

## News from the EU

### Legislative Instruments

#### New negotiations:

##### *Mutual recognition*

Directive on the European Protection Order (EPO) (OJ C 69, 18 March 2010, pp. 5-18)

This proposal was tabled in January 2010 by 12 Member States. The objective is to make sure that a victim who is subject to a protection measure (for example in a case of domestic violence) may still be protected when he/she moves to another Member State. The scope is therefore very close to that of Framework Decisions 2008/947/JHA of 27 November 2008 (mutual recognition of probation measures) and 2009/829/JHA of 23 October 2009 (mutual recognition of supervision measures). These instruments, however, apply where it is the offender or suspected person (and not the victim) who leaves the territory of the Member State where the probation or surveillance measure were taken. The Council discussed the file on 4 June 2010. For the last public version (Doc. Council 10384/10, 28 May 2010) of the text, [click here](#).

Directive regarding the European Investigation Order in criminal matters (EIO) (OJ C 165, 24 June 2010, pp. 22- 39)

This initiative has been submitted on 21 May 2010 (Doc. Council 9288/10) by a group of seven Member States. The objective is to provide a comprehensive instrument covering the gathering of all types of evidence on the basis of the principle of mutual recognition. It would replace Framework Decisions 2008/978/JHA on the European Evidence Warrant, 2003/577/JHA on freezing orders (as far as evidence is concerned) as well as conventions on mutual legal assistance (including the 1959 convention of the Council of Europe, the 1990 Schengen Convention and the 2000 EU Convention). The negotiation of this directive started at the Council in July 2010.

To read the proposal, [click here](#).

##### *Approximation of substantive criminal law*

Directive on preventing and combating trafficking in human beings, and protecting victims (COM (2010) 95, 29 March 2010)

This Directive was proposed by the Commission on 29 March 2010. It is related to the [proposal for a Framework Decision](#) proposed and negotiated in 2009. The proposal was not adopted before the entry into force of the Treaty of Lisbon and had to be resubmitted in the form of a proposal for a Directive. This Directive would repeal Framework Decision 2002/629/JHA. The Council reached a general approach on this file on 4 June 2010. This is only a first step in the ordinary legislative procedure (co-decision).

For the last public version of the text (Doc. Council 10845/10, 10 June 2010), [click here](#).

Directive on combating the sexual abuse, sexual exploitation of children and child pornography (COM (2010) 94, 29 March 2010)

This Directive was proposed by the Commission on 29 March 2010. It is related to the [proposal for a Framework Decision](#) proposed and negotiated in 2009. The proposal was not adopted before the entry into force of the Treaty of Lisbon and had to be resubmitted in the form of a proposal for a Directive. This Directive would repeal Framework Decision 2004/68/JHA. The negotiation is still at an early stage in the ordinary legislative procedure (co-decision).

##### *Approximation of procedural criminal law*

Directive on the rights to interpretation and to translation in criminal proceedings (OJ C 69, 18 March 2010, pp. 1-4)

This initiative has been proposed by 13 Member States at the end of December 2009. The content of the proposal, except for some aspects such as the legal nature (Directive instead of Framework Decision), is the result of the negotiation of the draft [Framework Decision](#) on which the Council had reached a political agreement on 21 October 2009. Because the Framework Decision had not been formally adopted at the time of the entry into force of the Treaty of Lisbon, it had to be resubmitted in the form of a proposal for a Directive. The proposal came from a group of Member States. There is also a [proposal for a Directive submitted by the Commission](#) on the same issue. The Parliament decided however to work formally

on the basis of the first proposal (Member States), while supporting the proposal of the Commission on the substance. The Council and the European Parliament have reached an agreement on this file in June (for the content of the agreement, [click here](#)). The Directive will be formally adopted at a later stage.

This Directive is the first measure foreseen in the framework of the [road map on procedural rights](#) adopted by the Council on 30 November 2009.

### External agreements

Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program ("Swift Agreement") (Docs. Council [11222/1/10 REV 1](#), [11222/1/10 REV 1 COR 1](#) and [11350/2/10](#))

The objective of this instrument was "to make sure that designated providers of international financial payment messaging services [in reality, the agreement is primarily intended to cover the company "Swift"] make available to the United States Department of the Treasury financial payment messaging data stored in the territory of the European Union necessary for preventing and combating terrorism and its financing". This agreement follows a change in the architecture of Swift: while all data managed by Swift were previously stored in the US, an important part of these data will soon be stored only in the EU. Under this agreement, transmission of data to the US will take place under mutual legal assistance procedures. Provisional application as from 1/2/2010 was provided. Due to the entry into force of the Lisbon Treaty, approval by the European Parliament was necessary before the conclusion of the Agreement. The European Parliament rejected the agreement on 11 February 2010. A new EU-US negotiation started in May 2010 and led to a [new agreement](#) signed on 28 June 2010 and approved by the European Parliament on 8 July 2010.

