





TEU (post-Amsterdam) - May 1999 Vienna action plan (december 1998) Tampere European Council (October 1999)

OC millennium strategy (March 2000)

warszaw. 27 november 2000

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TEU (Maastricht)

JHA matters common interest (Art. K.1)

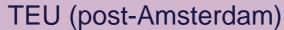
- 1. asylum policy
- 2. crossing/control of external borders
- 3. immigration/3rd country nationals
- 4. combating drug addiction
- 5. combating international fraud
- 6. judicial co-operation civil matters
- 7. judicial co-operation criminal matters
- 8. customs co-operation
- 9. police co-operation criminal matters

No legal basis for approximation of (substantive) criminal law

however: joint actions & conventions

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proper legal basis for approximation of substantive (not: procedural) criminal law

Article 29 TEU: approximation of rules on criminal matters, in accordance with the provisions of Article 31(e)

Article 31(e) TEU: progressively adopting measures establishing minimum rules relating to constituent elements of criminal acts and penalties (substantive criminal law only) in the fields of oc, terrorism & illicit drug trafficking

Article 34(2)b: via framework decisions (3rd pillar directive - no direct effect)

jurisdiction rules in framework decisions?

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Vienna Action Plan

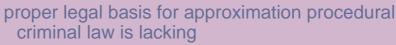
December 1998

Council/Commission action plan on how best to implement the provisions of the A'dam Treaty on an area of freedom, security and justice

Para 10: the aim of the Treaty is not to create a common territory where uniform detection and investigation procedures would be applicable to all law enforcement agencies in Europe in the handling of security matters

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a contrario ex Art. 29 juncto Art. 31(e) TEU Para 10 Vienna action plan

whereas the OC millennium strategy (infra) foresees

instrument introducing possibility of mitigating onus of proof regarding source of assets of a person convicted for OC-related offence

instrument on confiscation regardless of presence of offender

approximation of national legislation on criminal procedure governing investigative techniques, so as to make their use more compatible and render OC investigations more efficient

instrument on position/protection witnesses & persons cooperating with the judicial system

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Tampere European Council

October 1999

1st EU summit ever exclusively on JHA new developments announced at summit

(development towards mutual recognition: link with approximation substantive criminal law)

substantive criminal law approximation efforts to be focused in 1st instance on limited number of sectors, such as: financial crime, drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech and environmental crime

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OC Millennium Strategy

JHA Council March 2000

adoption of a 'European union strategy for the beginning of a new millennium' in the field of prevention and control of organised crime

follow-up action plan to 1997 EU action plan to combat organised crime

setting the lines/goals to be followed/achieved in this area in the coming years

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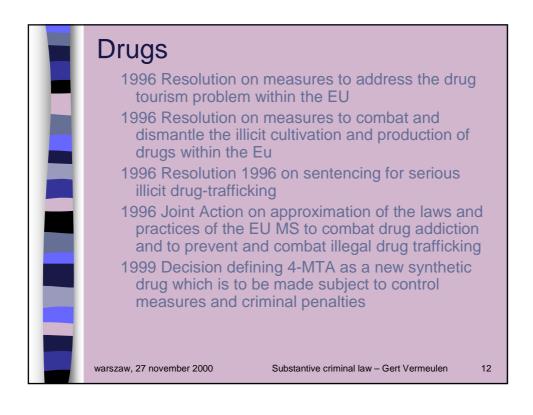
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39 detailed recommendations in various fields and setting target dates to implement them approximation of substantive criminal law at least for: financial crime (money laundering, corruption, e counterfeiting, tax fraud), drug trafficking and terrorism related offences, trafficking in human beings (particularly exploitation of women), sexual exploitation of children, high tech (computer fraud and offences committed by means of Internet) and environmental crime

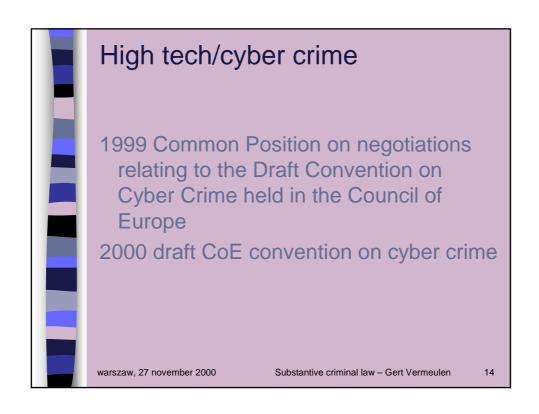
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Acquis in the area of substantive criminal law Drugs Environmental crime High tech/cyber crime Illegal immigration **Organized Crime** Racism and xenophobia confiscation proceeds of crime & money laundering Counterfeiting & fraud Pfi eu & corruption warszaw. 27 november 2000 Substantive criminal law - Gert Vermeulen 11









means of control

1996 Recommendation on combating the illegal employment of third_country nationals

2000 draft framework decision on strengthening the penal framework for preventing the facilitation of unauthorised entry and residence

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Organized Crime

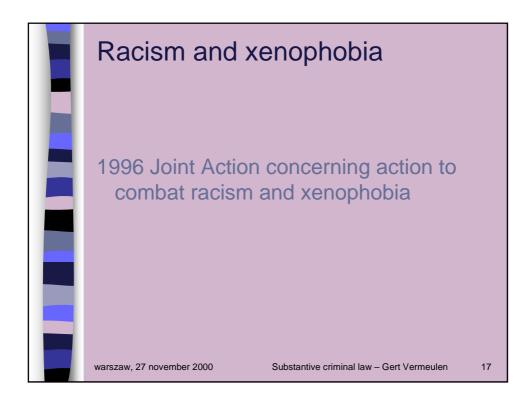
1997 action plan to combat organised crime 1998 Joint action on making it a criminal offence to participate in a criminal organisation in EU MS

1998 Resolution on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it

2000 Strategy for the beginning of the new millennium, on the prevention and control of organised crime

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confiscation proceeds from crime & Money laundering

1990 Coe Convention

1998 Joint Action on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime

2000 draft framework decision on the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime

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Counterfeiting & fraud

1999 resolution on increasing protection by penal sanctions against counterfeiting in connection with M

2000 Framework Decision on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with M

2000 draft framework decision on combating fraud and counterfeiting of non-cash payments

2000 draft framework decision on criminal law protection against fraudulent/unfair anti-competitive conduct in relation to public contracts in the common market

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Pfi eu & corruption EU 1995 PFI convention 1996 protocol to 1995 PFI convention Criminalisation active/passive corruption Likely to damage EU FI Extra-territorial jurisdiction

1997 2nd protocol to 1995 PFI convention

Mandatory Liability legal persons Seizure & confiscation

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1997 convention on fight against corruption involving EC or MS officials

Similar to 1996 protocol to 1995 PFI convention

Potential damage EU FI not required No liability legal persons (instead: heads businesses)

1997 common/joint positions (2)

Aimed at safeguarding compatibility between eu instruments/initiatives and developments/negotiations in coe/oecd

1998 joint action

on corruption in the private sector

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Criminalisation of Alltogether: all forms of passive & active domestic and foreign bribery in both the public and private sector Coe: broader definition, including « trading of influence » Effective/dissuasive criminal sanctions for physical persons Corporate liability criminal or non-criminal Recognition corruption as predicate offence for money laundering warszaw, 27 november 2000 Substantive criminal law – Gert Vermeulen 24







