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Subject:	Draft Council conclusions on Model provisions on EU substantive criminal law

At its meeting on 8-9 December 2025, the Council (Justice and Home Affairs) approved a set of Council conclusions on ‘Model provisions on EU substantive Criminal law’. The text as approved by the Council is set out in the Annex.

Council conclusions on model provisions on EU substantive criminal law

The Council recalls its conclusions from 2002 “on the approach to apply regarding approximation of penalties”¹, from 2009 “on model provisions, guiding the Council's criminal law deliberations”², and from 2024 “on the future of EU criminal law: recommendations on the way forward”³, and reiterate that the mentioned conclusions reflect the position of the Council on the matter.

The Council in particular underlines the importance of point 3 in its conclusions from 2002 and of point 1-10 in its conclusions from 2009. It reiterates the need to ensure coherence and consistency with the EU acquis as regards recurring provisions in different EU substantive criminal law acts, so to facilitate the implementation of EU provisions in national law and their interpretation, while safeguarding the necessary flexibility. In this context, the importance of guidelines and model provisions to facilitate legislative negotiations is underlined.

The Council recalls that the conclusions from 2009 endorsed a set of model provisions, set out in Annex II to the Conclusions, which “*should guide future work of the Council on legislative initiatives that may include criminal provisions*”.

The Council notes that it in 2024 launched a process to modernise and, if necessary, enlarge the scope of the model provisions in the light of the numerous EU criminal law acts that have been adopted since the entry into force of the Lisbon Treaty in 2009. This process led to the elaboration of an updated set of model provisions, which were presented in the Report of the Hungarian Presidency in December 2024. It was thereby underlined that future legislative acts on substantive criminal law “*should, as much as possible, follow the approach outlined in these agreed model provisions*”.

¹ 9141/02.

² 16542/1/09 REV2.

³ 10984/24.

In this light, the Council considers it appropriate to approve the following updated model provisions. It underlines that the model provisions should not be binding on the co-legislators, but constitutes a toolbox from which the co-legislators can choose the provisions they deem necessary to include in a legislative act and which will guide the work of the Council on any future proposal for an EU substantive criminal law act. They are meant to identify standard agreed language of relevant provisions so to ensure consistency, coherence and efficiency across legislative acts. They do not in any way affect the prerogatives of the Commission or the co-legislators under the Treaties or anticipate the Council's position on the possible inclusion of a specific provision based on these Council conclusions, in a specific legislative act. Brackets and italics identify provisions that (the Council considers) would require a particularly strong justification (in light of the specific circumstances) in order to be included in a specific legislative act. The necessity to include any additional provision or element, should also be considered during the relevant negotiations.

The Council invites the European Parliament and the Commission to take note of the model provisions and continue to engage in a structured interinstitutional dialogue with the aim of defining common model provisions.

MODEL PROVISIONS FOR EU CRIMINAL LAW

A. CRIMINAL OFFENCES

Member States shall ensure that the following conduct constitutes a criminal offence, when committed intentionally.

B. INCITING, AIDING AND ABETTING, AND ATTEMPT

1. Member States shall ensure that inciting, and aiding and abetting, the commission of an intentional criminal offence covered by [Article(s) ...] is punishable as a criminal offence.
2. Member States shall ensure that an attempt to commit an intentional criminal offence covered by [Article(s) ...] is punishable as a criminal offence.

C. PENALTIES FOR NATURAL PERSONS

1. Member States shall ensure that where a natural person commits an offence covered by [Article(s) ...], the criminal offence is punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall ensure that the criminal offences covered by [Article(s) ...] are punishable by a maximum penalty of imprisonment of at least [one/two/five/ten] years;
- [3. *Member States shall ensure that natural persons who have committed criminal offences covered by [Article(s)...] may be subject to other criminal or non-criminal penalties or measures which may include the following:*

(a) *an obligation to:*

(i) ; *or*

(ii) ...;

- (b) *finances that are proportionate to the gravity of the conduct;*
- (c) *exclusion from access to public funding, including tender procedures, grants, concessions and licences;*
- (d) *disqualification from holding, within a legal person, a leading position of the same type used for committing the offence;*
- (e) *withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence.]*

D. AGGRAVATING [AND MITIGATING] CIRCUMSTANCES

1. Aggravating circumstances⁴

To the extent that the following circumstances do not form part of the constituent elements of the criminal offences covered by [Article(s) ...], Member States shall ensure that, in relation to the criminal offences covered by [relevant Article(s)] one or more of the following circumstances can, in accordance with national law, be regarded as an aggravating circumstance:

(a)....;

(b)....

⁴ The following model recital shall also be part of these model provisions: “Member states should ensure that at least one of the aggravating [*and mitigating*] circumstances provided for in this Directive is provided for as a possible aggravating [*or mitigating*] circumstance in accordance with applicable rules in their legal system.”

