea patrol vessels, two coastal patrol vessels, two coastal patrol boats, two aircraft, and one helicopter as well as five debriefing teams. They will support the Italian authorities in collecting intelligence on the people-smuggling networks operating in the countries of origin and transit of the migrants and include two screening teams. Operation Triton has a monthly budget of €2.9 million. (CR)

► eucrim ID=1404020

## Specific Areas of Crime / Substantive Criminal Law

### Protection of Financial Interests

#### The EPPO Proposal – State of Play

During the JHA Council of 9-10 October 2014, the Council was briefed by the Italian Presidency as regards the orientation debate on the Proposal

for a Regulation on the establishment of the EPPO (see also eucrim 3/2014, p. 79 and eucrim 2/2014, pp. 53-54). At this JHA Council, the Italian Presidency reported on the debate revolving around the concept of a 'single legal area,' as used in Article 25 of the proposed regulation. This concept refers to the question of whether the EPPO will be able to operate across the borders of participating Member States or if there is a need to rely on traditional mechanisms of mutual legal assistance and mutual recognition. A majority of ministers spoke out to confirm that the EPPO should be one single office. The Presidency summarised the underlying principle of the provision as follows:

'The concept of the single legal area means that the EPPO will not need to have recourse to instruments facilitating mutual assistance or of mutual recognition of judicial decisions in its work. The EPPO shall operate as one single office, and all cooperation and interaction between the Central Office and European Delegated Prosecutors based in different participating Member States, as well as between European Delegated Prosecutors between them, shall be organised with full account taken of this principle.'

During the JHA Council of 4-5 December 2014, the Council was briefed by the Presidency on the discussions, which leave a number of technical issues to be resolved. The Council received a redrafted text of the first 37 articles of the proposed regulation. Aspects that need more work were highlighted, including the supervisory role of European Prosecutors, the nomination and appointment of the members of the EPPO, and the independence of decision-making in the EPPO. The discussion report ended with the assumption that the EPPO will be organised in such way, that the European Prosecutors will supervise the work of the European Delegated Prosecutors in their Member States of origin. Questions on the appointment procedure were added. (EDB)

► eucrim ID=1404021

## Organised Crime

### COSI Report

On 30 September 2014, a report on the proceedings of the Standing Committee on operational cooperation on internal security (COSI) for the period from January 2013 to June 2014 was agreed on at the COSI meeting. The report had been prepared by the Presidency and was approved during the JHA Council of 9-10 December 2014.

COSI activities in the reporting period mainly concentrated on the implementation of the first two years of the EU policy cycle (2012-2013) and the setting up and implementation of the next cycle (2014-2017). For the first time, an EU Serious and Organised Crime Threat Assessment (SOCTA) was issued by Europol (see *eu crim* 2/2013, p. 37), which provided the basis for the adoption by the Council of the EU crime priorities for 2014-2017. Following the adoption of these crime priorities, COSI examined and approved Multi-Annual Strategic Plans for each priority, which were then converted into Operational Action Plans for 2014.

Two points highlighted in the report are:

- The increasing link between internal and external security. This includes the topic of foreign fighters and returnees from a counter-terrorism perspective, in particular Syria. COSI contributed to the preparation of the discussions in the Council on this topic and to the implementation of the proposed measures.
- Strengthening the cooperation between JHA agencies, especially regarding information exchange, remains a key concern for COSI. The ongoing negotiations on the draft Europol regulation and the draft Eurojust regulation are significant in this respect.

In the report's conclusion, it is stressed that the lessons learned from the first EU policy cycle proved to be of great added value for the preparation of the new cycle, and all stakeholders involved have contributed to its improved preparation

### Report

#### The European Public Prosecutor's Office and the Prosecutor General in Federal States

What lessons can the EU learn from Swiss and German models?

On 25 and 26 September 2014, an international conference on 'The European Public Prosecutor's Office and the Prosecutor General in Federal States' organised by the Universities of Bonn and Basel took place in Basel, Switzerland. The conference was co-financed by the European Commission (OLAF) within the framework of Hercule II.

In July 2013, the European Commission launched a proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO). Even though a majority of Member States supports the idea of establishing a European Public Prosecutor, a number of issues still remain unresolved. In this regard, the EU legislator might draw upon the experiences of federal states, such as Switzerland and Germany, both of which have a general prosecutor at the federal level and prosecutors at the cantonal or state level. During the conference, academics and practitioners discussed the challenges that a federal (or supranational) prosecutor faces in a system with a strong tradition of law enforcement at the local level.

Key topics were:

- The need for uniform procedural rules or (at least) harmonised standards;
- Cooperation mechanisms, in particular with regard to case allocation and conflicts of competence;
- Independence of the public prosecution service and political supervision.

The overall conclusion was that, despite significant differences (in particular, the hybrid nature of criminal proceedings where the investigation is conducted by the EPPO and the trial is held before a national court) from fully fledged federal criminal justice systems, the German and Swiss experiences can provide useful guidance on the division of competences and the setting up of cooperation mechanisms.

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and implementation. Remarkable progress was made in a very short time, and COSI will continue to closely monitor the implementation by Member States and JHA agencies and make interventions and adjustments where necessary.

Shortcomings that were identified in the implementation cycle mainly related to funding, Member States' involvement, and the lack of awareness regarding the policy cycle. (EDB)

► *eu crim* ID=1404022

#### Implementation Report on Framework Decision Combatting Terrorism

On 5 September 2014, the Commission published a report on the implementation of Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combatting terrorism. The latter introduced new offences of public provocation, recruitment, and training for ter-

rorism. Member States were to have adopted implementing measures with regard to these offences by 9 December 2010.

Ireland and Greece have not adopted implementing measures yet, so the Commission urges them to do so without further delay. Most Member States are in compliance with the terms of the 2008 Framework Decision. Nevertheless, the Commission underlines that potential concerns exist with regard to the criminalisation of 'indirect provocation' and recruitment of 'lone actors' under national provisions. For this reason, Member States have been requested to submit additional information. (EDB)

► *eu crim* ID=1404023

#### Commission Presents Three Reports on Trafficking in Human Beings

On 17 October 2014, the Commissioner for Home Affairs, Cecilia Malmström,

presented a package of three reports on the Commission's efforts to combat trafficking in human beings.

The first document presented was the midterm report on the Implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. Measures of the strategy that have been carried out already include:

- Improved information to victims of their rights;
- Improved identification of victims;
- Protection of children;
- Cooperation with civil society;
- Strengthening of cooperation between EU agencies and with third states.

The second report consists of statistical data collected by Eurostat on trafficking in human beings, covering the years 2010, 2011, and 2012. During this period, Member States registered 30,146 victims of trafficking in human beings, two-thirds of which were EU citizens. More than 8500 prosecutions for this type of crime were reported by Member States in the same three years as well as 3800 convictions. The Commissioner points out that differences between Member States' definitions of trafficking in human beings and the recording of data still make analysis and comparison difficult.

The third document is a communication adopted by the Commission on 17 October 2014 on the application of Directive 2004/81, which allows for residence permits to non-EU victims of trafficking who cooperate with the authorities. The directive addresses the situation of trafficked victims from outside the EU, to ensure that they get the right support and that they can stay in Europe where the authorities can take their traffickers to court. The Commission's conclusion so far is that this legal instrument is underused by Member States. In addition, the 2011 EU anti-trafficking directive should have been transposed into national law by April 2013. Belgium and Germany still have not complied. (EDB)

►eucrim ID=1404024

### Report on Joint Actions on Trafficking in Human Beings by EU Agencies

On 18 October 2014, several EU agencies published a report on their jointly undertaken actions to fight trafficking in human beings. The agencies involved are the European Police College (CEPOL), Europol, Eurojust, the Agency for Fundamental Rights (FRA), Frontex, and the European Asylum Support Office (EASO). The European Institute for Gender Equality (EIGE) also contributed.

The coordination of this joint report was in the hands of the EASO. Covering the period from October 2012 to October 2014, the report focuses on the operational results achieved in the area of trafficking in human beings via multilateral cooperation among JHA agencies. This also includes the implementation of the 'EMPACT THB' project (the European Multidisciplinary Platform against Criminal Threats to address trafficking in human beings). Further, the report stresses relevant strategic activities, such as thematic expert meetings organised by EASO and Europol's and Eurojust's strategic project on trafficking in human beings.

