SIPARUNTON
International Journal of
Interdisciplinary Research

ISSN 2337-0556 (Print)
ISSN 2337-0572 (Online)
Vol 1, Issue 4, October 2014

HARMONIZATION OF CRIMINAL LAW: IMPLEMENTATION OF EUROPEAN UNION POLICIES THROUGH CRIMINAL LAW

Emira Kazazi
Albtelecom sh. a, Tirane, Albania

Abstract

This article addresses the nature of European Union criminal law (ECL). It claims that ECL has evolved along two main expanding dynamics, both with a significant punitive emphasis. The first dynamic of ECL focuses on the fight against a particular type of criminality that the European Union perceives as threatening to its goals - 'Euro-crime' - a criminality with particular features (complex in structure and which attempts primarily against public goods) that reflects the nature of contemporary societies. This focus was brought about by rationales such as the fight against organized crime, the protection of EU interests and policies, and recently, the protection of the victim. In turn, the second dynamic of ECL reinforces the State's capacity to investigate, prosecute and punish beyond its own national borders. It does so, not only in relation to Euro-crime, but also in relation to a broader range of criminality.

This article will further argue that these two dynamics have contributed to a more severe penalty across the European Union by increasing levels of formal criminalization; by facilitating criminal investigation, prosecution and punishment; and by placing more pressure on more lenient States. Furthermore, it will claim that this punitive emphasis of ECL has, more recently, begun to be nuanced. This has taken place at the national level as some Member States have shown reluctance to fully accepting the enhanced punitive tone of ECL instruments. It has also taken place at EU level as the punitive emphasis of EU legal instruments was modulated and the protection of fundamental rights has taken a more central place in the 'post Lisbon' framework. Thus, at this later stage of ECL dialectic between punitiveness and moderation began to surface. Having set the main dynamics of European Union criminal law (ECL), this article will turn to the mechanisms or principles through which ECL is developed

Having set the main dynamics of European Union criminal law (ECL), this article will reflect the mechanisms or principles through which ECL is developed. Hence, it will be focused on the harmonization of national criminal law. It will be

suggested that harmonization of Euro-crimes is potentially bringing about a harsher penalty across the European Union by increasing levels of formal criminalization.

Harmonization of Criminal Law

Harmonization aims at approximating national criminal laws by creating common standards which allow for a certain degree of harmony between different systems. In criminal matters, it was envisaged by the Treaty of Amsterdam (TEU (A)) in a narrow fashion, namely in relation to the minimum elements constituent of crimes and penalties in fields of drug trafficking, terrorism and organized crime. However, secondary legislation has been adopted that places a broad interpretation on the TEU (A) provisions and, in practice, harmonization measures were adopted in a significantly wider range of topics than the ones mentioned by the TEU(A), covering most examples of Euro-crimes.

Furthermore, it will be suggested that the fashion according to which the legislator developed the 'minimum elements of crime' was all but minimal. In fact, it will be shown how definitions of crimes adopted tended to be very wide, how liability was extended to legal persons and how punishment envisaged was mostly focused on custodial sentences namely its minimum maximum. The focus on these features led to an increase in criminalization at national level, either by requiring Member States to introduce new crimes or extend the scope of pre existent offences; by requiring them to extend liability to legal persons; and by establishing minimum maximum sentences for criminal offences harmonized. This article will further outline how the nature of minimal harmonization placed more pressure on more lenient Member States vis-à-vis more severe ones as the former are more likely to have to amend their national provisions more significantly in order to meet the EU standard imposed by the framework decisions.

This article will lay out the framework for harmonization as determined by the Treaties and then give an overall picture of the measures adopted. Then it will look particularly at the example of organized crime – on the main rationales through which ECL has developed – to explain how the EU tends to adopt very wide definitions of the conduct to be criminalized. It will bring the argument forward and show how the adoption of broad definitions of crime across the large majority of framework decisions led to an increase in the scope of national legal orders, thus increasing criminalization by expanding the number of behaviors punishable at national level.

