EU approach on criminal law

2010/2310(INI) - 24/04/2012 - Committee report tabled for plenary, single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the own-initiative report by Cornelis de JONG (GUE/NGL, NL) on an EU approach on criminal law.

The report welcomes the recognition by the Commission in its recent Communication on an EU criminal law policy that the first step in criminal law legislation should always be to decide **whether to adopt substantive criminal law measures at all**.

In this spirit, Members stress that proposals for EU substantive criminal law provisions must fully **respect the principles of subsidiarity and proportionality**. In their view, the necessity of new substantive criminal law provisions must be demonstrated by the necessary factual evidence making it clear that:

- the criminal provisions focus on conduct causing significant pecuniary or non-pecuniary damage to society, individuals or a group of individuals;
- there are no other, less intrusive measures available for addressing such conduct;
- the crime involved is of a particularly serious nature with a cross-border dimension or has a direct negative impact on the effective implementation of a Union policy in an area which has been subject to harmonisation measures;
- there is a need to combat the criminal offence concerned on a common basis; and
- the severity of the proposed sanctions is not disproportionate to the criminal offence.

The report stresses that harmonisation measures should be proposed primarily with a view to **supporting the application of the principle of mutual recognition** in practice, rather than merely expanding the scope of harmonised EU criminal law. Members also insist on the need to establish **uniform minimum standards of protection at the highest possible level for suspects and defendants** in criminal proceedings in order to strengthen mutual trust. In this regard, they recall that criminal law must **fully respect the fundamental rights** of suspected, accused or convicted persons.

The Commission is encouraged to:

- put forward measures that **facilitate more consistent and coherent enforcement** at national level of existing provisions of substantive EU criminal law, without prejudice to the principles of necessity and subsidiarity;
- include in its impact assessments the **necessity and proportionality test**;
- draw on the **best practices** of those Member States with a high level of procedural rights guarantees;
- include an evaluation based on its **fundamental rights checklist**; and
- introduce a test specifying how its proposals reflect the **general principles** governing criminal law (e.g. principles of individual guilt; legal certainty, non-retroactivity and the presumption of innocence).

The report underlines the need for a **more coherent and high-quality EU approach** to criminal law and deplores the fragmented approach followed so far. With this in mind, it calls for a clear, **coordinating authority** within the Commission for all proposals which contain criminal law provisions.

Members call for an **inter-institutional agreement** on the principles and working methods governing proposals for future EU substantive criminal law provisions. They invite the Commission and the Council to establish an **inter-institutional working group** in which these institutions and Parliament can draw up such an agreement and discuss general matters. This inter-institutional working group should help to

define the proper scope and application of **criminal-law sanctions at EU level**, as well as examining existing legislation with a view to reducing the fragmentation and conflicts of jurisdiction characterising the current approach.

Lastly, the report emphasises the importance of establishing an information service for Parliament that can support the individual Members in their daily work, thus ensuring the quality of Parliament's work as a co-legislator.