The report has been annexed to the Commission's Midterm Report on the Implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. (EDB)

►eucrim ID=1404025

### Cybercrime

#### First Internet Organised Crime Threat Assessment Report

On 29 September 2014, the European Cybercrime Centre (EC3) at Europol presented its first Internet Organised Crime Threat Assessment Report (iOCTA). Contributions to the report were delivered by law enforcement authorities inside and outside the EU, partners in the private sector, and academia. It aims at informing decision makers at strategic, policy, and tactical levels about ongoing developments and emerg-

ing threats of cybercrime affecting governments, businesses, and citizens.

One of the most crucial conclusions of the report is the emergence of cybercrime as a service-based criminal industry. This refers to a wide range of commercial services facilitating many types of cybercrime, such as renting botnets, developing malware, and cracking passwords. Criminals procure such services from skilled experts in order to commit crimes themselves. The financial gains these experts offer help make cybercrime increasingly commercialised and increasingly sophisticated.

Relationships between cybercriminals do not correspond to the traditional modus operandi of an organised criminal group. Moreover, anonymisation techniques allow Internet users to communicate without the risk of being traced, which is legitimate but often abused by criminals for illicit online trade in drugs, weapons, and child sexual exploitation.

Child sexual exploitation online continues to be a major concern; therefore, part of the iOCTA report is dedicated to this type of crime and the investigative challenges involved.

The report also concludes that criminals predominantly operate from jurisdictions outside of the EU which, combined with outdated legal tools and insufficient response capacities, allows them to operate at minimum risk. (EDB)

►eucrim ID=1404026

#### Cooperation between Europol and European Banks in Fight against Cybercrime

On 22 September 2014, Europol's EC3 and the European Banking Federation signed a Memorandum of Understanding aiming to strengthen cooperation between law enforcement and the financial sector. The agreement allows for the exchange of expertise, statistics, and strategic information. EC3 will be able to send data on threats, enabling financial institutions to protect themselves. The financial institutions will, in turn, report on new malware and evolving means of

payment fraud, helping law enforcement to investigate and possibly arrest those responsible. (EDB)

► eucrim ID=1404027

### Joint Cybercrime Action Taskforce Launched

On 1 September 2014, the Joint Cybercrime Action Taskforce (J-CAT) was launched by EC3, the EU Cybercrime Taskforce, the US' FBI, and the UK's National Crime Agency (NCA). Under the direction of Andy Archibald, Deputy Director of the National Cyber Crime Unit of the NCA, J-CAT will be piloted for six months and hosted by EC3 in The Hague.

Besides EC3, the taskforce is composed of cyber liaison officers from specific Member States and third state law enforcement authorities. So far, Austria, Canada, Germany, France, Italy, the Netherlands, Spain, the UK, and the US are taking part. Australia and Colombia have also committed to join.

The aim of the taskforce is to coordinate international investigations and take strategic and operational action against key cybercrime threats and targets. With this purpose in mind, actors from the private sector as well as the Computer Emergency Response Teams for the EU institutions, bodies, and agencies (CERT-EU) will also take part in consultation meetings. (EDB)

► eucrim ID=1404028

## Illegal Migration

### Joint Operation 'Mos Maiorium' Collecting Data on Illegal Migration

From 13 to 26 October 2014, the Italian Presidency organised a joint operation called 'Mos Maiorium.' The operation, which acknowledged Frontex in its data collection and analysis role, aimed at identifying the main transit flows of illegal migrants through major land, sea, and air thoroughfares in the Member States. This includes data on the migratory pressure within each Member State, the main routes taken by traffickers of

human beings, and the main destinations and countries of origin and transit.

On 23 October 2014, the EP held a debate with the Italian Presidency, expressing their concerns on reconciling fundamental rights and the non-discrimination of migrants with the need to gather information in order to dismantle criminal networks profiting from human trafficking.

Frontex published a statement on its website explaining its role in analysing the data resulting from this operation. (EDB)

► eucrim ID=1404029

### Council Conclusions Regarding Migratory Flows

On 10 October 2014, the JHA Council presented conclusions on taking action to better manage migratory flows. A sustainable approach in response to migratory pressure has been introduced in a structural manner, based on three pillars:

- Cooperating with third states, with a specific focus on the fight against smugglers and traffickers in human beings;
- Strengthening external border management and Frontex' ability to respond to emerging risks and pressures in a flexible and timely manner;
- Actions in the EU to uphold and fully implement the Common European Asylum System, also through increased operational cooperation. This includes also taking action against smuggling networks that aim at circumventing the Eurodac database of fingerprints for identifying migrants.

On 4-5 December 2014, the JHA Council was briefed by the Commission and the European External Action Service (EEAS) on the implementation of the operational actions identified by the Task Force Mediterranean and on the follow-up to the Council conclusions above. The Commission stressed the need for an additional effort on the resettlement of refugees. It also announced that it is considering the possibility of presenting an outline for a pilot project on resettlement. Member States

had mixed reactions, with some of them stating that resettlement should be based on a voluntary approach. (EDB)

► eucrim ID=1404030

## Procedural Criminal Law

### Procedural Safeguards

#### Presumption of Innocence – General Approach

During the JHA Council of 4-5 December 2014, a general approach was reached on the 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. As part of the so-called roadmap for procedural rights that was attached to the Stockholm Programme of 2009, the proposed directive is the fourth measure to be implemented. The proposal aims to enhance the right to a fair trial in criminal proceedings by laying down minimum standards for aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.

After an orientation debate on provisions covering the burden of proof (held on 30 September 2014), the general approach reached in December constitutes the basis for negotiations with the EP in order to agree on and adopt the final text of the directive. (EDB)

► eucrim ID=1404031

### Data Protection

#### Progress on EU Data Protection Framework

The JHA Council of 4-5 December 2014 reached a general approach on specific aspects of the draft regulation establishing an EU legal framework for data protection. This partial agreement was reached on the understanding that nothing is agreed until everything is agreed, meaning that it is without prejudice to

any horizontal questions and that it does not mandate the presidency to engage in informal trilogues with the EP.

Aspects that were agreed on include provisions on data processing within the public sector and on specific data processing situations, such as processing for journalistic purposes or the purposes of academic, artistic, or literary expression.

A significant part of the Council's debate was dedicated to the so-called one-stop-shop mechanism. This addresses the question of companies that have branches in several Member States and are thus confronted with several data protection authorities as regards their activities as data controller or processor. By centralising the responsibility in the Member State in which the company has its main establishment, only one data protection authority would be supervising. On 28 November 2014, the Italian Presidency held an orientation debate on this subject and defined the building blocks for an overall architecture of the one-stop-shop mechanism. A majority of ministers endorsed this general architecture and concluded that further technical work will need to be done in the coming months on the basis of these elements. (EDB)

► eucrim ID=1404032

### New European Data Protection Supervisor

On 21 October 2014, after hearings in the Civil Liberties Committee, Giovanni Buttarelli was voted as the top person to take over the mandate of Peter Hustinx as EDPS. For the position of Assistant-EDPS, the EP voted for Wojciech Rafal Wiewiórowski.

On 27 November 2014, the Parliament's Conference of Presidents, consisting of President Schulz and leaders of the political groups, endorsed both appointments. On 4 December 2014, the decision of the EP and the Council nominating Buttarelli and Wiewiórowski was signed, and both candidates took up their functions on that day. (EDB)

► eucrim ID=1404033

## Cooperation

### Interpol and Kaspersky Lab Sign Cooperation Agreement

On 1 September 2014, Interpol signed a cooperation agreement with Kaspersky Lab, a Russian multi-national computer security company developing secure content and threat management systems. Under the new agreement, Kaspersky Lab will provide Interpol with threat intelligence as well as hardware and software to establish and run the newly cre-

ated center IGCI and its digital forensic laboratory (Interpol Global Complex for Innovation: a research and development facility for the identification of crimes and criminals, innovative training, operational support and partnerships, located in Singapore). Furthermore, Kaspersky Lab will provide several training sessions on malware analysis, digital forensic, and financial threat research to Interpol officers. A malware expert from Kaspersky Lab will be temporarily relocated to IGCI. (CR)

► eucrim ID=1404034



## Council of Europe\*

Reported by Dr. András Csúri

## Foundations

### Commissioner Releases Second Quarterly Activity Report of 2014

On 17 September 2014, Nils Muižnieks, CoE Commissioner for Human Rights, published his second quarterly activity report of 2014. The main focus of the Commissioner's work was on media freedom and children's rights, human rights that are not covered by dedicated monitoring mechanisms (treaty bodies or expert groups) within the CoE.