The harmonization of national criminal law attempts to create common standards in order to allow for a certain degree of harmony between different domestic legal systems. Harmonization is a mechanism "borrowed" from the context of the single market where it became one of the central tools for integration. In European Union criminal matters, it was first developed during the

Maastricht years, despite there being no clear mandate for the EU to do so at the time, and became central after the adoption of the TEU (A) It has been debated whether 'approximation of laws' as mentioned in the Treaties in the context of criminal law and 'harmonization' are different or similar concepts. This purity in the distinction of the two terms however disregards the fact that Article 100a EC introduced by the Single European Act (SEA) (1987) - the first provision to introduce the concept of harmonization in the context of the Treaties - referred to 'approximation of provisions' and not harmonization; similarly so did Article 94 and 95 EC and the current Article 114 (TFEU). In any case, some authors suggest that approximation as used in relation to criminal law is less than harmonization, hence demanding less of national legal orders. In this Article we will use both terms interchangeably. For more details on the particular use of the two concepts in European criminal law see, for example F. Calderoni in the *Organized Crime Legislation in the European Union, Harmonization and Approximation of Criminal Law, National Legislation and the EU Framework Decision on the Fight Against Organized Crime (2010)* made a clear distinction between the two concepts; or Heidelberg/ Dordrecht/London/ New York: Springer (2010 p. 1-6) for a different opinion on the same subject, namely that the two concepts can have the same.

A. F. Bernardi, G. Giudicelli-Delage, E. Lambert-Abdelgawad (2003, p. 451, 461) and A. Weyembergh (2005, p. 12, 149, 164) found that harmonization was felt to be necessary to avoid criminals exploiting loopholes and heterogeneity in different legal systems, by taking advantage of less severe laws in some Member States, or by making use of new technical and communication means more readily available today.

All this was of course made easier in an EU without internal borders. However, the actual impact and manipulation of differences between legal systems by criminals remains largely unknown. In fact, it has at times been voiced as a mere theoretical or academic hypothesis by authors or the European Commission itself. The European Commission for instance voiced these doubts in 2005 and postulated that: "*There is also the question of whether there is a risk that certain criminals might relocate to a Member State where their nefarious activity is not classified as an offence or attract lighter penalties. It would be interesting to consider whether this is a purely academic hypothesis or corresponds to reality in the event, for example, of financial, business or computer crime*", European Commission, *Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union*.

K. Nuotio, E. J. Husabo and A. Strandbakken (2005, p. 79, 92) in fact found the idea that offenders will learn to exploit the heterogeneity of national legal orders a 'problematic assumption', based on common sense rather than on

criminological evidence (the author argues that criminal activities rarely follow such strategic cost/benefit calculations). Regardless, the EU sought harmonization of most Euro-crimes. The official architecture of harmonization was laid out by the TEU (A) under VI of the TEU. Article 29 TEU (A) held that *Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through: approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e)* scope.

Subsequently, Article 31 (3) TEU referred to harmonization only and provided that the *Common action on judicial cooperation in criminal matters shall include: progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organized crime, terrorism and illicit drug trafficking.*

The approach to harmonization of national criminal law taken by the TEU (A) was clearly a contained one. First, Article 29 TEU made it the exception rather than the rule, stating it should be pursued only "*where necessary*", therefore conveying the idea that it was not always needed and it should not be pursued when that is not the case. Second, the TEU(A) noted that common action on judicial cooperation in criminal matters shall include progressively adopting measures establishing minimum rules relating to the limited the domains for harmonization to three areas of substantive criminal law, namely organized crime, terrorism and illicit drug trafficking. Finally, it limited its depth to the minimum elements constituent of crimes and penalties, as stated in Article 31 (e) TEU (A).

Its scope nevertheless has always been contentious. Indeed, on the one hand, Article 31(e) TEU(A), although seemingly choosing a narrow approach to EU's competence to seek harmonization in this field, were not crystal clear on the exact extent of EU's mandate to pursue such harmonization. On the other hand, there was a clear propensity, for EU's secondary law and political initiatives to interpret the TEU (A) (namely Article 29 and Article 31 TEU (A)) ambitiously, thus harmonizing in a wider range of domains than those clearly mentioned. However, whilst it is unclear whether the Treaty's list was exhaustive or merely indicative, clearly, there was an attempt to circumscribe narrowly the domains of harmonization of national criminal law. Peers in *EU Justice and Home Affairs Law*

