Preface

European Criminal Law Review (EuCLR)

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The development of substantive and procedural EU criminal law has reached a new phase. With the entry into force of the Lisbon Treaty we have left behind the "third pillar" approach that often led to arduous, narrow-gauged decisions in many policy areas involving criminal law, on which the European and national parliaments had little say. The Lisbon Treaty also sheds new light on the potential scope of EU criminal law, building upon two landmark cases of the European Court of Justice.[1]

With regard to the multiple and increasing challenges modern criminality poses to the EU, including particularly serious forms of cross-border crime or offences at the expense of European public money, the opportunities thus offered by the Lisbon Treaty should not go unused. And they will not: Since December 2009, together with Member States, we have put in place a strong agenda for justice policies in the EU. The Stockholm Programme sets political priorities and defines actions to realise the area of freedom, security and justice over the next five years.

With the Lisbon Treaty and the Stockholm Programme, EU criminal law now has the best prospects to evolve. As the first ever Justice Commissioner it is my great privilege to propose both procedural and substantive criminal law measures under the Lisbon Treaty that will go the streamlined way of the ordinary legislative procedure, in which the European Parliament and the Council of Justice Ministers are on equal footing. Articles 82, 83 and 325 of the Treaty on the Functioning of the European Union will be of particular interest in this process. Complementary institutional improvements, such as the reinforcement of Eurojust and the establishment of a European Public Prosecutor's Office, also can bolster the deterrent effect of criminal law in specific areas of crime.

However, I will apply appropriate prudence. Criminal law is not an end in itself, and it carries many specificities, which the legislator summarised as follows: "(…) *criminal penalties (…) demonstrate social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law*".[2] Therefore, only when criminal law is in line with our common European values and principles, and only when EU legislation in this field has a clear added value over national action, it will be legitimate and credible. Subsidiarity and proportionality as provided in Article 5 of the Treaty on European Union form a core part of these

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[1] Judgments of 13 September 2005, C-176/03, and of 23 October 2007, C-440/05.

[2] See Recital no 3 of Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6. 12. 2008, p. 28.

principles. When applied in the light of the diverse legal systems and traditions of Member States, and given the severity of criminal sanctions, these principles clearly turn EU criminal law into an instrument of last resort.

With the Lisbon Treaty, the Charter of Fundamental Rights has likewise become legally binding. This means that, in accordance with Article 51 of the Charter, we must now measure all EU legislation and Member States' implementing measures with this yardstick. The European Union must be exemplary when it comes to the effective implementation of the Charter of Fundamental Rights. Concerning criminal law, the maxims of *nulla poena sine lege* and *ne bis in idem* are set out, respectively, in Articles 49 and 50 of the Charter. They add to, and specify for the legal order of the EU, the obligations already enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Convention Implementing the Schengen Agreement.

The European Commission is well placed to perform legal quality control, which takes into account this normative framework – both *a priori*, if and when it makes legislative proposals, and *ex post*, when it monitors implementation. But the Commission is wise enough not to work alone. It requires dynamic input and analysis for the emergence of EU criminal law, from other EU institutions such as the European Parliament, from Member States including national Parliaments, as well as from academics and from practitioners in the judiciary or from the Bar. In this regard I applaud and hugely welcome the work of the European Criminal Policy Initiative. After it published the Manifesto on European Criminal Law at the end of 2009, I am pleased to see the launch of the European Criminal Law Review, the first edition of which you are now holding in your hands. Thanks also to the linguistic choice, this journal allows an exchange of assessments, opinions and new acknowledgements on criminal law across the EU. This is a great opportunity. I would like to encourage all, EU law scholars, students and practitioners alike, to contribute to this journal. EU lawmakers need your best possible advice.