Missions and visits took place inter alia to Romania (human rights issues regarding persons with disabilities, the situation of abandoned and street children), to Malta (systematic nature and length of migrants' detention), to the Netherlands (automatic detention of asylum seekers from non-Schengen countries), and to the Ukraine (human rights and humanitarian issues related to

the ongoing crisis, necessary reforms in law enforcement, public prosecution and the judicial system).

► eucrim ID=1404035

## Specific Areas of Crime

### Corruption

#### GRECO: Fourth Round Evaluation Report on Slovakia

On 6 November 2014, GRECO published its Fourth Round Evaluation Report on the Slovak Republic. The fourth and latest evaluation round was launched in 2012 in order to assess how states address issues such as conflicts of interest or declarations of assets with regard to

\* If not stated otherwise, the news reported in the following sections cover the period September – December 2014.

MPs, judges, and prosecutors (for further reports, see eucrim 1/2014, p. 16; 2/2014, pp. 57-58 and 3/2014, p. 83.).

The report underscored substantial corruption risks and underlined the deficiencies in the implementation of regulations on conflicts of interest and the lack of efficient and enforceable codes of conduct. GRECO addressed 16 recommendations to the country.

As regards Members of Parliament, the report stressed inappropriate ‘behind-the-scenes’ decision-making practices, in particular the regulation of contracts with lobbyists and the acceptance of gifts and other advantages. GRECO recommends strengthening the mandate of the Parliamentary Committee on the Incompatibility of Functions and refinement of the financial disclosure rules in order to capture the deputies’ financial and business interests.

The low levels of public trust as well as the vulnerability, insufficient transparency, and accountability of the judiciary as regards undue political interference need to be addressed as well. It is necessary to bolster the independence of the Judicial Council and to improve and broaden asset disclosure by judges (including gifts above a certain threshold). In addition, unimpeded public access to such disclosures should be ensured.

► eucrim ID=1404036

### GRECO: Fourth Round Evaluation Report on Ireland

On 21 November 2014, GRECO published its Fourth Round Evaluation Report on Ireland. The report made 11 recommendations on the following grounds: There is growing concern about corruption in Ireland, not least as a result of the findings of the 2012 ‘Mahon Tribunal’ (payments to influence decision-making). While the legislative process in the Irish parliament is very transparent (enabling broad public access), the normative framework concerning the conduct of parliamentarians is highly complex (governed by a high range of standards and containing rules

Council of Europe Treaty	State	Date of ratification (r), signature (s) or acceptance of the provisional application (a)
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)	Kazakhstan	23 September 2014 (a)
Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167)	Spain	9 September 2014 (s)
Convention on Cybercrime (ETS No. 185)	Turkey Luxembourg	29 September 2014 (r) 16 October 2014 (r)
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)	Czech Republic Luxembourg Spain	7 August 2014 (r) 16 October 2014 (r) 18 December 2014 (r)
Protocol amending the European Convention on Suppression of Terrorism (ETS No. 190)	Spain	16 October 2014 (r)
Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191)	Malta Turkey	1 July 2014 (r) 16 December 2014 (r)
Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)	Lithuania	15 May 2014 (r)
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)	Sweden United Kingdom	23 June 2014 (r) 29 September 2014 (s)
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)	Czech Republic Latvia Georgia Monaco	17 July 2014 (s) 18 August 2014 (r) 23 September 2014 (r) 7 October 2014 (r)
Third Additional Protocol to the European Convention on Extradition (CETS No. 209)	United Kingdom Switzerland Bosnia and Herzegovina Spain	23 September 2014 (r) 23 October 2014 (s) 1 December 2014 (r) 18 December 2014 (r)
Convention on preventing and combating violence against women and domestic violence (CETS No. 210)	Georgia	19 June 2014 (s)
Fourth Additional Protocol to the European Convention on Extradition (CETS No. 212)	United Kingdom Switzerland Portugal	23 September 2014 (r) 23 October 2014 (s) 1 December 2014 (s)
Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 213)	Lithuania Norway Georgia Ukraine Azerbaijan Moldova	10 June 2014 (s) 17 June 2014 (r) 19 June 2014 (s) 20 June 2014 (s) 3 July 2014 (r) 14 August 2014 (r)
Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 214)	Lithuania Georgia Ukraine Romania Albania	10 June 2014 (s) 19 June 2014 (s) 20 June 2014 (s) 14 October 2014 (s) 24 November 2014 (s)

► eucrim ID=1404041

and norms that are not mutually compatible). Therefore, GRECO recommends establishing a new consolidated normative framework with more stringent rules on conflicts of interest and a uniform monitoring system that is independent from Parliament and its Members.

Though the independence and professionalism of the judiciary and the prosecution service is undisputed, the report encourages finalising the long delayed establishment of a judicial council. The judicial council could appoint the best candidates to become judges, establish an ethical code, and institutionalise judicial training. As regards complaints against prosecutors, the report urges the prosecution service to enhance its means to handle such complaints.

►eucrim ID=1404037

## Money Laundering

### Fourth Round Evaluation Report on Estonia

On 3 July 2014, MONEYVAL published its Fourth Round Evaluation Report on Estonia, calling first of all for the strengthening of the sanctioning framework with regard to breaching of AML/CFT requirements. The report states that, besides ML and drug-trafficking offences, confiscation measures are not used as a central tool with respect to other serious proceeds-generating offences. The ML offence is broadly in line with the international standards and there have been a number of convictions. The report, however, raised concerns about the level of proof required to establish the criminal origin of property in cases in which the underlying crime has not been identified. In addition, the financing of terrorism offence fails to cover all important elements required under international standards. The FIU is provided with wide-ranging powers, performs its analytical functions effectively, and generally exchanges information with its foreign counterparts.

Implementation of the relevant measures in the financial sector is adequate.

The non-financial sector also has a satisfactory level of understanding of preventive requirements, but there is room for improvement as regards implementation, especially within the real estate sector. Additionally, supervision of the non-financial sector is weak due to the lack of human resources. Finally, domestic cooperation is robust and the authorities routinely provide MLA.

►eucrim ID=1404038

### Report on Importance of Financial Inclusion Policies

On 17 November 2014, MONEYVAL published a report entitled Strengthening Financial Integrity through Financial Inclusion. As the title suggests, MONEYVAL encourages countries to develop financial inclusion policies and initiatives, which appear to constitute an important aspect in the fight against ML and terrorist financing. According to the report, financial inclusion potentially impacts two areas: the promotion of human rights (especially the right to financial services) and the protection of the rule of law through the prevention of greater use of informal and underground banking networks. Inter alia, the report identifies the following as potential barriers towards improving the level of financial inclusion:

- Financial illiteracy;
- Lack of experience with financial products;
- Lack of confidence in financial institutions.

In order to counter these barriers, the report points out several initiatives, such as awareness raising, the use of the post office network in rural communities, complaints procedures, and relaxation of AML and CTF requirements for low-risk customers.

MONEYVAL therefore encourages the states to develop financial inclusion policies and initiatives and to take into consideration financial inclusion in their

national risk assessments. MONEYVAL plans to repeat this exercise every two years and will publish a further update in 2016.

►eucrim ID=1404039

## Procedural Criminal Law

### CEPEJ

### Fifth Evaluation Report on European Judicial Systems

On 9 October 2014, CEPEJ published its fifth evaluation report on the main trends in 46 European judicial systems. The main findings – based on 2012 data – emerging from this report are as follows: In half of the Member States, the budget of the judiciary has remained unaffected by the economic crisis. In other states, however, the crisis has had a clear impact on human resources. There is a new balance in the funding of the public service of justice, with increasing participation of court users alongside the taxpayers. While France and Luxembourg are the only states with free access to courts, access to justice has generally improved.

All Member States now have legal aid mechanisms for both civil and criminal procedures, and more consideration is given to the needs of court users (information provided, compensation procedures, attention paid to victims). In terms of numbers, as a continuing trend, there are fewer courts in Europe with a stabilised but uneven number of judges. Judges' salaries are on the rise, and there is a trend – even if not yet significant – of increasing numbers of women within the judiciary. The courts are generally able to cope with the volume of cases without adding to their backlogs. There are fluctuations though, depending on the case categories involved. The difficulties in processing criminal cases are mainly at the level of the prosecution services.