(p. 250, 387) were of opinion that competence to harmonize was not limited to the 'listed offences'. Furthermore, unmistakably, no attempt was made to attribute a comprehensive and overarching competence for the European Union to harmonize national criminal law. K. Ambos (2005 p. 12, p. 173) found that the level of harmonization attempted as it is far from the creation of a common general part of criminal law. However, the minimal approach suggested by the Treaties (even if interpreted broadly) contrasts greatly with the amount and wide scope of secondary legislation in these matters. Indeed, the European Union adopted a wide range of framework decisions aiming at harmonizing the minimum elements of criminal offences and penalties at national level, many of which were under the umbrella of the fight against organized crime. The range of areas involved went considerably beyond the domains referred to in Article 29 TEU, let alone Article 31 TEU. Hence, framework decisions harmonizing elements of national criminal law were adopted in areas as diverse Council Framework Decision (2004) found as illicit drug trafficking, Council Framework Decision (2004) found sexual exploitation of children and child pornography, Framework Decision (2002) found terrorism, Framework Decision (2001) found fraud and Framework Decision (2001) found counterfeiting of non-cash means of payment, Framework Decision (2001) found money laundering, Framework Decision (2002) found trafficking in human beings, Framework Decision (2003) found corruption in the private sector, Framework Decision (2005) found crime against information system, and Framework Decision (2003) found environment, among others.

Furthermore, the fashion according to which the EU legislator set the scope of minimum harmonization in place was all but minimal. This, it will be contended, can be perceived in several elements, namely in the choice of wide definitions of crimes, in the widening of criminal liability to legal persons, in the establishment of common minimum maximum penalties, and generally on the impact those elements have on national legal orders. Ultimately, it will be seen that the attempt to establish a minimum common denominator resulted in the setting of a higher intensity of criminalization namely through more and wider criminal law across the European Union.

The EU, in seeking to harmonize the minimum elements constituent of crimes and penalties, focused first and foremost on the definition of criminal offences. In this regard, ECL has showed a tendency to adopt broad definitions of crimes hence potentially criminalizing a wider range of behaviors than before across the EU. This is clearly seen in the approach to the harmonization of organized crime. It was seen previously how organized crime was often used as an umbrella concept to allow for intervention in areas not directly mentioned in the TEU(A) and which could be related to organized crime in a more direct or indirect

way. The wide approach to organized crime was further continued by the Framework Decision on fighting organized crime. Framework Decision 2008/841/JHA, which came to replace the Joint Action 98/733/JHA making it a criminal offence to participate in a criminal organization (V. Mitsilegas 2001 p. 582-598, F. Calderoni 2008 p. 265-282). The Framework Decision adopts an extensive interpretation of organized crime and on the definition of a criminal organization. This reflects a contemporary approach to the phenomenon but also an impetus to criminalize extensively. First, the Framework Decision (2008) required Member States to criminalize one or both offences of, broadly speaking, membership of a criminal organization (even if no actual offence is committed) or the agreement to actively take part in the execution of offences related to the activities of the criminal organization. The Framework Decision (2008) article 2 reported that *Each Member State shall take the necessary measures to ensure that one or both of the following types of conduct related to a criminal organization are regarded as offences: (a) conduct by any person who, with intent and with the knowledge of either the aim and general activity of the criminal organization or its intention to commit the offences in question, actively takes part in the organization of criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such a participation will contribute to the achievement of the organization's criminal activities; (b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in Article 1, even if that person does not take part in the actual execution of the activity.* Furthermore, the Framework Decision defined a criminal organization as a *structured association, established over a period of time, of more than two persons acting in concert with a view of committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;* whilst structured association means "*an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure.*

This provision portrays a criminal organization in a wide fashion. The first striking element of the definition is the requirement of only three members for an association to be considered a criminal organization. Indeed, the idea that one has of a criminal organization is usually not one association with only three members. Other elements are also left open for interpretation as, for example, the notion of 'financial or material benefits. ' Is a material benefit of £100 or £200 enough to be included in the range of the concept of organized crime? And what can be

