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*Corpus Juris* –  
A Criminal Law  
System for the EU?



# *Corpus Juris* – A Criminal Law System for the EU?

## **Introduction**

The term *corpus juris* means body of law in Latin and is usually used to refer to the body of law of a country, jurisdiction or court. In the EU context *Corpus Juris* was the name given to a limited examination of how European law could be adapted to tackle the problem of fraud directed against EU funds. This briefing explains the background to the discussion of these proposals for the establishment of an EU-wide set of principles to deal with financial crime against the European Union and the EU's response to these ideas. The proposals in the original paper have now been overtaken by events following the establishment of the EU anti-fraud office, OLAF, and other measures (detailed below).

## **Background**

'*Corpus Juris*: introducing penal provisions for the purpose of the financial interests of the European Union,' was a study written by eight academic lawyers from EU Member States (one of them British) and published in 1997.<sup>1</sup> It was not an official paper of the European Commission but a piece of research work commissioned by it. The purpose of the group was not to create a single criminal code or criminal procedure for the EU but to come up with a set of legal principles that would be valid across all Member States when dealing with financial crime that related to the EU.

The study was the result of a suggestion made by the European Parliament and the Commission that the question of the legal principles concerning cross-border crime against EU funds (usually called trans-national crime in EU institutions) should be studied. The decision to establish the study group followed concern about fraud and misuse of EU funds and the fact that it was estimated that 80 per cent of such fraud was trans-national in nature and therefore inherently more difficult to investigate than if it had occurred in one state alone. The large and sophisticated nature of some of these frauds against the EU was demonstrated by research in the 1990s which found that just one per cent of such fraud cases involved 50 per cent of the total stolen.

The Court of Auditors has drawn attention to the cross-border nature of this type of crime and the difficulties in preventing and detecting it:

Fraud against the Community budget is often transnational. The enforcement agencies, however, operate according to a huge number of

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<sup>1</sup> Mireille Delmas-Marty *et al.*, *Corpus Juris: Introducing Penal Provisions for the Purpose of the Financial Interests of the European Union* (Paris: Economica, 1997)

different procedures and in dispersed order in a very time-consuming way. In contrast the fraudsters themselves can operate in real time using their international networks of contacts.

The procedures in place can simply not cope with new criminal networks.<sup>2</sup>

## **The Proposals**

The study group highlighted two major obstacles which impeded justice in this kind of fraud:

- criminal justice authorities being competent only in their national jurisdictions – meaning that they can only prosecute cases if the crime occurred in their own country;
- disparity between legal systems in everything from the definition of offences to penalties and the rules of procedure – making it possible for fraudsters to operate with impunity in certain countries and making prosecution difficult in all Member States.

They observed that these obstacles meant that the law was excessively complex and ineffective in tackling fraud against the EU budget. A further complication is that crimes are not necessarily committed in EU Member States – the fraudsters could be based outside the EU but be stealing EU funds.

They considered three ways the situation could be improved:

- assimilation – Member States were already required under the Treaties to ensure that they had laws to protect EU funds against fraud;
- co-operation – Member States could work together to tackle this kind of trans-national crime using the various instruments of co-operation established by the EU and other bodies, such as Europol and Interpol;
- harmonisation – Member States could adopt identical legal measures, such as common definition of offences and rules of procedure, in order to create a single legal area for offences involving the EU's funds.

The study group considered each of these approaches and identified difficulties with all of them. Assimilation had so far failed to result in a significant improvement in the situation and the co-operation measures envisaged in several EU agreements had not been ratified by Member States or were in other ways ineffective. Harmonisation was possible for the definition of offences but difficult in the field of criminal law procedure because of differences in legal systems between Member States.

The *Corpus Juris* study recommended the adoption of a limited criminal code to cover offences against EU funds. The offences were based on existing crimes and included fraud in the Community Budget, corruption, abuse of office and misappropriation of funds.

The study proposed that a European Public Prosecutor (EPP) be created with an inquisitorial system of prosecution led by judges. The EPP would delegate prosecution to

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<sup>2</sup> Court of Auditors, *Special Report No 8/98 on the Commission's services specifically involved in the fight against fraud, notably the 'unité de coordination de la lutte anti-fraude' (UCLAF) together with the Commission's replies*, 1998 OJ C 230/1, p. 22, para 7.5

representatives in Member States. To ensure that fraudsters could not evade justice, there would be a European warrant of arrest to enable them to be brought before the national court that was trying the offence.

The study group summarised their approach as “a radically new response to the absurdity, widely condemned but still tolerated, which consists in opening up borders to criminals whilst closing them to law enforcement agencies”. But they went on to emphasise that their proposals did not amount to “a criminal code, nor a unified code of criminal procedure” but a “set of penal rules [...] limited to the penal protection of the financial interests of the European Union”.<sup>3</sup>

## **The Response**

Reaction varied from the supportive – the European Parliament thought it a useful basis for further investigation and discussion – to outright hostility. In the United Kingdom, *Corpus Juris* became caught up in a wider debate about national sovereignty and the EU in which critics saw the study as presaging a wholesale transfer of sovereignty to the EU in the sensitive area of criminal justice. This had not been proposed by the study group and, in addition, treaty change would have been needed to implement the study group’s proposals and the British Government (amongst others) would not have agreed.

The Senior European Experts paper on the European Public Prosecutor describes how the idea of the EPP was subsequently taken forward by the EU. The possibility of creating such a post by unanimity was included in the Treaty of Lisbon (but has not been implemented as yet). The concept of an arrest warrant that crosses borders within the EU was developed separately and has been implemented for serious offences, not just fraud. Most of the remaining proposals of the study were not pursued although the issue of fraud against the EU was addressed in other ways.

In practice, the *Corpus Juris* study was overtaken by events as the EU reformed its policy and institutional structures. The European Commission established the European Anti-Fraud Office (OLAF) in 1999 in recognition of the need for a more effective and specialised team to tackle fraud against EU funds. Other measures were taken to improve criminal and judicial co-operation as a result of the Treaty of Amsterdam and the crime and justice work programmes that followed.

## **Future Policy**

Although OLAF has improved the EU’s vigilance towards protecting its own budget, and there has been an important change in culture towards safeguarding EU resources, OLAF’s effectiveness is inevitably limited. Although it prepares many cases for national authorities to investigate, fewer than 10 per cent are prosecuted. This is particularly frustrating given that around 80 per cent of the EU’s budget is spent in Member States under the supervision of national and/or regional governments and it is Member States who usually raise concerns about fraud. Although the proposals in *Corpus Juris* are now a matter of history, the need for the EU to be far more effective in how it tackles fraud against its funds remains.

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<sup>3</sup> Both quotes in Mireille Delmas-Marty *et al.*, *supra* n. 1, p. 40



## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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