►eucrim ID=1404040

# Better Regulation in European Criminal Law

## Assessing the Contribution of the European Parliament

Wouter van Ballegooij\*

The entry into force of the Lisbon Treaty on 1 December 2009 resulted in a number of important changes for the democratic accountability of European criminal law. Among them is the enhanced role of the European Parliament as regards the adoption of EU legislation in this area. This coincides with the Charter of Fundamental Rights of the European Union (EU Charter) achieving binding status.<sup>1</sup>

A new European Parliament was installed in July 2014, followed by the confirmation of the Commission presided over by Jean-Claude Juncker. Together with the Council, these European institutions now have the obligation to make a convincing case for European integration, by producing better regulation (meaning that it has added value), based on a holistic impact assessment – effective and of high quality – including in the area of European criminal law.<sup>2</sup> The work of the new Justice Commissioner is overseen by the First Vice President of the European Commission and the European Commissioner for the portfolio of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights (Mr. Frans Timmermans).

Looking back at experience gained by the European Parliament in the exercise of democratic scrutiny during the past five years, and taking into account the ambitions of the new Commission, this article addresses the question of to which extent the enhanced role of the European Parliament has led to better regulation in the area of European criminal law. It also contains a number of recommendations for the future.

### I. Impact of the Entry into Force of the Lisbon Treaty

Since the entry into force of the Lisbon Treaty, the provisions relating to judicial cooperation in criminal matters have been moved from the Treaty on the EU (TEU) to the Treaty on the Functioning of the EU (TFEU).<sup>3</sup> This has led to a significant enhancement of the role of the European Parliament, which was previously *de facto* excluded from negotiations on EU legislation in the above-mentioned area as it had only been formally consulted. As a general rule, the ordinary legislative procedure now applies to this area (Commission proposal, co-

decision with Parliament and qualified majority voting in the Council of Ministers). However, the Commission still has to share its right to legislative initiative, as one quarter of the Member States (currently seven) is still allowed to propose EU legislation in this area.<sup>4</sup> The uniform application of this legislation is also not guaranteed, as Member States have maintained possibilities for enhanced cooperation,<sup>5</sup> ‘opting in’<sup>6</sup> or staying out.<sup>7</sup>

The EU Charter now needs to be taken as the main point of reference in determining the level of protection required from EU legislation in this area. It should be noted that the EU Charter offers a minimum level of protection.<sup>8</sup> Member States may go beyond that, for instance, based on a higher level of protection provided for by their national constitution, though the Court of Justice has held that such a higher level of protection may only be called for to the extent that the primacy, unity, and effectiveness of EU law are not thereby compromised.<sup>9</sup> The interpretation of the principle of mutual recognition plays an important role in the context of primacy and fundamental rights protection in European criminal law, as the Treaty stipulates that it should be taken as a basis for judicial cooperation measures, on the one hand, whereas, on the other, the approximation of procedural rights is limited to the extent necessary to facilitate mutual recognition of judgments and judicial decisions.<sup>10</sup>

The Commission spells out on an annual basis the steps it takes to ensure that EU legislation complies with the EU Charter from the moment a proposal is developed and its impact is assessed to its discussion during negotiations between the EU institutions and its final adoption. A guidance document on how to take into account fundamental rights in Commission impact assessments was published in 2011.<sup>11</sup> In the same year, the Council adopted conclusions on the effective implementation of the Charter, in which it commits itself to ensuring the fundamental rights compliance of its initiatives and amendments to Commission proposals. Its working party on fundamental rights, citizens’ right and free movement of persons (FREMP) has since developed ‘guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council’s preparatory bodies.’<sup>12</sup>

## II. Parliament's Experience in the Exercise of Democratic Scrutiny

The European Parliament has taken up its role as ordinary legislator in the area of European criminal law in an evolving context within which there have been many open questions regarding the exact practical implications of the institutional and fundamental rights framework outlined above.<sup>13</sup>

In a resolution focussing on the development of an EU approach to criminal law, the need for Parliament to develop its own procedures in order to ensure a coherent criminal law system of the highest quality was acknowledged.<sup>14</sup> In scrutinizing legislative proposals, including their compliance with the EU Charter, Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) can rely on the Directorate for impact assessment and European added value (IMPA). It may also seek the opinion of EU agencies, such as the Fundamental Rights Agency,<sup>15</sup> Parliament's legal service, and academic experts. The Directive on Access to a Lawyer<sup>16</sup> and the Directive on the European Investigation Order<sup>17</sup> will be treated as examples of the way Parliament has managed to exercise democratic scrutiny so far.

### 1. Directive on Access to a Lawyer

The negotiations on the Directive on Access to a Lawyer proved to be particularly contentious. The Commission proposal<sup>18</sup> was not well received by a number of Member States, with a coalition of five of them (NL, BEL, FR, UK and IRL) claiming that this proposal went beyond European Court of Human Rights case law and that allowing early access to a lawyer would reduce the effectiveness of law enforcement and lead to disproportionate costs.<sup>19</sup> The Council's general approach contained a number of consequential adaptations of the text, in particular as regards the exclusion of 'minor offences' from the scope of the measure, the moment of access, the modalities of the lawyer's participation during questioning, derogations from access to a lawyer, lawyer-client confidentiality, and remedies against breaches of the right of access to lawyer.<sup>20</sup> Spain and Italy, however, joined the Commission in a joint declaration expressing their discontent with the level of fundamental rights protection achieved in the general approach.<sup>21</sup>

At the same time, the Council's general approach ushered in difficult negotiations with the European Parliament, which largely followed the Commission proposal. An exception was the mandatory exclusion of evidence obtained in violation of the right of access to a lawyer, taking into account the differences among Member State as regards rules and systems on the admissibility of evidence.

As overcoming the differences between Council and Parliament hinged upon the exact interpretation of decisions of the European Court of Human Rights (ECtHR), the Parliament sought the advice of the Secretariat of the Council of Europe.<sup>22</sup> This was perhaps a bit surprising given the existence of the Fundamental Rights Agency. However, this hesitation might be explained by the fact that this agency's mandate has so far not been aligned with the Lisbon Treaty to include the areas of police and judicial cooperation in criminal matters.<sup>23</sup> Parliament also relied on the work of academics, practitioners, and NGOs.<sup>24</sup> Their task was made more difficult by the fact that the 'four column document' comparing the positions of Commission, Council, and Parliament, including the latest compromise suggestions, was not publicly available, although the rapporteur provided feedback to the LIBE committee after the trialogues.<sup>25</sup> Another difficulty resulted from the relative speed with which trialogue negotiations, meetings between the rapporteur and shadow rapporteurs, feedback to the LIBE committee, and new compromise proposals on behalf of the Council followed each other. These are issues which are the topic of wider concern within the Parliament and those studying the way in which inter-institutional negotiations are conducted in practice.<sup>26</sup>

The Directive resulting from these negotiations<sup>27</sup> contains a number of points on which Parliament managed to defend its position, notably on avoiding derogations to lawyer-client confidentiality in the articles of the Directive (Parliament was strongly supported by the European Commission on this point, in line with the joint declaration attached to the general approach).<sup>28</sup> As regards other points, notably limiting derogations to the right of access to a lawyer, Parliament was forced to compromise.<sup>29</sup> The article on remedies has also been criticised for its weak language on excluding evidence obtained in absence of a lawyer, though it remains to be seen whether this may be compensated for through an interpretation in line with the accompanying recital in which ECtHR case law is explicitly cited.<sup>30</sup>

### 2. European Investigation Order

The Stockholm programme foresaw a measure on the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition as well as on common standards for gathering evidence in criminal matters in order to ensure its admissibility.<sup>31</sup> Before the Commission came up with legislative proposals, in 2010 a group of Member States decided to launch their own initiative for a Directive regarding the European Investigation Order.<sup>32</sup> This initiative was even accompanied by a detailed statement thoroughly justifying the need for the Direc-

tive from a law enforcement perspective, as well as an ‘impact analysis’,<sup>33</sup> also referring to fundamental rights. However that particular fundamental rights impact analysis was limited to the rights of freedom and security and good administration as well as a statement that an evidence collecting instrument with a global scope would ‘meet the concern of the citizens to be protected and to combat criminality.’<sup>34</sup> It notably did not assess the impact of the proposal on the rights to a fair trial and data protection as spelled out in the (subsequent) Commission guidance document.<sup>35</sup>

