



Council of the
European Union

**Brussels, 14 June 2024
(OR. en)**

10984/24

**JAI 993
COPEN 312
DROIPEN 176
CATS 58
FREMP 298**

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10000/24
Subject:	Council conclusions on ‘The future of EU criminal law: recommendations on the way forward’

At its meeting on 13-14 June 2024, the Council (Justice and Home Affairs) approved a set of Council conclusions on ‘The future of EU criminal law: recommendations on the way forward’. The text as approved by the Council is set out in the Annex.

Council conclusions**‘The future of EU criminal law: recommendations on the way forward’****Introduction**

- a) The development of the criminal law of the European Union and the principles governing it have been discussed for several decades, both within the institutions and among academic experts¹. The discussions gained momentum during the run-up to the entry into force of the Lisbon Treaty, which introduced new legal bases for EU criminal law. A set of dedicated Council conclusions on model provisions, guiding the Council’s criminal law deliberations, was approved on 27 November 2009², and the Commission communication³ ‘Toward an EU criminal policy: Ensuring the effective implementation of EU policies through criminal law’ followed in 2011. The European Parliament resolution of 22 May 2012 on an EU approach to criminal law was adopted in 2012⁴.
- b) A large number of EU instruments in the area of criminal justice have been adopted since then on the legal bases of Articles 82 and 83 TFEU introduced by the Lisbon Treaty. These instruments have for example addressed particularly serious crime with a cross-border dimension (Article 83(1) TFEU), introduced measures to ensure the effective implementation of EU policies (Article 83(2) TFEU) and created criminal procedural law (Article 82 TFEU). In addition, the Eurojust Regulation was adopted on the basis of Article 85 TFEU and the ground-breaking European Public Prosecutor’s Office was set up on the basis of Article 86 TFEU.

¹ See, for example, the Manifesto on EU Criminal Policy of 2009 (www.crimpol.eu) and the Manifesto on European Criminal Procedure Law of 2013 (www.zis-online.com).

² ST 16542/2/09.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0573>

⁴ OJ C 264 E, 13.09.2013, p. 7.

- c) The Council and the Parliament, as co-legislators, and the Commission have throughout this time strived to ensure the highest possible quality of criminal legislation. In this regard, the following considerations have appeared particularly important in relation to substantive criminal law:
- that the EU legislator should ensure that the commonly agreed principles of criminal law, such as the principle of legality and the principle that criminal law should only be used as a last resort (*ultima ratio*), and the protection of fundamental rights in general, are fully respected,
 - that the internal consistency of EU criminal law *acquis* is safeguarded,
 - that EU criminal law instruments respect the different legal systems and traditions of the Member States and give them the necessary flexibility to implement them in a way that does not interfere with the system and consistency of national criminal laws.

In relation to criminal procedural law, the key cross-cutting interests have been to ensure that EU instruments facilitate judicial cooperation in criminal matters, while respecting the different legal systems and traditions of the Member States, and that they are consistent with the obligations of Member States under international law, including the relevant conventions of the Council of Europe.

- d) It has become evident, however, that the high number of proposals including criminal law elements, in various policy areas, makes it challenging for the co-legislators to ensure that all these aspects are systematically and fully taken into account.
- e) In this transition between two legislative cycles, it appears timely to address the future of EU criminal law in a cross-cutting manner, so that the quality of criminal legislation can be enhanced.

Conclusions of the Council

General considerations

1. The European Union has an obligation to ensure that its actions in the area of criminal law respect the specific principles governing this area, such as the legality principle and the principle of *ultima ratio*, as well as the general principles of conferral of competence, subsidiarity and proportionality as set out in Article 4 TFEU and in Articles 4 and 5 TEU.
2. In particular, criminal law instruments and provisions should only be adopted when necessary to achieve the objective behind those instruments and provisions, when that objective cannot be achieved through other means and when there is a clear legal basis for them.
3. In accordance with the Interinstitutional Agreement on Better Law-Making⁵, the need for and appropriateness of any criminal law instrument or provision needs to be based on strong evidence. As a general rule, this requires in-depth impact assessments.
4. EU criminal law instruments and provisions, and in particular ~~core~~ provisions on penalties, criminal responsibility, jurisdiction and limitation periods, must be clear and consistent.
5. EU criminal law instruments and provisions need to respect the different legal systems and traditions of the Member States and be drawn up in a manner that makes it possible for the Member States to implement them in the existing system of national criminal laws, in particular without undermining the consistency of their general part.

⁵ OJ L 123, 12.5.2016, p. 1–14.

Actions to be taken by the Council

6. The Council will, taking as a starting point the abovementioned 2009 Council conclusions on model provisions, initiate work on the establishment of modernised model provisions for EU criminal law, in particular as regards minimum rules on penalties for natural and legal persons, liability of legal persons, aggravating and mitigating circumstances, incitement, aiding and abetting and attempt, jurisdiction, limitation periods, the availability at national level of effective and proportionate investigative tools, and statistical data. These model provisions should be included in future European legislation, to the extent it is considered necessary to address each individual subject-matter covered by them in a specific legislative instrument, taking into account the different legal systems and traditions.
7. The Council calls on the EU institutions involved in the legislative procedure to reach a common understanding on model provisions, building on the main principles of EU criminal law.
8. Once they have been agreed upon, the Council will promote the use of the model provisions during legislative work, except where there are strong and justified reasons to diverge from them.
9. In parallel with the work on the establishment of modernised model provisions on substantive criminal law, the Council will continue its reflections on the future of judicial cooperation in criminal matters.

Institutional

1. The Council invites the Commission to continue and enhance its actions:
 - to ensure that any proposal with a criminal law element is based on evidence that such legislation is necessary and proportionate to achieve the objectives and that it is only used as a last resort (*ultima ratio*),
 - to draw up thoroughly prepared and detailed impact assessments, including on the impact of any proposal on fundamental rights, that are made available before the start of the examination of the proposal in the Council.
 2. The Council invites the Commission and the Parliament to take Member States' need to ensure consistency and maintain the basic principles of their national legal orders into account with a view to future legislative negotiations.
 3. The Council invites the Commission and the Parliament to engage in a structured and comprehensive joint reflection on all aspects of the future of EU criminal law, including on reinforcement of the internal consistency of the EU criminal law, and its consistency with closely related instruments, and the possibility of having common model provisions.
 4. The structured joint reflection mentioned in the preceding point could, where appropriate, also involve academia, practitioners and other external experts.
-