

## News from the EU

### Legislative Instruments

#### **New negotiations:**

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

##### **Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest**

This Directive was proposed by the Commission on 8 June 2011. It is the third measure implementing the [roadmap](#) on procedural rights. The proposal aims at approximating national legislations on access to a lawyer and on the right to communicate upon arrest. Contrary to what was envisaged in the roadmap on procedural rights, it does not deal with the issue of legal aid. For the proposal of the Commission, [click here](#). Negotiations on this Directive started in Council in July 2011.

##### **Directive establishing minimum standards on the rights, support and protection of victims of crime**

This Directive was proposed by the Commission on 18 May 2011. It aims at approximating national legislation and practices on protection of victims, in particular during criminal proceedings. It would replace Framework Decision [2001/220/JHA](#) of 15 March 2001 on the standing of victims in criminal proceedings, which partly covers the same scope but is less detailed.

##### ***Processing of personal data for law enforcement purposes***

##### **Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**

On 2 February 2011, the Commission adopted a new [proposal for a Directive](#) obliging air carriers to provide EU Member States, for law enforcement purposes, with data on passengers entering or departing from the EU. A [Framework Decision](#) had already been proposed with the same object in 2007. After a first round of sensitive negotiation and given the reaction from the European Parliament, the Council decided to wait for the entry into force of the Lisbon Treaty. A new instrument had to be resubmitted under the form of a Directive. The Directive does not simply reproduce the content of the initial draft

Framework Decision. The new proposal differs on several issues. The Directive is submitted to the ordinary legislative procedure (codecision) and will therefore require agreement between the Council and the Parliament.

## **Ongoing negotiations**

### ***Mutual recognition***

#### **Directive on the European Protection Order (EPO)**

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 [Framework Decision 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. This file, which covers to some extent non criminal proceedings has raised issues in terms of legal basis. The Presidency of the Council negotiated with the Parliament on the basis of the document submitted to the JHA Council of June 2010 ([click here](#)). The Parliament voted on this file on 14 December 2010 ([click here](#) for the position of Parliament). The position of the Council remains unclear but seems to be going in the direction of a reduction or clarification of the scope of the instrument (see [Council doc. 9667/11](#)). The negotiation is affected by the recent proposal of the Commission for a Regulation on mutual recognition of protection measures in civil matters, proposed on 18 May 2011 ([click here](#) for the proposal of the Commission).

#### **Directive regarding the European Investigation Order in criminal matters (EIO)**

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 in Council in July 2010. On 10 June 2011, the Council reached a “partial general approach” (see [Council doc. 11735/11](#)) on articles 1 to 18 of this instrument which define the general regime for the EIO (scope, issuing and executing authorities, grounds for non recognition, time limits, legal remedies, etc ...). Negotiations in the Council will continue on the other articles under Polish Presidency. Examination of the file is at a preliminary stage in the European Parliament.

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

#### **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**

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 replaces Framework Decision [2002/629/JHA](#). In December 2011, the Council and the European Parliament reached agreement in first reading on this file. The directive was formally adopted on 5 April 2011 ([click here](#)). It is the first post-Lisbon instrument on substantive criminal law.

#### **Directive on combating the sexual abuse, sexual exploitation of children and child pornography**

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 Council and the European Parliament reached agreement on the substance of this Directive in June 2011 (see [Council doc. 11987/11](#)) but disagreed on the horizontal institutional issues of the correlation tables (obligation for Member States to send to the Commission tables detailing which provision of the Directive is implemented by which national provision). The

European Parliament is expected to vote on this file in plenary session in September 2011. Whatever the result of the negotiations on the issue of correlation table, it is likely that the compromise reached on the Directive under Hungarian Presidency on the other parts of the instrument will not change.

### Directive on attacks against information systems

This proposal for a Directive was adopted by the Commission on 30 September 2010. It would replace [Framework Decision 2005/222/JHA](#). One of the main objectives of the proposal is to deal with large scale attacks such as those carried out via the use of "botnets". The Directive is discussed in Council and Parliament through the ordinary legislative procedure (codecision). The Council reached a general approach on this text on 10 June 2011 (see [Council doc. 11566/11](#)). The European Parliament is expected to take an orientation vote on this instrument during the second semester 2011. Negotiations between Parliament, Council and the Commission will start only afterwards.

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

#### Directive on the right to information in criminal proceedings (Letter of Rights)

This proposal was submitted by the Commission on 20 July 2010. It is the second measure implementing the [roadmap](#) on procedural rights. The proposal deals with right to information about rights of the suspected or accused person (with special rules on right related to arrest and rights related to European Arrest Warrant proceedings), right to information about the charge and right to access to the case file. The Council reached a general approach ([click here](#)) on this text on 3 December 2010 with a view to starting negotiations with the European Parliament in 2011, under the ordinary legislative procedure (codecision). The European Parliament took an orientation vote on 17 March 2011. Negotiations between the institutions are ongoing.

### ***External agreements***

#### EU-US agreement on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters

The Council adopted on 3 December 2010 a mandate for the Commission to start negotiations with the United States on this Agreement. The text of the mandate is not public. Negotiations between the Commission and the US government continued during the second semester 2011.

#### Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR)

The agreement would replace the current [agreement signed in 2008](#) and provisionally applicable. Under the Lisbon Treaty, conclusion of the 2008 agreement by the EU required approval by the European Parliament. The European Parliament postponed its vote, thereby enabling the agreement to remain applicable, but required the negotiation of a new agreement.

