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Subject :	Council conclusions on the approach to apply regarding approximation of penalties

The Council adopted the attached conclusions at its meeting on 24 and 25 April 2002.

Council conclusions on the approach to apply regarding approximation of penalties

1. A number of legal instruments involving approximation of criminal law of the Member States have been adopted by the Council on the basis of the TEU. The instruments adopted before the entry into force of the Amsterdam Treaty were primarily aimed at establishing minimum constituent elements in respect of certain criminal offences and ensuring a proper basis for judicial cooperation between the Member States in respect of these offences. Since the entry into force of the Amsterdam Treaty, the Council has, on the basis of Articles 31 and 34 of the TEU, adopted several instruments which in addition lay down minimum requirements for the maximum level of the penalties to be provided by national law in respect of specified offences.
2. During the negotiations leading to the adoption of the most recent of the instruments referred to, a need for establishing a general approach regarding approximation of penalties emerged. At its meeting on 28 and 29 May 2001, the JHA Council held a detailed debate on the subject and instructed the relevant instances of the Council to continue the debate on the approximation of criminal law. The Council addressed the issue again at its meeting on 27 and 28 September 2001. Following that meeting, the Belgian Presidency submitted in November 2001 a document based on suggestions from various Member States and containing certain technical options for the purpose of approximation of penalties. In the light of observations made on that paper and certain ideas presented by the Spanish Presidency, the question was examined again at the informal meeting of the JHA Ministers in Santiago de Compostela on 14 and 15 February 2002. In the light of the results of that meeting, the Article 36 Committee and the Coreper have further examined the matter.

3. Having in mind the developments set out above, the Council establishes the following conclusions:

With the objective to stepping up co-operation against crime, and in accordance with conclusion n° 48 of the Conclusions of the European Council in Tampere on 15 and 16 October 1999, “efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance”.

It is a fact that there are certain differences in the penalty level between different Member States. Those differences have evolved over time and are an expression of how Member States have chosen to deal with basic questions concerning crime and punishment.

When considering how to approximate criminal sanctions in certain areas it is necessary to keep in mind that legal traditions differ in the Member States. In order to allow Member States to preserve the coherence of their national penalty systems, a certain flexibility is needed when approximating criminal sanctions.

Where proposals for legal instruments to be adopted under Title VI of the TEU contain provisions establishing minimum constituent elements in respect of criminal offences, the possible need for establishing a minimum level for the maximum penalties for the offences concerned under national law is considered.

In some cases it may be sufficient to provide that the Member States shall provide that the offences concerned are punishable by effective, proportionate and dissuasive criminal penalties and leave it to each Member State to determine the level of the penalties.

In other cases there may be a need for going further in line with the conclusions of the European Council in Tampere. The Council agrees to establish a system of penalty levels to be used in such cases. The Council agrees that this system consists of the following levels of criminal penalties:

- Level 1: Penalties of a maximum of at least between 1 and 3 years of imprisonment
- Level 2: Penalties of a maximum of at least between 2 and 5 years of imprisonment
- Level 3: Penalties of a maximum of at least between 5 and 10 years of imprisonment
- Level 4: Penalties of a maximum of at least 10 years of imprisonment (cases where very serious penalties are required)

The definition of four levels does not imply that in every legal instrument all of them should be used, neither that all the offences defined in each particular legal instrument must be subject to the approximation of sanctions. It is noted that the levels referred to are minimum levels, and that nothing prevents the Member States from going further than those levels in their national law.

The system of criminal penalties implies that where there is a need for providing the minimum level for the maximum penalty which must be provided by each Member State under its national law in respect of a specific offence, the minimum level is set at one of the levels defined above. However, the Council does not exclude the possibility of the application of a higher penalty than the minimum of level 4 in particular circumstances.