The Council reached a general approach in December 2011,<sup>36</sup> allowing negotiations with the European Parliament, whose mandate for negotiations was adopted in May 2012.<sup>37</sup> As with the Directive on Access to a Lawyer, the differences between the positions of Parliament and Council again mostly revolved around fundamental rights safeguards. Parliament’s position was inspired by the disproportionate use of the European Arrest Warrant, a matter on which it has more recently (unsuccessfully) called for legislative amendments.<sup>38</sup> The Commission, due to the fact that it had been sidelined by the Council, did not play an active role in the negotiations.<sup>39</sup> In this specific case, Parliament did ask for the opinion of the Fundamental Rights Agency, which helped set the parameters for a ground for non-execution based on fundamental rights,<sup>40</sup> facilitating an agreement between Parliament and Council.<sup>41</sup>

When comparing the Directive on the European Investigation Order with that on Access to a Lawyer, there is, however, a remarkable difference between them as regards the way in which they frame the relationship with fundamental rights protections offered by national law. Recital 54 to the Access to a Lawyer Directive maintains that ‘a higher level of protection [offered by national law] should not constitute an obstacle to the mutual recognition of judicial decisions.’<sup>42</sup> However, Recital 39 to the Directive on the EIO (the first mutual recognition measure adopted afterwards) argues that it ‘respects the fundamental rights and observes the principles recognised by Art. 6 of the TEU and in the Charter (...) and in the Member States’ constitutions in their respective fields of application.’<sup>43</sup>

Exactly how these recitals are to be reconciled is not clear. The EIO seems to leave too much scope for Member States to intervene based on national law, whereas the Access to a Lawyer directive seems to leave too little. It would have been better if Recital 54 would have more closely followed the (already contested) language of the Court by replacing ‘constitute an obstacle to mutual recognition of judicial decisions’ with ‘compromise the primacy, unity and effectiveness of EU law.’<sup>44</sup>

### III. Achieving Better Regulation in the Area of European Criminal Law

The fact that Member States are still allowed to come up with legislative proposals in the area of European criminal law may be seen as a serious problem, as their proposals do not go through a proper impact assessment procedure, including a fundamental rights impact assessment (though the revised Council guidelines might signal an improvement in this respect). Still, from a better regulation perspective, the preferred option would be for the Commission to exercise its right of legislative initiative. Parliament also cannot be expected to compensate for a Council general approach agreed below the minimum level of protection offered by the EU Charter. Council needs to be held to its commitment to comply with the Charter in its amendments to Commission proposals.

At the same time, the European Parliament and its LIBE committee can take further steps in ensuring better regulation by relying more on the expertise of EU agencies as well as seeing to it that negotiations are conducted with a maximum of transparency and at a pace that allows academics, practitioners, and NGOs to contribute to the quality and coherence of the resulting legislation. Ensuring compliance with fundamental rights is not just a matter of checking ECtHR case law. One also needs to take into account the legal traditions and systems of the Member States, including the way in which they guarantee fundamental rights as well as the specific supranational context in which European criminal law is developed.

\* The author would like to thank Professor André Klip, Professor Taru Spronken, and Pia Kohorst for their comments to earlier drafts of this article.

1 O.J. C 115 of 9 May 2008, p. 1. For a commentary on the EU Charter, see S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of Fundamental Rights*, Hart publishing, 2014.

2 The various Commission initiatives on better/smart regulation are available at: [http://ec.europa.eu/smart-regulation/index\\_en.htm](http://ec.europa.eu/smart-regulation/index_en.htm)

3 For an overview of the institutional framework after the entry into force of the Lisbon Treaty, see S. Peers, *EU Justice and Home Affairs Law*, 3rd edition, Oxford University Press (2011), pp. 41–107.

4 See Art. 76 TFEU.

5 Art. 82(3) TFEU; Peers (2011), p. 93.

6 Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, O.J. C 83 of 30 March 2010, p. 295.

7 Protocol (No. 22) on the position of Denmark, O.J. C 83 of 30 March 2010, p. 299.

8 See Art. 52(3) and 53 EU Charter.

9 Case C-399/11, *Melloni*, not yet published, § 59: It is settled case law that, by virtue of the principle of primacy of EU law, which is an essential feature of the EU legal order (see Opinion 1/91 [1991] ECR I-6079, § 21 and Opinion 1/09 [2011] ECR

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I-1137, § 65), rules of national law, even of a constitutional order, cannot be allowed to undermine the effectiveness of EU law on the territory of that State (see, to this effect, *inter alia*, Case 11/70, *Internationale Handelsgesellschaft* [1970] ECR 1125, § 3 and Case C-409/06, *Winner Wetten* [2010] ECR I-8015, § 61); It is true that Art. 53 of the Charter confirms that, where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity, and effectiveness of EU law are not thereby compromised.

10 See Art. 82 (1) and (2) (b) TFEU; For recent publications on mutual recognition more generally, see Ouwerkerk, *Quid Pro Quo? A comparative law perspective on the mutual recognition of judicial decisions in criminal matters*, Intersentia, 2011; A. Suominen, *The principle of mutual recognition in cooperation in criminal matters, a study of the principle in four framework decisions and in the implementation legislation in the Nordic Member States*, Intersentia, 2011; Janssens, *The principle of mutual recognition in EU law*, Oxford University Press, 2013.

11 2013 Report on the Application of the EU Charter of Fundamental Rights, COM (2014) 224 final; Commission staff working paper, Operational guidance on taking account of Fundamental Rights in Commission Impact Assessments, SEC (2011) 567.

12 Council document 13390/14, 29 September 2014.

13 For a more general assessment, see Carrera, Hernanz and Parkin, *The 'Lisbonisation' of the European Parliament, Assessing progress, shortcomings and challenges for democratic accountability in the area of freedom, security and justice*, CEPS Paper in Liberty and Security in European No. 58, September 2013.

14 European Parliament resolution of 22 May 2012 on an EU approach to criminal law, P7\_TA(2012)0208.

15 Council document 14449/09, 16 October 2009.

16 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. L 294/1 of 6 November 2013.

17 Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, O.J. L 130 of 1 May 2014, p. 1.

18 COM (2011) 0326 final, 8 June 2011.

19 Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest – Note by Belgium / France / Ireland / the Netherlands / the United Kingdom, Council document 14495/11 of 22 September 2011.

20 Council document 10467/12, available at <http://register.consilium.europa.eu/pdf/en/12/st10/st10467.en12.pdf>.

21 Council document 10908/12, p. 3: 'The Commission, Spain and Italy note that in the course of the negotiations in the Council good progress has been made towards strengthening procedural rights, notably on the access to a lawyer in criminal proceedings in the European Union. The draft Directive as it currently stands still does not satisfy all our concerns as far as protection of fundamental rights and procedural guarantees is concerned. We notably continue to have some important concerns about the derogations included in the current compromise text, including to the principle of confidentiality of the communication between the lawyer and the suspect or accused person, which is a key pillar of the fundamental rights of the person concerned. Our objective is to achieve a high level of protection of fundamental rights on the basis of the standards set out in the Charter of Fundamental Rights. As a matter of principle the application of derogations should be subject

to law and judicial control. Further, as regards minor offences, we believe that exclusions from the scope should be limited to those which are duly and objectively justified. However, we believe that time is now ripe for starting negotiations with the European Parliament on the draft Directive and we will therefore support the Presidency in carrying on negotiations with the European Parliament on these issues, taking full account of our remaining concerns.'

22 Council of Europe, Opinion of the Secretariat on the Commission's proposal for a Directive of the European Parliament and of the Council on 'the right to access to a lawyer in criminal proceedings and on the right to communicate upon arrest', Strasbourg, 9 November 2011; Council of Europe, Opinion of the Secretariat on the Commission's proposal for a Directive of the European Parliament and of the Council on 'the right to access to a lawyer in criminal proceedings and on the right to communicate upon arrest', Strasbourg, 20 September 2012.

23 Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, O.J. L 53, 22 February 2007, pp. 1–14.

24 Notably Justice, the Open Society Institute, Council of Bars and Law Societies of Europe (CCBE), the European Criminal Bar Association (ECBA), the Meijers Committee and Fair Trials International; Joint NGO briefing on the Directive on the right of access to a lawyer in criminal proceedings and the right to inform a third party upon deprivation of liberty, 15 April 2013; T. Spronken, 'The Dutch exception', *Nederlands Juristenblad*, 2012, 37.

25 See Rule 73 of the Rules of Procedure of the European Parliament and Annex XX containing a Code of conduct for negotiating in the context of the ordinary legislative procedures.

26 T. Bunyan, Secret dialogues and the democratic deficit, *Statewatch viewpoint*, September 2007.

27 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. L 294/1 of 6 November 2013.