## Case Law

### *EU/UN Terrorist Blacklist*

CJ, 29 June 2010, judgment, C-550/09, DHKP-C

Considering the case law of the Court of Justice of the European Union on procedural rights of defence of the persons, groups and entities subjected to restrictive measures and considering Council Decision No 2007/445/EC to amend the listing procedure, the *Oberlandesgericht Düsseldorf* refers several questions to the CJ. First, the German court asks if the decision to list an organisation under Art. 2 of Council Regulation (CE) No 2580/2001 has to be regarded as effective even if the

CJEU considered that basic procedural guarantees were infringed and even if the DHKP-C has not brought proceedings contesting Council Decisions. The *Oberlandesgericht Düsseldorf* refers also questions on the interpretation of Arts. 2 and 3 of Council Regulation (CE) No 2580/2001.

On 29 June 2010, the CJ rules that in respect of the period prior to 29 June 2007, the inclusion of DHKP-C on the list provided for in Art. 2(3) of Council Regulation (EC) No 2580/2001 is illegal and, accordingly, can form no part of the basis for a criminal conviction linked to an alleged infringement of that regulation. Moreover, the Court states that Art. 2(1)(b) of the regulation must be interpreted as covering the transfer to a legal person, group or entity on the list provided for in Art. 2(3), by a member of that legal person, group or entity, of funds and other financial assets or economic resources collected or obtained from third persons.

CJ, 29 April 2010, judgment, C-340/08, the Queen, M and others

The Court of Justice of the European Union answers to a question of the House of Lords on the interpretation of Article 2(2) of Council Regulation (EC) No 881/2002. According to the CJ Article 2(2) must be construed as not applying to the provision by the State of social security or social assistance benefits to the spouse of a person designated by the UN Sanction Committee created pursuant to paragraph 6 of UN Resolution 1267 (1999) and included in the list in Annex I to the Council Regulation (EC) No 881/2002 on the grounds only that the spouse lives with that person and will or may use some of those payments to pay for goods and services which the designated person also will consume or from which he also will benefit.

CJ, 11 March 2010, action for annulment, C-130/10, EP v. Council of the EU

The European Parliament (EP) brings an action for annulment of Council Regulation No 1286/2009 (amending Regulation No 881/2002) imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. The EP claims the invalidity of the contested regulation because it has not Art. 75 TFEU as legal basis. In case the CJ does not contest the chosen legal basis of Council Regulation No 1286/2009, the EP considers that the conditions to adopt it under the procedure of Art. 215 TFEU were not fulfilled.

### *European Arrest Warrant*

CJ, 28 May 2010, preliminary ruling, C-264/10 PPU, Kita

Kita Gheorghe, a Romanian citizen, killed his wife in Austria in 2008. The Austrian Court issued a European arrest warrant with a view to arrest and surrender Mr Kita. The Romanian authorities accepted to execute the European arrest warrant under the condition that if he is

condemned to imprisonment, the sentence will be executed in Romania. After his condemnation to 15 years of prison in Austria, Mr Kita opposed himself to his transfer in Romania because his brother, sister and girlfriend were living in Germany. Consequently, the Romanian High Court refers a question to the CJ on the interpretation of Art. 5 (3) of the Framework Decision on the European arrest warrant. Considering that Mr Kita is in detention, the Romanian Court asks the application of the urgent preliminary ruling procedure (PPU) or of the accelerated procedure to the case.

CJ, 11 May 2010, hearing, C-306/09, I.B.

This case concerns the interpretation of Articles 4(6), 5(3) and 5(6) of the Framework Decision on the European arrest warrant. The Belgian Constitutional Court asks whether a European arrest warrant issued for the purposes of the execution of a sentence in *absentia*, without the convicted person having been informed of the date and place of the hearing, and against which that person still has a remedy, should not be considered as an arrest warrant issued for the purposes of the execution of a custodial sentence or detention order within the meaning of Art. 4(6) of the Framework Decision but rather as an arrest warrant for the purposes of prosecution within the meaning of Art. 5 (3) of the Framework Decision on the European arrest warrant.