considered a material benefit? Furthermore, no specification is given to what is to be considered 'a period of time' (hence how long does a group need to be existent and operational to be considered a criminal association) besides the exclusion of groups formed for the immediate formation of offences. Moreover, the structure of the group can also be rather loose; its members neither need to a have a defined role nor particular continuity in their membership. The most solid element of the definition seems indeed to be the seriousness of the crime which needs to be punishable by a maximum sentence of at least 4 years. No reference to specific crimes is made, which raises some uncertainty as different legal orders might punish similar crimes in a diverse manner. This wide scope contrasts with definitions proposed by F. E. Hagan, et. al (2006 p. 127-137), along the past decades which have tended to be more detailed and narrower. H. Abadinsky, W. Laqueur (2010) mentioned eight attributes of an organized crime group, namely the lack of political goals (the aims of an organized crime group are money and power), hierarchy, limited or exclusive membership, has a unique subculture, perpetuates itself (hence it shall survive beyond the life of current memberships), exhibits willingness to use illegal violence, is monopolistic and is governed by explicit rules and regulations. M. D. Maltz (1976, p. 22, 338-340) identified four main characteristics, namely varieties of the crimes committed, an organized structure, the use of violence and corruption. Likewise, F. Calderoni (p. 272-273) in "A definition that could not work" emphasized four essential elements to define a criminal organization, namely continuity, violence, enterprise and immunity, and noted how these characteristics have allowed for a distinction between mere 'crimes that are organized' and 'organized crime'.

Similarly, beyond academic comment, definitions of criminal organizations used by law enforcement agencies – 'working definitions' - also tended to be narrower than the one proposed by the Framework Decision. More significantly, in some cases, legal attempts to define criminal organizations failed as political compromise on such topics foundered. The solution was often a compromise via the adoption of working definitions, used mostly by law enforcement agencies. This is the case of Germany, for example, where attempts to conceptualize organized crime took place for the first time in the 1970s, when a definition was agreed to by a joint working party of law enforcement and judicial officials and used by the BundesKriminalAmt (Germany's Federal Criminal Police Office 1998) stated that *Organized crime is the planned violation of the law for profit or to acquire power, which offences are each, or together, of a major significance, and are carried out by more than two participants who co-operate within a division of labor for a long or undetermined time span using (a) commercial or commercial like structures, or (b) violence or other means of intimidation, or (c) influence on politics, media, public*

*administration, justice and the legitimate economy (*A. Leong Aldershot, Burlington, VT: Ashgate, 2007). Whilst this definition was thought by M. Beare (ed) in the *Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption* (Toronto/ Buffalo/ London: University of Toronto Press, 2003, p. 55) as being "*vague and a catch-all definition that can cover any criminal offence*" it was nonetheless more specific than the EU's one. Indeed, even if, for example, only a small number of members are required, such relaxed criteria were compensated for by other more clear and objective characteristics the criminal organization ought to fulfill to be considered as such, namely the use of violence and intimidation, the impact of such criminality in society, etc. Generally legal approached to organized crime began to emerge at national level since the 1970s. In Italy with the adoption of Law 646 (the 'Rognoni-La Torre Law'); in the UK in the 1980 initially with the adoption of the Drug Trafficking Offences Act (1986); or even in the USA in 1968 with Public Law 90-351 – the Omnibus Crime Control and Safe Streets Act (Mitsilegas, J. Finckenauer, Leong (2005, p. 8, 63, 69, 91-93) Similarly, international instruments, although broader than national definitions still managed to be marginally narrower than EU's one. The United Nations Convention against Transnational Organized Crime (2000 A/RES/55/25) defined organized crime as *a structured group of three or more person existing for a period of time and acting in concert with the aim of committing one of the more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.*

It refers exclusively to the crimes mentioned in the text of the Convention, thus providing more legal certainty than open-ended formula of the Framework Decision which stated as …*offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty.* "

Such a broad definition of organized crime and of a criminal association has the potential to cover a broad range of conducts under its umbrella of what is to be understood as organized crime. Indeed, some authors have argued that too narrow a definition does not capture the reality of organized crime as an unclear and undefined phenomenon. P. V. Duyne, in the *Organized Crime in Europe* (New York: Nova Science Publishers, 1996, p. 53) pointed out how many of the definitions used do not match the empirical evidence which shows as stated by him that …*less well-organized, very diversified landscape of organizing criminals [whose] economic activities can better be described from the viewpoint of 'crime enterprises' than from a conceptually unclear framework such as organized crime.* "

This more diversified landscape in crime is exacerbated by the new traits of a globalised world where people, goods, services, capital, information, etc move

much more freely between different countries than decades ago. V. Ruggiero in Global Markets and Crime emphasized the difficulties in distinguishing clearly between organized crime and some legal enterprises in this context. The author has provided a number of examples related to human trafficking, illegal immigration, money laundering, and drug trafficking and illegal arms transfers – crimes with a potential transnational element. M. E. Beare (et. al, 2003, p. 171, 174-177) argued that …*it is appropriate to identify transnational organized crime as the result of partnerships between illegitimate and legitimate actors. In other words (…) criminal activity conducted by 'aliens' needs a range of indigenous partners and agents, along with a receptive environment in which that activity is carried out*. "