28 Directive 2013/48/EU, Art. 4.

29 Directive 2013/48/EU, Arts. 3(5) and 3(6), Recitals 31, 32.

30 Directive 2013/48/EU, Art. 12, Recital 50; Cras, *eu crim* 1/2014, p. 40

31 Stockholm programme, Council doc 14449/09, 16 October 2009; Action plan implementing the Stockholm programme, COM (2010) 0171 final, 20 April 2010.

32 Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia, and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters, Council document 9288/10; F. Zimmermann, S. Glaser, A. Motz, 'Mutual recognition and its implications for the gathering of evidence in criminal proceedings: a critical analysis of the initiative for a European Investigation Order', *European Criminal Law Review*, 2011, pp. 56-84; D. Sawyers, 'The European Investigation Order, Travelling without a roadmap', CEPS Paper in Liberty and Security in Europe, June 2011, available at: <http://www.ceps.eu/book/european-investigation-order-travelling-without%E2%80%99roadmap%E2%80%99>.

33 Council document 9288/10, ADD 2.

34 Council document 9288/10, ADD 2, p. 33.

35 Report from the Commission to the European Parliament, the Council, the European economic and social committee, and the Committee of the Regions, 2013 Report on the application of the EU Charter of Fundamental Rights, COM (2014) 224 final; Commission staff working paper, Operational guidance on taking account of Fundamental Rights in Commission Impact Assessments, SEC (2011) 567.

36 Council document No. 18225/1/11, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2018225%202011%20REV%201>.

37 Available at <http://www.europarl.europa.eu/document/activities/cont/201205/20120523ATT45657/20120523ATT45657EN.pdf>.

38 European Parliament resolution of 27 February 2014, with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109 (INL)), P7\_TA-PROV (2014); Follow-up to the European Parliament resolution of 27 February 2014, with recommendations to the Commission on the review of the European Arrest Warrant, received by the European Parliament on 24 July 2014.

39 Commission comments on the EIO Initiative, COM (2010) 5789, <http://register.consilium.europa.eu/pdf/en/10/st13/st13446.en10.pdf>.

40 Available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1490-FRA-Opinion-EIO-Directive-15022011.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1490-FRA-Opinion-EIO-Directive-15022011.pdf).

41 Directive 2014/41/EU of 3 April 2014 regarding the European investigation order in criminal matters was published on 1 May 2014 (O.J. L 30/1 of 1 May 2014).

42 Directive 2013/48/EU, Recital 54: 'This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the case-law of the Court of Justice and of the European Court of Human Rights.'

43 Directive 2014/41/EU, Recital 39: 'This Directive respects the fundamental

rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.'

44 Case C-399/11, *Melloni*, not yet published, paragraph 59.

# European Perspectives on Rights for Victims of Crime

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## I. Introduction: The EU Framework on Victims' Rights

Unlike other initiatives seeking to consolidate the area of 'freedom, security and justice,' it would be justified to consider the EU action on victims' rights as a clear success story. Improving the rights, support, protection, and participation of victims in criminal proceedings, alongside capturing and punishing the offenders, has been a focus of Union policy during the past few years, especially since the need for action in this field had been identified as a strategic priority by the Commission in the Action Plan implementing the Stockholm Programme of the European Council.<sup>1</sup> The Commission's concrete proposals were presented in a Communication issued on 18th May 2011 under the title 'Strengthening Victims' Rights in the EU,' which set out the goals that should be pursued in order to reinforce existing national measures and to ensure that victims of crime (including victims of gender-based violence, trafficking in human beings, child sexual exploitation and abuse, and terrorism) experience a minimum range of rights, on a non-discriminatory basis, across the EU.<sup>2</sup> This package of proposals included a Directive on the position of crime victims in criminal proceedings as well as a new mutual recognition mechanism aiming to afford victims, or potential victims (e.g., of domestic violence), who benefited from a protection measure in their Member State of residence, the same protection when crossing the borders of another Member State.

The legislative process in respect of the measures proposed in the above 'Victims Package' has already been completed. The most essential element of this package is without doubt the landmark Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, which was adopted in October 2012,<sup>3</sup> replacing the Framework Decision on the same subject, adopted back in 2001.<sup>4</sup> This far-reaching instrument aims to ensure that victims are recognized and treated with dignity and respect, in an efficient, professional, and individual manner, and that the special needs of vulnerable victims are properly addressed. More specifically, it aims to ensure that victims receive the support they need to recover and overcome emotional, practical, administrative, and legal difficulties; that they can participate in proceedings and receive and understand relevant information; and that they are protected throughout criminal investigations and trials.

With this Directive in place, and taking into account the combined subsidiary effect of the 2011 Directive on the European Protection Order,<sup>5</sup> the 2011 special Directives on human trafficking<sup>6</sup> and child sexual exploitation,<sup>7</sup> the 2013 Regulation on the mutual recognition of protection measures in civil matters,<sup>8</sup> the older 2002 Framework Decision on combating terrorism,<sup>9</sup> and the 2004 Directive on the compensation of crime victims,<sup>10</sup> there is now a comprehensive legislative basis at the EU level to ensure that victims of all types of crime, whatever

their nationality or country of residence, and wherever in the EU the crime takes place, receive proper procedural rights, support, and protection in the criminal justice systems of the Member States. In short, victims' rights legislation at the EU level has never been stronger.

## II. The Way Forward: Three Perspectives on the European Victim Protection Regime

Despite this success, it is not yet time to rest on one's laurels. The improved EU legal framework notwithstanding, in many aspects, the needs of victims in national criminal proceedings have still not been sufficiently addressed in practice, and the level of victims' rights continues to differ significantly across Member States. Accordingly, there is much to be done, especially on the national level. We recommend, more specifically, that three perspectives on the short-term development of victim protection regimes across Europe be followed concurrently in order to achieve the intended results: a) the common perspective of all EU Member States, which calls for the timely creation of coherent national victim protection schemes; b) the separate perspective of each individual Member State, which involves promoting focused action, namely the one best suited to addressing country-specific needs and particularities; and c) the established, general perspective followed by the Greek EU Presidency, which favours a balanced and measured approach, affording comparable attention to both the rights of the victims of crime and the rights of (vulnerable) persons – suspected or accused – in criminal proceedings.

### 1. The common perspective: Creating coherent national victim protection schemes

In several countries across the EU, national victim protection measures are not based on a general or overarching scheme. Instead, there sometimes exist fragmented programs and initiatives of limited scope, inadequate pieces of legislation, and incoherent practices. Accordingly, even the implementation of the standards laid down in the old 2001 Council Framework Decision, which called for addressing victims' needs 'in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation,'<sup>11</sup> cannot be considered satisfactory. To name but only a few examples,<sup>12</sup> in eight Member States, there appear to be no generic victim support services available (i.e., services aimed at all rather than specific categories of victims), and in further two States, the main generic victim support organisation does not maintain contact with its counterparts in other countries. In the majority of Member States, there is no special unit or service providing support to victims of crime at trial, and in several States, victims

do not have the right to be accompanied by support persons during trial. Police are legally obliged to provide information concerning both victim support services and compensation in just over half of Member States. In some States, there is still no legal obligation to provide information concerning victims' rights and their role in criminal proceedings. Furthermore, in practice, there are still considerable gaps, due to the non-prioritisation and the lack of knowledge of victim's needs.

This situation can only be addressed through the concerted action of national authorities, aiming at the creation of coherent victim protection schemes, as set out in the EU legislation and especially in the Victim's Directive. It should be clear that the demands for a modern, coherent legal framework on victims' rights are high. As a rule, extensive national coordination among competent authorities by means of the preparation of effective implementing measures will be needed. Therefore, the Greek Presidency urged Member States to take immediate action, if they have not yet done so, to ensure the proper and timely transposition and implementation of EU instruments into national laws and policies.

The key word here is 'timely.' The EU legislation on victims must be adopted and the relevant rights made fully available to victims by the transposition deadlines in 2015. As of January 2015, the two protection measures (the Directive on the European Protection Order and the Regulation on the mutual recognition of protection measures in civil matters) should be fully operational in all Member States. By 16 November 2015, the Victims' Directive should be transposed into national laws, regulations, and administrative provisions. Indeed, despite the difficult financial and budgetary reality in most EU countries, there appears to be adequate political momentum to act on these obligations and raise the standards of victim protection. Thus, it appears there is a good chance that the intended goal shall be achieved sooner rather than later. To a large extent, this will be due to the efforts of the Commission, which released a valuable Guidance Document related to the transposition and implementation of the Directive. This Guidance Document was launched on the occasion of the European Day for victims of crime (22 February 2014) and presented at the workshop on the Victims' Directive held in Brussels on 28 March 2014.