If that European arrest warrant is to be considered as following under Art. 4(6) of the Framework Decision, another question raised is to know whether Articles 4(6) and 5(6) are to be interpreted as not permitting the Member State to make the surrender to the issuing Member State of a person residing on their territory when the European arrest warrant is for the purposes of the execution of a custodial sentence or detention order, subject to a condition that that person be returned to the executing State in order to serve there the custodial sentence or detention order imposed by a final judgment against that person in the issuing State. If the executing Member State is not allowed to subordinate the surrender of its resident to his/her return to execute his/her sentence, the Belgian Court asks if there is a risk to infringe the principles of equality and non-discrimination. In addition, the Belgian Constitutional Court asks if Articles 3 and 4 of the Framework Decision are to be interpreted as preventing the judicial authorities of a Member State from refusing the execution of a European arrest warrant in case there are valid grounds for believing that its execution would have the effect of infringing the fundamental rights of the person concerned. The CJ asked for the Opinion of the Advocate General.

CJ, 3 April 2010, order for removal, C-105/10 PPU, Gataev & Gataeva

The Finnish Court (*Korkein oikeus*) made a reference for a preliminary ruling to the CJ on 25 February 2010. The questions referred concerned provisions of the Framework Decision on the European arrest warrant and

on its relationship with provisions of the Directive 2005/85/EC (the Asylum Procedures Directive).

On 26 March 2010, the Finnish Court signed off the case and consequently the CJ ordered its removal from the register on 3 April 2010.

### *Standing of Victims*

CJ, 4 January 2010, preliminary ruling, C-1/10, Sanchez, Ministerio Fiscal & Léon

The Audiencia Provincial de Tarragona (Spain) made a reference for a preliminary ruling on the interpretation of the Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings to the CJ. The Spanish Court asks for clarifications on the interpretation of recital (8) and Articles 2 and 8 of the Framework Decision.

### *EU Law and Preliminary Rulings*

CJ, 22 June 2010, judgment, C-188/10 and C-189/10, Aziz Melki and Selim Abdeli

In both cases, the French *Cour de cassation* refers two questions to the CJ. The first one is to clarify if Art. 267 TFEU precludes a national legislation - such as that resulting from Article 23-2, paragraph 2, and Article 23-5, paragraph 2, of Order No 58-1067 of 7 November 1958, created by *Loi organique* No 2009-1523 of 10 December 2009 - in so far as it requires courts to rule as a priority on the submission to the *Conseil constitutionnel* of the question of constitutionality before them, inasmuch as that question concerns the failure of domestic legislation, because of its infringement of provisions of EU law, to comply with the Constitution. The second question seeks to understand if Art. 67 TFEU preclude a national legislation such as Art. 78-2 (4) of the French Code of Criminal Procedure on checks at national borders.

On 22 June 2010, the CJ ruled that Art. 267 TFEU preclude a national legislation establishing an incidental procedure of constitutionality control of national law if it prevents all other national courts (before the transmission of the constitutionality question to the competent Court and this court has assessed the constitutionality of the provision under examination) from referring preliminary rulings to the CJ. Moreover, the Court of Justice decided that Art. 67 TFEU and Arts. 20 and 21 of Regulation No 562/2006 (Schengen Borders Code), preclude Art. 78-2(4) of the French Code of Criminal Procedure on checks at national borders.

### *Other News*

Action Plan implementing the Stockholm Programme (COM (2010) 171, 20 April 2010)

The Stockholm Programme was adopted by the European Council on 11 December 2009. It reflects the Programme of the EU for the next 5 years in the area of Freedom, Security and Justice. The Commission

submitted on 20 April 2010 an Action Plan. The Action Plan is an instrument of the Commission only, not of the Council, despite the call in the Stockholm Programme for an action plan to be presented by the Commission but adopted by the Council. During its meeting of 3-4 June 2010, the Council adopted rather negative conclusions on the Action Plan of the Commission implementing the Stockholm Programme.

## News from ECLAN and other academic activities

The 2<sup>nd</sup> meeting of the Management Committee took place at the Université Libre de Bruxelles, Institute for European Studies, Brussels, Friday 2 July 2010.

### Research Projects

*ECLAN II: Development of ECLAN – Phase II*  
Financed by the European Commission (Criminal Justice Programme, Call for proposals 2009), the Institute for European Studies – ULB and the Ministry of Justice of Luxembourg.

The main objectives of the project are the enlargement of the academic network ECLAN, the improvement of its internal organisation, the development of new communication tools to disseminate information, the organisation of two conferences regarding EU criminal law.

### Upcoming Events

Evening Conference: *Reconfiguration of powers in European criminal justice after Lisbon – the cases of PNR and SWIFT* (Brussels, Institute for European Studies-ULB, 2 July 2010).

To read more, [click here](#).

PhD Seminar: *The EU Area of Criminal Justice* (Brussels, Institute for European Studies-ULB, 3 July 2010).

To read more, [click here](#).

Strategic Seminar: *Eurojust and the Lisbon Treaty: towards more effective action* (organised by Eurojust and the Belgian Presidency of the EU, Bruges, 20-22 September 2010).