V. Ruggiero in Global Markets and Crime (2003, p. 171-182) has specifically referred to official employment agencies that can help recruit illegal immigration, transport companies or travel and tourist agencies which might help with the transport of illegal immigrants, among many other examples. In fact, Europol's reports reflect this reality in European organized crime, first in relation to the looseness of the structure of criminal groups and second in relation to the interrelationship between illegitimate and legitimate business structures. The European Union Organized Crime Report, Open Version (2004) stated that *the trend towards more lost network structure with regard to the set-up of OC groups continues. The roles of facilitators and professionals are becoming increasingly important. These are individuals with specific skills that are required to conduct complex or difficult elements of a criminal enterprise.* The report notes further stipulated that *OC groups are increasingly taking advantage of the benefits of legitimate company structures to conduct or hide their criminal. These legal structures are often abused to launder profits or reinvest profits. Alternatively they commit economic crimes such as VAT fraud as a primary activity.*

Yet Europol has gone beyond this view of organized crime as interlinked with a 'crime enterprise' and with legitimate activities. It suggests that organized criminality is not always related to the commission of serious offences. Indeed, it suggests it is becoming an issue of petty crime as well by stating that *Organized crime seems to be moving more and more into areas of 'petty crime' like pick-pocketing and shop-lifting but also burglaries and theft by deception of individuals often tourists. Members of OC groups, who often originate from Eastern Europe work in small groups and are moved around quickly but never stay long in one location… This development is in line with the realized trend towards the 'high profit- low risk' crime areas.*

The EU's definition of organized crime has thus the potential to cover all the conducts mentioned by Europol and potentially others. It is indeed broad and flexible enough to cover Mafia-like associations, business related criminal groups,

small groups of pickpocketers, large illegal drug and human trafficking networks, among many other formations one could think of. They can also be large or small groups, national or transnational, more or less structured, exist for shorter or longer periods of time, make use of corruption of officials or not, use commercial structures or not, make use of violence and intimidation or not, and so on. This suggests that, in fact, the EU's definition of a criminal organization is closer to that of a criminal network than of a criminal organization in its more traditional sense (such as the Mafia-like model for example). The former can or cannot take the shape of a criminal organization but does not always have to do so. In fact, many networks of criminals are likely to commit crimes that are organized rather than crimes within the context of a criminal organization. J. Finckenauer in "Problems of Definition" (2005, p. 596, 76-78) has given details and examples on how to distinguish organized crime from crime that is organized.

Furthermore, the EU's approach to organized crime has strong prosecutorial benefits due to its catch all characteristics. Indeed, organized crime has the potential to give rise to public fears; to empower police forces with more stringent policing means (which can often end up being used against less serious forms of criminality); and to open doors to harsher frameworks for punishment (D. Nelken, 1997, p. 251- 277). An example of this can be found, for instance, in Portugal. Law 5/2002 of 11 January on covert means of surveillance as lawful means to obtain evidence was adopted in context of the fight against violent and organized criminality and it aimed at allowing police forces to make use of particular covert investigation techniques in relation to serious criminality only. However, it is now being discussed whether evidence related to other crimes obtained under these investigation operations could be used and under which conditions (J. F. Araújo, 2012). In the European Union, this means bringing criminal investigation under Europol's competence, criminalizing more behaviors than before under the umbrella of organized crime (E. Symeonidou-Kastanidou, 2007, p. 15) whilst ensuring a more severe penal framework to the crimes in question as the Article 3 of the Framework Decision (2008/841/JHA, p. 416) required Member States to consider such offences when committed in the context of a criminal organization as aggravating circumstances. The question is whether such legal changes are indeed reflecting and combating new realities or if they are used to squeeze through the back door tougher approaches to crime independently of such realities. In this sense, M. Levi noted in the "Organized crime and terrorism" (p. 377, 780) that broad definitions of organized crime results from a tension between *a) those who want the legislator to cover a wide set of circumstances to avoid the risk that any major criminal might 'get away with it', and b) those who want the law to be quite tightly drawn to avoid the overreach of powers which might*

otherwise criminalize groups who are only a modest threat."