In this context, one should bear in mind not only that the Victims' Directive is more ambitious and far-reaching than the Framework Decision of 2001 it replaced, but also that there are more mechanisms to ensure its effective and timely enforcement: The Directive has both primacy over conflicting national law and 'direct effect,' in the sense that, once the time limit given for its transposition expires, victims of crime can immediately invoke its provisions to assert their rights before national courts. Moreover, the Commission can be expected to initiate in-

fringement proceedings against Member States that will not have fulfilled their obligations from the instrument by the set deadline or that will have applied it poorly or incorrectly. Non-governmental organisations active in the field of victim protection and support will have the possibility to issue complaints to the Commission, pressing for the effective implementation of the Directive, as well as increased opportunities to bring corresponding proceedings before national courts.<sup>13</sup>

## 2. The individual perspective: Promoting focused action

While all Member States must work towards establishing coherent victim protection schemes, each one of them should assess the specific needs arising within its own, individual criminal justice system and determine the areas in which focused action, above and beyond the minimum standards of the Victims Directive, is necessary. This would lead to measures more closely linked to national conditions and surroundings and would be more likely to effect a tangible improvement of the situation of victims in the country involved. For example, some States may consider as a priority area the provision of support services to victims; or the individual assessment of victim's needs; or measures for the benefit of specific groups of victims of crime (e.g., victims of gender-based violence, hate crime, and homophobic crime).

In Greece, one important area of focus, at least at a theoretical level, is 'restorative justice', an idea which can be traced as far back as ancient Greek philosophy and Aristotle's 'Nicomachean Ethics' ('diorthotikon' or 'epanorthotikon dikaiōn').<sup>14</sup> Restorative justice is a highly dynamic concept in criminal justice policies and programmes, which goes beyond purely financial compensation, focusing on victim-offender mediation, the repairing of the harm done by the crime, and the recovery of the victim as a result of a voluntary and organised process (e.g., in cases of juvenile delinquency, domestic violence, financial offences, minor assaults, injuries by negligence, etc.).<sup>15</sup> As a cost-effective alternative to, or in combination with the formal judicial process, it aims to restore victims to the position they were in before the crime, by giving them, if they so wish, an opportunity to confront their offenders face to face. It also gives the offenders the opportunity to take responsibility for their actions.

The Victims Directive requires in Art. 1 that victims 'are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services,' and contains in Art. 2 par. 1(d) a definition of restorative justice as 'any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of

matters arising from the criminal offence through the help of an impartial third party.' Moreover, Art. 12 sets out the fundamental safeguards that need to be applied when providing restorative justice services, in order to prevent secondary and repeat victimisation, intimidation, and retaliation. Unlike Art. 10 of the 2001 Framework Decision on the standing of victims in criminal proceedings, the Directive does not include an obligation for Member States to 'seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure,' nor does it in any way entail a requirement for Member States to introduce restorative justice services if they do not already have such a mechanism in place. Indeed, even under the previous regime, the Court of Justice of the EU, in its rulings in the *Eredics & Sári* and *Gueye/Salmerón Sanchez* cases, had confirmed that the choice of the offences for which mediation is to be available is for the Member States to determine, on criminal justice policy grounds, and that, consequently, Member States are not required to make possible recourse to mediation/restorative justice for all offences.<sup>16</sup> Nevertheless, most Member States appear to have legislation making some form of criminal mediation or restorative conferencing available, especially for less severe cases, such as misdemeanours and petty offences.<sup>17</sup>

A focused approach to restorative justice would, first of all, promote the introduction, development, and coordination of restorative measures, taking into account the basic principles enshrined in the provisions of the Victims Directive:<sup>18</sup>

a) Restorative justice services should serve, as a primary consideration, the interests of the victims, taking into account their vulnerability. The relevant measures should be applied only when the victims voluntarily participate in the process. The victims should be able to withdraw their consent at any stage of the process, without this affecting their status within the criminal justice system. Equally, neither the offender nor the victim should be coerced to accept an outcome. For example, the opportunity offered by Greek law to the perpetrator of a misdemeanour against property to pay the value of the capital as well as the default interest and in this way be exempted from penalty (Arts. 384 par. 3 and 406A par. 3 of the Greek Penal Code), even if the victim has not been consulted, cannot be considered an example of restorative justice.<sup>19</sup>

b) The victims, as well as the offenders, should be fully informed on the elements and guiding principles of the restorative justice process, their rights, and the possible consequences of their participation as well as the procedures for supervising and enforcing any potential agreement. Throughout the entire process, they should be allowed to consult or be supported by legal counsel and have access to a translator or interpreter, when necessary. In cases involving children, in their best interest, it should be provided for that their parents or legal custodians be involved.

c) The offender should have acknowledged the basic facts of the case. Nonetheless, this acknowledgment and his/her voluntary participation should not automatically be considered an admission of guilt for the purposes of the traditional criminal justice process. The restorative justice process must also safeguard the fundamental procedural rights of the offender.

d) Information disclosed during restorative justice processes should, in principle, remain confidential and not be subsequently used, unless otherwise agreed by the parties or as required by international human rights legislation or by national law, due to an overriding public interest.

e) The referral of cases to restorative justice services should be based on a well organized and effective system providing guidelines on the conditions for such referral, taking into consideration factors, such as the nature and severity of the crime, the ensuing degree of trauma for the victim, and the admission of responsibility by the offender. In addition, the maturity and intellectual capacity of the victim, which could influence his/her ability to make an informed choice or could prejudice a positive outcome of the restorative process, should be taken into account.

Above and beyond these basic principles, which form part of the obligations of all State parties, there is much that can be done on a national level to further enhance the safeguards and ensure the quality of restorative justice procedures. In addition to promoting targeted national restorative justice programmes, with the cooperation of all relevant stakeholders, including NGOs and academia, and to creating centralized institutions for the provision or coordination of restorative practices, the following measures could be envisaged as elements of a plan for focused action:<sup>20</sup>

a) The collection of specific factual and statistical data on the law and practice of restorative justice, also from a comparative perspective, that will directly reflect the needs of victims as well as those of decision makers and practitioners involved in providing restorative justice services.

b) The analysis of the information collected and use of the above data to develop special provisions for particular groups of victims or offenders (e.g., juveniles and young offenders), as well as evidence-based, practical guidelines for providing restorative justice, with the aim of improving victims' safeguards.

c) The development of training programmes and accreditation materials for professionals in authorities and agencies involved in restorative practices (e.g., the police, prosecutors, judges, victim support service providers, prison and probation staff) as well as the introduction of codes of conduct, with the aim of raising awareness about the competences of said professionals and improving their skills and knowledge on how they treat and interact with victims.

### 3. The perspective followed by the Greek EU Presidency: Upholding a balanced and measured approach

Finally, the enhancement of victims' rights, support and protection should be carried out by means of a balanced and measured approach. There are still voices in Europe that over-stress the elements of antagonism between victims and offenders. According to this view – which has also gained a foothold in public opinion –, the movement to emancipate the victim in the criminal process and make certain he/she is treated in a respectful, supportive, and non-discriminatory manner may necessitate a more reserved approach to the legal status of the person suspected or accused of having committed the crime. In other words, the development of victims' rights is intertwined with the acknowledgment that too much attention has been paid to the legal rights of defendants. In order to restore a reasonable balance, we may need to shift our basic concern in the direction of the victim, at the expense of the offender and possibly the privileges he/she has so far enjoyed. In this context, the question is sometimes raised as to 'whether prioritizing the issue of the protection of victims might render the effort to forge common minimum standards for the rights of the defence less effective.'<sup>21</sup>

We do not quite share this concern. As most European victim support organizations would agree, one can certainly be in favour of victims' rights without being against offenders' rights. Efforts to guarantee the participation and protection of victims in criminal proceedings are not intended to jeopardise the traditional legal status of the accused.<sup>22</sup> Even if the existence of elements of conflict cannot be denied, victim protection and support should not in principle be seen as a 'zero-sum game.'<sup>23</sup> The emancipation of the victim in the criminal justice system does not entail that offenders' rights are taken lightly. Quite the contrary: A system that pays attention to fair trial rights and especially to the rights of vulnerable offenders (such as children and persons with serious psychological, intellectual, physical, or sensory impairments) may well lead to lower rates of recidivism and thus less victimization in the future.