Conference: *Guaranteeing Procedural Safeguards in the EU. A first step taken?* (organized by ERA, Trier, Germany, 18 - 19 November 2010).

To read more, [click here](#).

Conference: *Criminal Justice in Europe: Challenges, Principles and Perspectives* (organized by the University of Luxembourg, Institut Universitaire International Luxembourg, 22 - 23 October 2010).

To read more, [click here](#).

Annual Forum: *Mutual Recognition of Judicial Decisions in Criminal Matters* (ERA, Trier, 20– 22 October 2010).

To read more, [click here](#).

9th Annual Conference: *Making European Criminal Justice Work: Assessments and Perspectives One Year After the Lisbon Treaty* (ICLN, The Hague, 7 December 2010).

To read more, [click here](#).

### Summer Schools

The 7th edition of the Summer School “*The EU Area of Criminal Justice*” organised by the Institute for European Studies – ULB in collaboration with ECLAN, took place in Brussels from 28 June to 3 July 2010.

The objective of the Summer School is to provide participants with an extensive knowledge of EU criminal law.

For more information, please visit:

[www.ulb.ac.be/iee/penal/summerschool](http://www.ulb.ac.be/iee/penal/summerschool)

ERA Summer Course “*The European Criminal Justice*” took place on 28 June 2010 – 2 July 2010 in Trier, Germany. This course is intended as an introduction to EU criminal law and to the instruments for cooperation in criminal justice. It considers the origins, legal framework and institutional system of criminal justice cooperation in the EU.

For more information, [click here](#)

### Publications

#### New Journal of European Criminal Law

ECLAN recently joined the European Criminal Bar Association (ECBA) as patron of the New Journal of European Criminal Law (NJECL) which is published by

Intersentia. NJECL serves as a forum for both legal practitioners and academics interested in issues related to European Criminal Law. Its editorial board encompasses as wide a cross-section of the legal professions as wide as possible. The New Journal of European Criminal Law welcomes the submission of articles from all those involved in the criminal law in its European dimension. It seeks a large variety of contributions, from short case notes with little or no comments, to opinionated comments on developments to long in-depth critiques of judgments, legislative measures with proposals for reform or change. To ensure originality, the New Journal of European Criminal Law has a peer review system which is applied to long in-depth articles.

*Members of the European Criminal Bar Association (ECBA) and the European Criminal Law Academic Network (ECLAN) receive a -15% discount. For more information, [click here](#).*

### Books

G. Giudicelli and S. Manacorda (eds). *Cour de justice et justice pénale*. Paris, Ed. la Société de législation comparée, Collection de l'UMR de Droit Comparé de Paris, vol. 19. 2010, 324 pp.

Katja Šugman, Primož Gorkič, *Evropski nalog za prijetje in predajo: teoretični in praktični vidiki (European Arrest Warrant: theoretical and practical aspects)*, Ljubljana, GV založba, 2010, 210 pp.

Nicola Padfield, Dirk Van Zyl Smit, Frieder Dünkel (eds.), *Release from prison: European policy and practice*, Willan Publishing, 2010, 460 pp.

Patrycja Szarek-Mason, *The European Union's Fight Against Corruption – The Evolving Policy Towards Member States and Candidate Countries*, Cambridge University Press, 2010, 318 pp.  
To read more, [click here](#).

Ed Cape, Zaza Namoradze, Roger Smith and Taru Spronken, *Effective Criminal Defence in Europe*, Intersentia, Metro, 2010, 656 pp.  
To read more, [click here](#).

John Bell, *Judiciaries within Europe – A Comparative Review*, Cambridge University Press, not yet published, available from September 2010, 416 pp.  
To read more, [click here](#).



Hart Publishing is pleased to offer 20% discount on their criminal law titles to ECLAN members. If you would like to place an order you can do so directly through the Hart Publishing website (please mention the reference 'ECLAN' in the special instructions field to receive the discount).

<http://www.hartpub.co.uk/books/search.asp?st=0&s=Criminal+Law>

## Justice Forum and other EU Meetings

*Expert meeting on evidence* (Brussels, European Commission, 9 February 2010), ECLAN was represented by Gisèle Vernimmen-Van Tiggelen [*meeting report provided on request*].

*Expert meeting on the Framework Decision on the standing of victims in criminal proceedings* (Brussels, European Commission, 18 -19 February 2010), ECLAN was represented by Katalin Ligeti [*meeting report provided on request*].

*Expert meeting on the Directive on compensation of victims of crime* (Brussels, European Commission, 14 April 2010).

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*The European Criminal Law Academic Network (ECLAN) aims to facilitate and strengthen academic research and education in the field of EU Criminal Law*

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