

News from the EU

Legislative Instruments

Adopted:

Judicial cooperation

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11 Nov. 2009, p. 20–40)

This instrument – on which the Council had already reached a general approach on 27 November 2008 – is now adopted. It lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention. Compared to the similar FD applicable to probation measures (FD 2008/947/JHA), this FD creates a regime where the issuing authority remains to a larger extent in control of the measure. Surrender of the person concerned to the issuing State in case of breach of those measures will require the issuing of an EAW and the executing authority will be able to use all grounds for non recognition provided for in the FD on the EAW to refuse the surrender.

Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15 Dec. 2009, p. 42–47)

This instrument – on which the Council had already reached a general approach on 6 April 2009 – is now adopted. It deals with situations of parallel investigations in two different Member State on the same person and for the same facts, thereby creating a risk of *ne bis in idem* situation. In such cases, the FD provides for the obligation for the concerned authorities to enter into consultation. It does not however lay down binding rules on the resolution of the possible conflict of jurisdiction.

Approximation of procedural law

Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings (Doc. Council EU 15434/09)

The roadmap was adopted by the Council on 30 Nov. 2009 as a Resolution. With this roadmap, the Council agrees to work in the future on the approximation of the following rights: the right to translation and interpretation (1), information on rights and information about the charges (2), Legal Aid and Legal Advice (3), communication with relatives, employers and consular authorities (4), special safeguards for vulnerable persons (5). Furthermore, the roadmap mentions possible work on the right to review of the ground for detention but only a Green Paper is called for on this aspect.

Approximation of substantive criminal law

Directive 2009/123/EC of the European Parliament and the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ, L 280, 27 Oct. 2009, p. 52)

This Directive is a consequence of the annulment by the Court of Justice of Framework Decision 2005/667/JHA, which had the same objective, for lack of legal basis (case C-440/05). The new Directive inserts in the existing Directive 2005/35/EC provisions on criminal sanctions for ship-source pollution.

Council conclusions of 30 November 2009 on model provisions, guiding the Council Criminal Law deliberations (Doc. Council EU 16542/2/09)

These conclusions deserve special attention although they do not constitute legislative acts. The Council is of the opinion that “the Lisbon Treaty is likely to have the effect that criminal law provisions will be discussed within the Council to an even greater extent than at present. This may result in incoherent and inconsistent criminal provisions in EU legislation. Furthermore, provisions negotiated within the Council might unjustifiably deviate from wording that is normally used in EU criminal legislation, thus creating unnecessary difficulties when

implementing and interpreting EU law". The conclusions are particularly related to Art. 83(2) TFEU (*approximation of criminal laws and regulations of the Member States (...) essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures*). The conclusions contain guiding principles and model provisions.

Others

Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9 Dec. 2009, p. 14)

The instrument is applicable to laboratory activities related to DNA and dactyloscopic (fingerprints) data. The objective is not only to ensure that national forensic service providers comply with adequate standards. The Framework Decision also provides an obligation for each Member State to recognise the results of forensic service providers of the other Member States.

Council Decision 2009/902/JHA of 30 November 2009 setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA (OJ L 321, 8 Dec. 2009, p. 44–46)

This Decision becomes the new legal basis for the EUCPN. The intergovernmental approach is strengthened compared to the previous instrument (Decision 2001/427/JHA) as the Commission is not any more in charge of the secretariat of the network. The new Decision also removes the focus on "the fields of juvenile, urban and drug-related crime" provided in Decision 2001/427/JHA.

Europol

Various decisions of the Council and of the Management Board of Europol have been adopted on 30 Nov. 2009 in order to implement the new Europol Decision 2009/371/JHA of 6 April 2009. This includes Council Decisions 2009/934/JHA (Europol's relations with partners), 2009/935/JHA (list of third States and organisations with which Europol shall conclude agreements) and 2009/936/JHA (Europol analysis work files). See OJ L 325, 11 Dec. 2009.

All instruments should be soon available on Europol's website (<http://www.europol.europa.eu>).

New negotiations:

Procedural safeguards

Initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings (Doc. Council EU 16801/09)

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 under the new institutional framework.

Mutual recognition

Directive of the European Parliament and of the Council on the European Protection Order (EPO) (Doc. Council EU 17513/09)

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 from Framework Decisions 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. These instruments, however, are based on the case 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.