Accordingly, the Stockholm Programme has also placed a strong focus on strengthening of the rights of suspected or accused persons in criminal proceedings, resulting so far in the 2010 Directive on interpretation and translation,<sup>24</sup> the 2012 Directive on the right to information,<sup>25</sup> and the 2013 Directive on access to a lawyer.<sup>26</sup> As noted by the Commission, the EU's action in this field intends to 'raise the standards of fundamental rights for everyone affected by criminal proceedings – whether victim, accused or detainee, whilst ensuring that any limitation of these rights occurs only where necessary and proportionate.'<sup>27</sup>

Following this general perspective, at the beginning of 2014 the Greek Presidency likewise selected and tabled for discussion a Commission Proposal for a ‘Directive on procedural safeguards for children suspected or accused in criminal proceedings,’ aiming at ensuring that suspects or accused who are children are recognized and treated with respect, dignity, and professionalism, whenever they are in contact with the competent authority acting within the framework of criminal proceedings.<sup>28</sup> This should also facilitate the reintegration of children into society after they have been confronted with the criminal justice system. The Proposal was presented together with a Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings and vulnerable persons subject to European arrest warrant proceedings.<sup>29</sup> Already, at the JHA Council of 6 June 2014, a general approach was reached on the text of the proposed Directive.

### III. A Look into the Future

We believe that advancing victim protection under the three perspectives described above, will lend substance to the achievements already made, both at the national and EU lev-

els. Looking to the future, one could perhaps envisage further legislative measures, such as:

- A revised, improved version of Council Directive 2004/80/EC relating to compensation to crime victims that would simplify existing procedures for the victim to request compensation, as contemplated by the Commission and the Council;<sup>30</sup>
- An amendment to the Rome II Regulation<sup>31</sup> that would address the issue of the law applicable to limitation periods in road traffic cases across borders, as contemplated by the Commission;<sup>32</sup>
- A new Directive on restorative justice in criminal matters that would define the basic rules under which restorative justice procedures should be implemented in the EU Member States, as recently proposed by a group of Greek academics.<sup>33</sup>

Further legislative action may also be needed in relation to specific categories of victims, such as victims of terrorism, organised crime, and gender-based violence, with a view to improving their situation. At this point, however, our short-term priority should be to consolidate what has already been achieved, by creating coherent national victim protection schemes, by promoting focused action for the benefit of victims, and by upholding balanced and measured criminal justice policies.

\* Revised version of a speech delivered on behalf of the Greek EU Presidency for the opening of the ‘Victim Support Europe’ Annual Conference, Warsaw, Poland, 15 May 2014.

1 COM(2010) 171 final. See also The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, O.J. C 115, 4 May 2010, § 2.3.4.; and Commission Work Programme 2011, COM(2010) 623 final, § 3.

2 COM(2011) 274 final. See also Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (the Budapest Roadmap), 3096th Justice and Home Affairs Council meeting, Luxembourg, 9 and 10 June 2011, O.J. C 187, 28 June 2011, p. 1. On the status of victims in EU criminal law up to this point, see Fichera, *eucri* 2011, p. 79ff.

3 O.J. L 315, 14 November 2012, p. 57.

4 Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, O.J. L 82, 22 March 2001, p. 1. See Groenhuijsen/Pemberton, The EU Framework Decision for victims of crime: Does hard law make a difference? *European Journal of Crime, Criminal Law & Criminal Justice* 17 (2009), p. 43ff.; Wieczorek, A needed balance between security, liberty and justice. Positive signals arrive from the field of victims’ rights, *European Criminal Law Review* 2 (2012), p. 141ff.

5 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, O.J. L 338, 21 December 2011, p. 2. In relation to this initiative, see Jiménez Becerril/Romero Lopez, The European Protection Order, *eucri* 2011, p. 76ff.

6 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, O.J. L 101, 15 April 2011, p. 1.

7 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse of children and child pornography,

and replacing Council Framework Decision 2004/68/JHA, O.J. L 335, 17 December 2011, p. 1.

8 Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, O.J. L 181, 29 June 2013, p. 4.

9 Council Framework Decision 2002/475/JHA on combating terrorism, O.J. L 164, 22 June 2002, p. 3.

10 Council Directive 2004/80/EC relating to compensation to crime victims, O.J. L 261, 6 August 2004, p. 15.

11 Preamble, § 5.

12 Findings from the FRA’s project on victim support services and victims’ rights in the EU, presented at the experts’ workshop on the Victims’ Directive which took place on 28 March 2014 in Brussels.

13 Peers, Guidelines for transposition – The EU Directive on Victims’ Rights (2012/29/EU) and homophobic and transphobic crime victims, *ILGA Europe*, December 2013, p. 4.

14 Book V, 5. See Artinopoulou, Restorative Justice in Greece, in: Pitsela/Syme-

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onidou-Kastanidou (eds.), *Restorative Justice in Criminal Matters – Comparative Research in 11 European Countries*, 2013, pp. 101–102, as well as Patsourakou, *Die Stellung des Verletzten im Strafrechtssystem*, 1994, p. 170.

15 See already UN ECOSOC, Resolution 1999/26, Development and implementation of mediation and restorative justice measures in criminal justice, adopted on 28 July 1999; Council of Europe Recommendation R(99) 19 on Mediation in Penal Matters, adopted by the Committee of Ministers on 15 September 1999; UN ECOSOC Resolution 2000/14, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002, U.N. Doc. E/2000/INF/2/Add.2, § 35. From among the vast literature, see von Hirsch/Roberts/Bottoms/Roach/Schiff (eds.), *Restorative Justice & Criminal Justice*, 2003.

16 CJEU Case C-205/09 *Eredics & Sápi*, Judgement of 21 October 2009, § 37ff; CJEU Joined Cases C-483/09 *Gueye and C-1/10 Salmerón Sánchez*, Judgement of 15 September 2011, § 72ff.

17 See Commission Report pursuant to Art. 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), 20 April 2009, COM(2009) 166 final, p. 8; see especially APAV (Portuguese Association for Victim Support), on behalf of Victim Support Europe, 'Victims in Europe' – Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union, 2009, p. 112ff. See also Pitsela/Symeonidou-Kastanidou/Antonopoulou/Karagiannidis, Towards a new European perspective for restorative justice in criminal matters: Comparative analysis and proposals, in: Pitsela/Symeonidou-Kastanidou (eds.), op. cit. (fn. 14), p. 311, p. 319.

18 *Ibid.*, p. 376ff.

19 *Ibid.*, p. 385.

20 See the project entitled 'Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals' (RJE), <http://www.rj4all.info>, as well as the recommendations of Artinopoulou, op. cit. (fn. 14), p. 121.

21 Fichera, op. cit. (fn. 2), p. 79.

22 As noted in § 12 of the Preamble to the Victims Directive: 'The rights set out in this Directive are without prejudice to the rights of the offender.'

23 See Groenhuijsen, Conflicts of victims' interests and offenders' rights in the

criminal justice system – a European perspective, in: Sumner/Israel/O'Connell/Scarre (eds.), *International Victimology: Selected papers from the 8th International Symposium held in Adelaide*, 21–26 Aug. 1994, p. 163, 171ff., 175, who argues that possible conflicts between victims' and offenders' rights could be addressed by considering as a 'basic line of demarcation' Art. 6 of the ECHR and by granting the courts the power to make, in some cases, a discretionary decision giving priority to one of the interests in question.

24 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, O.J. L 280, 26 October 2010, p. 1.

25 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, O.J. L 142, 1 June 2012, p. 1.

26 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings as well as on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, O.J. L 294, 6 November 2013, p. 1.

27 Commission's Communication of 18 May 2011, 'Strengthening Victims' Rights in the EU,' COM(2011) 274 final, pp. 3–4.

28 COM(2013) 822 final.

29 O.J. C 378, 24 December 2013, p. 8.

30 See Commission's Communication of 18th May 2011, 'Strengthening Victims' Rights in the EU,' COM(2011) 274 final, p. 9; and Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (the Budapest Roadmap), op. cit. (fn. 2), Preamble § 8 and Annex, Measure D.

31 Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), O.J. L 199, 31 July 2007, p. 40.

32 See Commission Communication of 18th May 2011, 'Strengthening Victims' Rights in the EU,' COM(2011) 274 final, p. 9.

33 Pitsela/Symeonidou-Kastanidou/Antonopoulou/Karagiannidis, op. cit. (fn. 17), p. 381ff.

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