[2. *Mitigating circumstances*

Member States shall ensure that, in relation to the criminal offences covered by [relevant Article(s) ...], one or more of the following circumstances can, in accordance with national law, be regarded as mitigating circumstances:

(a) ...;

(b)]

E. LIABILITY OF LEGAL PERSONS

1. Member States shall ensure that legal persons can be held liable for the criminal offences covered by [Article(s) ...] where the criminal offences have been committed for the benefit of those legal persons by a natural person who has a leading position within that legal person and who acts individually or as part of an organ of that legal person on the basis of any of the following ('leading person'):

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

- [2. *Member States shall ensure that legal persons can be held liable for criminal offences covered by [Article(s) ...] where the lack of supervision or control by a leading person has made possible, by a natural person under their authority, the commission of a criminal offence covered by [Article(s) ...], for the benefit of, that legal person.*]

3. Liability of legal persons under paragraphs 1 [or 2] of this Article shall not preclude criminal proceedings against natural persons who commit, incite or are accessories to the criminal offences covered by [Article(s) ...].

F. PENALTIES FOR LEGAL PERSONS

1. Member States shall ensure that where a legal person is held liable pursuant to [Article ...], the criminal offence is punishable by effective, proportionate and dissuasive criminal or non-criminal penalties or measures.
2. Effective, proportionate and dissuasive criminal or non-criminal penalties or measures shall include criminal or non-criminal fines and may include other criminal or non-criminal penalties or measures, such as:
 - (a) exclusion from entitlement to public benefits or aid;
 - (b) exclusion from access to public funding, including tender procedures, grants and concessions;
 - (c) disqualification from the practice of business activities;
 - (d) withdrawal of permits and authorisations to pursue activities which have resulted in the offence;
 - (e) placing under judicial supervision;
 - (f) judicial winding-up;
 - (g) closure of establishments used for committing the criminal offence;
 - (h) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

- [3. *Member States shall ensure that where a legal person is held liable pursuant to Article E(1) for criminal offences covered by [Article(s) ...], it is punishable by criminal or non-criminal fines. The amount of such fines shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall ensure that the maximum level of such fines is not less than:*
- (a) *for criminal offences covered by [Article(s) ...]:*
- (i) *[5 %] of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed or in the business year preceding the decision to impose the fine; or alternatively*
- (ii) *an amount corresponding to EUR [maximum 40 000 000];*
- (b) *for criminal offences covered by [Article]:*
- (i) *[1/3%] of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed or in the business year preceding the decision to impose the fine; or alternatively*
- (ii) *an amount corresponding to EUR [8/24 million].⁵*
4. *Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed or in the business year preceding that of the decision to impose the fine.]*

⁵ The thresholds should be proportionate to the levels of penalties for natural persons provided for in the specific legislative act and take into account the alternative thresholds adopted in Directive (EU) 2024/1203 on the protection of the environment through criminal law and Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures.

G. JURISDICTION

1. Each Member State shall establish its jurisdiction over the criminal offences covered by [Article(s) ...] where:
 - (a) the criminal offence was committed in whole or in part within its territory;
 - (b) the criminal offence was committed on board a ship or an aircraft registered in that Member State or flying its flag; or
 - (c) the offender is one of its nationals.
2. A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more criminal offences covered by [Article(s) ...] which have been committed outside its territory, where:
 - (a) the offender is a habitual resident in its territory;
 - (b) the offence is committed for the benefit of a legal person established in its territory;
 - (c) the offence is committed against one or more of its nationals or habitual residents; or

[...]
3. *In cases covered by paragraph 1, points [...] Member States shall ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a complaint by the victim in the place where the criminal offence was committed or a denunciation from the State of the place where the criminal offence was committed.]*

H. LIMITATION PERIODS⁶

1. Member States shall provide for a limitation period [which is commensurate to the gravity of the offence and] that enables the investigation, prosecution, trial and adjudication of criminal offences covered by Articles [...] for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.
- [2. *The limitation period covered by paragraph 1 shall be of at least [...] years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least [...] years.*
3. *Member States shall provide for a limitation period of at least [...] years from the date of the final conviction for a criminal offence covered by Articles [...] that enables the enforcement of the following penalties imposed following that conviction:*
 - (a) *a penalty of imprisonment of more than [...]; or alternatively*
 - (b) *a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least [...] years.*
4. *By way of derogation from paragraphs 2 and 3, Member States may establish a limitation period that is shorter than [...] years, but not shorter than [...] years, provided that such limitation period may be interrupted or suspended in the event of specified acts.]*

⁶ The following model recital shall also be part of these model provisions: “Member States should lay down rules concerning limitation periods in order to enable them to counter the criminal offences referred to in this Directive effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement”.

I. STATISTICAL DATA

1. Member States shall ensure that a system is in place for the collection, productions and dissemination of existing, anonymised statistical data on offences covered by [Article(s) ...].
- [2. *Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis and if they are available at central level, submit to the Commission statistical data covered by paragraph 1 which shall, as a minimum, include existing data on:*
 - (a) *the number of criminal offences registered and adjudicated by the Member States;*
 - (b) *the number of court cases that are dismissed, including on the grounds of expiry of the limitation period for the criminal offence concerned;*
 - (c) *the number of natural persons that are prosecuted.*]

[J. TRAINING

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall promote specialised training to judges, prosecutors, police and judicial staff and to competent authorities' staff involved in criminal proceedings and investigations with regard to the objectives of this Directive and appropriate to the functions of such judges, prosecutors, police and judicial staff and competent authorities' staff.]