As seen in the first part of this article, organized crime has been central to the development of ECL often serving as an umbrella concept for the EU to legislate in domains more or less related to it. It is thus perhaps not surprising that the EU's approach to organized crime is particularly broad. However, the EU's technique of adopting broad definitions of crime is seen in many other examples. The EU's definition of terrorism, for instance, has been particularly commented upon as being very wide (inter alia S. Douglas-Scott in "The Rule of Law in the European Union", p. 230-232). Indeed, the EU defined terrorist acts in Article 1 of the Council Framework Decision 2002/475/JHA as those committed with an *aim of seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization, shall be deemed to be terrorist offences."*

Article 1 of the Framework Decision 2002/475/JHA on combating terrorism continued in more detail stating that those offences should comprise *(a) attacks upon a person's life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons; (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life; (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life; (i) threatening to commit any of the acts listed in (a) to (h). Any action involving aggravated theft, extortion or drawing up false administrative documents with the view of committing any of the acts mentioned earlier, shall be considered terrorist linked activities.*

Examples of proposed academic and legislative approaches to terrorism are useful in helping to understand how broad and detailed the Framework Decision's definition is. Commonly accepted definitions by law enforcement agencies, for instance, tend to be concise and narrower than the EU's Framework Decision. The FBI considered terrorism as *The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any*

segment thereof, in furtherance of political or social objective whereas the CIA has defined it as *premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents, usually intended to influence an audience (*Title 22 of the US Code, Section 2656 f (d))

The contrast with previous national legislation on the definition of terrorism (or lack of) is also sharp. Indeed, before the adoption of the Proposal for a Council Framework Decision on combating terrorism, (Brussels, 19. 9. 2001) only six Member States criminalized terrorist acts autonomously: France, Germany, Italy, Portugal, Spain and the UK. All of them had narrower definitions than the EU's. France, for instance, criminalized as terrorism an act that could seriously alter public order through threat or terror. Portugal included acts that were able to prejudice national interests, to alter or disturb the State's institutions, force public authorities to do or not to do something or threaten individuals or groups. Spain treated subverting constitutional order and seriously altering public peace as terrorist acts. Italy had a law similar to Spain's, criminalizing terrorist actions as those that are able to subvert the democratic order. Finally, the UK defined terrorist offences as acts capable of influencing the government or intimidating the public order or a section of the public with the purpose of supporting a political, religious, or ideological cause.

Conclusion

Recent developments in harmonization of national criminal law suggest that the trends of increasing expansion and punitiveness will continue to echo throughout European Union Criminal Law (ECL). Expansion is seen first in the wording of the Article 83 Treaty on the Functioning of European Union (TFEU), which envisages the possibility of adoption of further harmonization measures in relation to serious and cross border crime on the basis of "*developments of crime*"; second, Lisbon also gives the EU competence to adopt criminal measures if these are necessary to ensure the effective implementation of Union policies. The latter development clearly extents the competence recognized by the Court of Justice of the European Union in relation to the protection of European Communities (EC) environmental and transport policies via the criminal law.

This Article shed light on the nature of harmonization of national criminal law. It noted how the Treaties envisaged harmonization as minimal in its range and depth but how in fact it was taken considerably beyond these boundaries. Measures were adopted in relation to Euro-crimes and these were defined through broad and catch-all concepts. Organized crime in this regard continues to be a clear example of EU's flexible and broad approach to criminality. The article went on to show how harmonization in criminal matters is facilitating the expansion of the

domestic punitive framework. This was seen in three different ways: first, through the adoption of broad definitions of crime by the EU which led some Member States to introduce new criminal offences in their legal systems or to extend the scope of pre-existing ones; second, by requiring that liability for criminal actions be extended to legal persons which led several Member States to expand their domestic accountability framework; finally, by establishing minimum maximum penalties to be applied by Member States which led at times to a harshening of sentences at national level even beyond the threshold required by the EU norm. Overall thus, it was shown that harmonization of national criminal law is bringing about a harsher criminal law across the European Union whilst placing additional pressure on more lenient States. These qualities of ECL mirror to some extent tendencies that national legal orders in Europe and even around the world have been experiencing. In fact, the harshening of national legal systems is a phenomenon common to many western legal orders for some decades now. Whilst the USA and the UK are the most striking examples in this matter, many other European countries have been evolving towards a harsher penalty either through the imposition of severer sentences or by passing stricter statutes (although the studies available focus almost exclusively on punishment and not on the definition of offences). Hence, the nature of harmonization of national criminal law so far seems to have a repressive emphasis.

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