



EUROPEAN COMMISSION

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Mr Horst SEEHOFER  
President of the Bundesrat  
Leipziger Straße 3 - 4  
D-10117 BERLIN

Dear President,

The Commission thanks the German Bundesrat for its Opinion on the Communication "Towards an EU Criminal Policy – Ensuring the effective implementation of EU policies through criminal law" {COM(2011) 573 final} and would like to provide the following replies to the Bundesrat's main comments:

The Commission welcomes the support expressed for its efforts to ensure a coherent and consistent EU criminal policy, focused on the needs of EU citizens. It reconfirms the importance of strict respect of the principles of subsidiarity and proportionality for any EU criminal law legislation.

The Commission agrees with the Bundesrat that under the legal framework of the Lisbon Treaty and in line with the principle of conferral, the EU has competence to adopt measures both in the field of criminal procedure and substantive criminal law in the specific areas mentioned by the Treaty.

The Commission takes note of the comments by the Bundesrat concerning the method to apply when determining whether EU criminal law measures are "essential" in ensuring the effective implementation of an EU policy within the meaning of Article 83 (2) TFEU. As set out in the Communication,<sup>1</sup> the European Commission will conduct a thorough analysis of the legal and factual situation in a specific policy area before considering the proposal of measures based on Article 83 (2) TFEU. The required justification to show that criminal law measures are "essential" to address the enforcement problems in a specific area will include the analysis on how criminal law measures as compared to other options, are expected to ensure the effective implementation of an EU policy.

The Commission would like to draw the Bundesrat's attention to two recently adopted Directives concerning the trafficking in human beings and sexual abuse and sexual exploitation of children and child pornography.<sup>2</sup> Both Directives contain jurisdiction clauses.

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<sup>1</sup> *Ibid.*, pp. 7 and 8.

<sup>2</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; Directive of the European Parliament and of the Council of 15 November 2011 on combating the

*They were adopted on the basis of Article 83 (1) TFEU, which provides, as Article 83 (2) TFEU, the basis for "minimum rules concerning the definition of criminal offences and sanctions".*

*Concerning general legal terms such as "incitement" or "aiding and abetting", the Commission reaffirms its intention for a broader discussion on this issue with a view to future legislative proposals on EU criminal law. These discussions will, amongst others, take place in an Expert Group the Commission will set up shortly<sup>3</sup> and which will be composed of high-level experts from academia and practice.*

*The Commission notes with interest the support of the Bundesrat for possible EU criminal law measures in the area of the Common Fisheries Policy. It will keep Member States and national Parliaments informed about the outcome of its own assessment whether such measures are essential to ensure the effective implementation of existing rules in this policy area.*

*I hope that these clarifications address the key issues raised in the Opinion of the Bundesrat, and look forward to continuing our political dialogue on these and other matters.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [no official number yet].

<sup>3</sup> See Communication, p. 12.