Bilateral agreements

Mutual Legal Assistance Agreement between the European Union and Japan (Doc. Council EU 7288/5/09)

This agreement was signed on 30/11/09 by the EU and on 15/12/09 by Japan. It covers only mutual legal assistance and is therefore not applicable for example to extradition procedures. Though the negotiation and the EU signature took place under the Treaty of Nice, the conclusion will be governed by the Treaty of Lisbon. The conclusion will therefore require prior approval by the European Parliament. On the other side, Member States will not have the possibility to submit the conclusion to national constitutional procedures as it was the case under the third pillar.

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") (Doc. Council EU 16110/09)

The objective of this instrument is *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 is provided, until its entry into force. The agreement is supposed to be an interim measure and will therefore cease to have effect on 31 October 2010. A new agreement should be negotiated in the meantime. Though the negotiation and the EU signature took place under the Treaty of Nice, the conclusion will be governed by the Treaty of Lisbon: it will therefore require prior approval by the European Parliament.

Negotiations which ended without adoption

Some negotiations did not lead to an adoption in time before the **entry into force of the Lisbon Treaty**. These negotiations will continue only if the instruments concerned are submitted again in the form of proposals for directives or regulations under the new Lisbon Treaty.

Procedural safeguards

Framework Decision on the rights to interpretation and to translation in criminal proceedings

This negotiation has been prolonged through a new proposal for a directive submitted by Member States (see above).

Trafficking in human beings

Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA

The main objective of this proposal was to incorporate into EU legislation some provisions of the Council of Europe Convention n° 197 on Action against Trafficking in Human Beings. The Framework Decision would have abrogated Framework Decision 2002/629/JHA. The Council did not reach a political agreement on this text. It is likely that the Commission will submit a new proposal for a directive.

For the last public version of this instrument, [click here](#) (Doc. Council EU 15011/09).

Sexual exploitation and child pornography

Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

The main objective of this proposal is to incorporate in EU legislation some provisions of the Council of Europe convention n° 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse. It would have abrogated Framework Decision 2004/68/JHA. The Council did not reach a political agreement on this text. It is likely that the Commission will submit a new proposal for a directive.

For the last public version of this instrument, [click here](#) (Doc. Council EU 13780/09).

Transfer of criminal proceedings

Proposal for a Council Framework Decision on the transfer of proceedings in criminal matters

This legislative proposal was submitted in June 2009 by 16 Member States. It aimed at creating an explicit legal basis at EU for the transfer of criminal proceedings from one Member State to another Member State. It would replace, for transfer of proceedings within the EU, the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 (Council of Europe) which has been poorly ratified by EU Member States. The Council did not reach a political agreement on this text.

For the last public version of this instrument, [click here](#) (Doc. Council EU 16437/1/09).

Case Law

European Arrest Warrant

ECJ, 6 October 2009, judgment, C-123/08, *Wolzenburg*

Through this decision the ECJ interprets Article 4(6) of the EAW FD. In this context, it states especially that the national of a Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation which lays down the conditions under which the competent judicial authority can refuse to execute a EAW. In case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a EAW laid down in that provision subject to supplementary

administrative requirements. Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals or person has lawfully resided for a continuous period of five years in that Member State of execution.

EU/UN Terrorist Blacklist

CFI, 30 September 2009, judgment, T-341/07, *Sison II*

In the case *Sison I* (T-47/03), the CFI annulled Council Dec. 2002/974/EC ordering the freezing of Mr Sison's funds because of lack of a statement of reasons, infringement of his rights to defence and to an effective judicial protection. One month before that judgment, the Council adopted another decision (repealing the previous one) freezing Mr Sison's funds. This time the Council communicated to him the statement of reasons. Since then the Council has adopted several acts maintaining the freezing of Mr Sison's funds. Mr Sison brought an action for annulment of those acts and for compensation before CFI (T-341/07, *Sison II*) in September 2007. In the case *Sison II*, the Court annuls the Council acts freezing Mr Sison's funds and stays proceedings so far as the claim for compensation was concerned. The CFI states that "(par. 111) having regard both to the wording, context and objectives of the provisions at issue in this case [...] and to the major part played by the national authorities in the fund-freezing process [...], a decision to 'instigat[e] ... investigations or prosecut[e]' must, if the Council is to be able validly to invoke it, form part of national proceedings seeking, directly and chiefly, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism and by reason of that person's involvement in terrorism." In the present case, that requirement is not satisfied because the national authority ruled only incidentally and indirectly on the possible involvement of Mr Sison in terrorist activities.