The Council adopted the mandate for negotiations on 2 December 2010. The mandate and the negotiations are confidential. Negotiations between the Commission and the Australian government are ongoing. The Commission proposed in May 2011 a draft agreement for signature and conclusion by the EU ([COM\(2011\)280](#)). The Council has not yet given its approval and the agreement has therefore not been signed yet. The conclusion also needs approval of the European Parliament.

#### Agreement between the European Union and the United States on the processing and transfer of Passenger Name Record (PNR)

The EU and the US signed a [first agreement in 2004](#) which had to be terminated following a [decision by the Court of Justice](#) (lack of legal basis). A [provisional agreement](#) was signed in 2006, later replaced by a [new agreement in 2007](#). The 2007 agreement is not concluded yet but is provisionally applicable. Under the Lisbon Treaty, conclusion of the 2007 agreement by the EU required approval by the European Parliament. The European Parliament postponed its vote, thereby enabling the agreement to remain applicable, but required the negotiation of a new agreement.

The Council adopted the mandate for negotiations on 2 December 2010. The mandate and the negotiations are confidential. Negotiations between the Commission and the US government are ongoing.

### [Agreement between the European Union and Canada on the processing and transfer of Passenger Name Record \(PNR\)](#)

The European Community and Canada signed a [first agreement in 2005](#). Though no challenge was brought against that agreement, it was indirectly affected by the annulment of the agreement with the US as the legal basis was the same. A legal vacuum emerged when the Commission did not renew its decision on the adequacy of data protection in Canada. Transmission of PNR data continued on the basis of unilateral commitments from Canada. The Council adopted the mandate for negotiations for a new agreement on 2 December 2010. The mandate and the negotiations are confidential. Negotiations between the Commission and the Canadian government are ongoing.

## **Case Law**

According to our information, there has been no decision of the Court of Justice or of the General Court on judicial cooperation in criminal matters, police cooperation or related to the EU lists of terrorists and terrorist groups during the second semester 2011.

## **News from ECLAN and other academic activities**

The 8<sup>th</sup> Contact Points meeting took place at the Institute for European Studies of the ULB (IEE-ULB) on 26 May 2011. The 9<sup>th</sup> Contact Points meeting will take place in Brussels, at the IEE-ULB in spring 2012.

The 4<sup>th</sup> meeting of the Management Committee was held at the IEE-ULB on 4 February 2011. The next one will take place at the University of Luxembourg during the second semester 2011.

## **Research Projects**

### ***ECLAN II project: Development of ECLAN – Phase II (2010-2012)***

Financed by the European Commission (Criminal Justice

Programme, Call for proposals 2009), the Ministry of Justice of the Grand Duchy of Luxembourg and the IEE-ULB.

The main objectives of the project are the enlargement of the academic network ECLAN, the improvement of its internal organization, the development of new communication tools to disseminate information and the organization of two conferences regarding EU criminal law. The project started on 1 September 2010 and will end on 31 August 2012.

## **Publications**

## Upcoming Events

Conference: *The Schengen Area Put to the Test* (ERA, Trier, 22-23 September 2011). [for info, [click here](#)]

*ECBA Fall Conference* (ECBA, Nicosia, 23-24 September 2011). [for info, [click here](#)]

Conference: *European Union Judicial Cooperation in Criminal Matters - Economic Crimes* (ERA, Cracow, 29-30 September 2011). [for info, [click here](#)]

*PhD Seminar on the EU area of Criminal Justice* (University of Luxembourg in cooperation with Eclan, Luxembourg, 11-12 October 2011) [for more info: [eclan@ulb.ac.be](mailto:eclan@ulb.ac.be)]

Training on *EUROPOL & EUROJUST: Their role in EU Police and Judicial Cooperation* (T.M.C. Asser Instituut, The Hague, 7-8 November 2011). [For info, [click here](#)]

Conference: *Fighting Cybercrime - Cooperation between law enforcement agencies and the internet industry* (ERA, Trier, 10-11 November 2011). [for info, [click here](#)]

Conference: *Transnational Use of Videoconferencing in Court - EU Member State experiences of cross-border videoconferencing in criminal proceedings* (ERA, Trier, 24-25 November 2011). [for info, [click here](#)]

Conference: *Annual Conference on EU Criminal Justice* (ERA, Trier, 1-2 December 2011). [for info, [click here](#)]

Conference: *Legal aid in criminal matters: Mutual legal assistance* (ERA, Warsaw, 5-6 December 2011). [for info, [click here](#)]

## Summer Schools

The 8th 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 27 June to 1 July 2011.

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

For more information, please send an email to [eclan@ulb.ac.be](mailto:eclan@ulb.ac.be) or visit:

[www.summerschool-ulb-criminaljustice.eu](http://www.summerschool-ulb-criminaljustice.eu)

## New Journal of European Criminal Law

ECLAN 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 comprises a cross-section of the legal profession as wide as possible. The New Journal of European Criminal Law solicits articles from all those involved in criminal law in its European dimension. It seeks a large variety of articles, on a spectrum starting with short case notes with little or no commentary, to articulated comments on recent 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 applies a peer review system 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](#).*



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>

***Next issue: January 2012***

To unsubscribe to the newsletter, please write to: [eclan@ulb.ac.be](mailto:eclan@ulb.ac.be)

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

**European Criminal Law Academic Network**  
Institut d'Etudes Européennes - Université Libre de Bruxelles  
39, Avenue F. D. Roosevelt – B-1050 Brussels (Belgium)  
Tel: +32 (0)2 650 66 65/64; Fax: +32 (0)2 650 30 68; [www.eclan.eu](http://www.eclan.eu)