ECJ, 3 December 2009, judgment, Joined Cases C-399/06 and C-403/06, *Hassan and Ayadi*

The Court of Justice of the European Union follows its conclusions in the *Kadi* case and sets aside the judgments of the CFI T-49/04 (*Hassan*) and T-253/02 (*Ayadi*). The Court annuls Council Regulation (EC) No 881/2002 (restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaeda network and the Taliban), in so far as it concerns Mr Hassan and Mr Ayadi. Mr Hassan and Mr Ayadi's names were added to the EU terrorist blacklist following the inclusion of their names in the UN Sanctions Committee consolidated list of entities and individuals to be subject to the freezing of funds under UN Resolutions 1267 (1999), 1333 (2000) and 1390 (2002). In the present joint cases, the Court rules that the right to an effective legal remedy and the rights of defence, in

particular the right to be heard, and the right to effective judicial review of observance of those rights, had patently not been respected by the Council. The Court notes that although the Council knew the *Kadi* judgment in these appeals, it has produced no information concerning the evidence adduced against the appellants. Therefore, the Court concludes that it is not able to undertake the review of the lawfulness of the contested regulation in so far as it concerns the appellants.

The Treaty of Lisbon and the Court of Justice of the European Union

The Treaty of Lisbon introduces changes to the organisation and jurisdiction of the Court of Justice of the European Union. To read more, [click here](#).

Other News

The Stockholm Programme: an open and secure Europe serving the citizen (Doc. Council EU 17024/09)

The Stockholm programme was adopted by the European Council on 11 Dec. 2009. It reflects the programme of the EU for the next 5 years in the area of Freedom, Security and Justice. An action plan to implement the programme will be proposed by the Commission and should be adopted during the first semester of 2010.

Green Paper of the European Commission on obtaining evidence in criminal matters from one Member State to another and securing its admissibility

A number of instruments are already in force, providing for mechanisms for a Member State to seek the collection of admissible evidence in criminal matters in a cross-border context.

According to the Commission, closer cooperation in this field is key to the effectiveness of criminal investigations and proceedings in the EU, and the Commission therefore intends to take further action to promote such cooperation. The objective of the Green Paper is to consult Member States and all concerned stakeholders on a number of issues that are relevant in that respect.

Period of consultation: from 11.11.2009 to 22.01.2010

Target groups: All citizens and organisations are welcome to contribute to this consultation

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

Consultation on the future European Union (EU) - United States of America (U.S.) international agreement on personal data protection and information sharing for law enforcement purposes

Extract from the questionnaire: "The European Council invites the Commission in the Stockholm Programme to propose a recommendation for the negotiation of a data protection and, where necessary, data sharing agreement for law enforcement purposes with the US,

building on the work of the HLCG." The paper of the Commission "non-exhaustively lists questions on which the Commission wishes to seek the opinions of stakeholders with a view to a future EU-US agreement on personal data protection and information sharing for law enforcement purposes."

Period of consultation: From 28.01.2010 to 12.03.2010
Target groups: All citizens and organisations are welcome to contribute to this consultation
To read more, [click here](#).

News from ECLAN and other academic activities

The 6th contact points meeting took place in Brussels at the ULB - IEE on 23 October 2009.

The 1st meeting of the Management Committee took place at the University of Luxembourg on 8 January 2010.

Research Projects

Copen Training-II: update and development of the standard judicial training programme on EU cooperation in criminal matters (2008-2009, finalised in September 2009)

Financed by the European Commission – Criminal Justice Programme and the Institut Universitaire International Luxembourg (IUIL).

To learn more, read the special issue on Copen Training at p. 7 of this Newsletter.

or visit: <http://www.copen-training.eu>

dimension of the Stockholm Programme (The Hague, T.M.C. Asser Instituut, 5 February 2010).
To read more, [click here](#).

Conference: **The perspectives for a European Public Prosecution: protecting the European financial and fundamental interests** (Paris, Cour de Cassation, 11-12 February 2010).
To read more, [click here](#).

Conference: **Mutual Trust: a Mutual Challenge** (London, The AIRE Centre, 12 February 2010).
To read more, [click here](#).

Annual Forum on Combating Corruption in the EU 2010: Incorporating Anti-Corruption Policy into the EU Accession Process (Trier, ERA, 25-26 February 2010).
To read more, [click here](#).

Conference: **The Future of European Criminal Justice under the Lisbon Treaty – New horizons post-Stockholm** (Trier, ERA, 11-12 March 2010).
To read more, [click here](#).

Upcoming Events

Symposium: **Seizure, Confiscation and asset recovery Recovery to Protect financial interests of the European Union. EU legislation and its enforcement in the European countries** (Milan, UAE – OLAF, 4-5-6 February 2010).

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

Conference: **The EU area of Freedom, Security and Justice in the wider world: Implementing the external**

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 comprises as wide a cross-section of the legal profession as possible. The New Journal of European Criminal Law solicits articles from all those involved in the 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 comment, 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

Peter-Alexis Albrecht and John Thomas, *Strengthen the Judiciary's Independence in Europe! International Recommendations for an Independent Judicial Power*, Intersentia, October 2009, 216 pp.
To read more, [click here](#).

Francesco Calderoni, *Organized Crime Legislation in the European Union*, Springer, available from January 2010, 250 pp.

Adam Lazowski (ed.), *The Application of EU Law in the New Member States*, The Hague, T.M.C. Asser Press, available from January 2010, 650 pp.

Daniel Flore, *Droit pénal européen*, Bruxelles, Larcier, December 2009, 634 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

Meeting on the economic crisis: what can be done in the justice field? (Brussels, European Commission, 16 October 2009), ECLAN was represented by Laura Surano [*meeting report provided on request*].

Meeting on procedural rights (Brussels, European Commission, 9 November 2009), ECLAN was represented by Prof. Anne Weyembergh [*meeting report provided on request*].

Special issue on COPEN TRAINING

The training tool COPEN TRAINING is the result of a project aiming at facilitating the training of magistrates in the sector of EU judicial co-operation in criminal matters. It should help any authority tasked with judicial training to develop specific training sessions on this subject. The tool may also be used by actors of judicial co-operation in their daily work as well as by any person interested in the field.

The methodology approach was to ensure academic quality of the information while at the same time taking into account the necessities of the daily work of the practitioner. Practical issues of judicial co-operation are therefore a major part of this tool. It contains practical cases to illustrate the explanations provided.

Currently, the training tool is only available in French. Translation into English will be provided in the near future. A translation into other EU languages is also envisaged in the future.

The training tool has been updated and extended thanks to the financial support of the European Commission (Criminal Justice Programme 2007), the University of Brussels (ULB) and the Institut Universitaire International Luxembourg (IUIL) and in partnership with several European universities and bodies. This project started in September 2008 and ended in August 2009.

The training tool is an evolutive product and regular updates will be provided, depending on the available budget.

The training tool includes the following elements:

1. A description of each module of the training tool: this document may be used by the organiser of the training session to draft the programme of this session.
2. A compilation of European and international legal instruments which are necessary for the work of the magistrate.
3. A user guide: this document recalls the objective of the training tool and contains recommendations on how to use the tool.
4. A guide to find useful documents: this document will help magistrates in using websites to find practical information on European legislation or case law which may be necessary in concrete cases of judicial cooperation.
- Content of the training itself: the training programme is divided into 10 modules. For each of these modules, the training tool contains a Word document (30-40 pages for each module) and a Power Point presentation. Both the Word document and the Power Point presentation contain areas to be filled in by the organiser in order to take into account the national specificities :
 - Module 1 : General introduction: judicial cooperation in criminal matters within the European Union
 - Module 2 : General framework of European judicial cooperation: from judicial cooperation to mutual recognition of judicial penal decisions
 - Module 3 : The Court of Justice of the European Communities: competences and case law in criminal matters
 - Module 4 : The actors of judicial cooperation in criminal matters
 - Module 5: Police cooperation
 - Module 6: Pre-trial stage and gathering of evidence (I): horizontal issues
 - Module 7 : Pre-trial stage and gathering of evidence (II): specific regimes for various investigative measures
 - Module 8: The European Arrest Warrant and the surrender procedure
 - Module 9 : Conflicts of jurisdiction, transfer of proceedings and ne bis in idem
 - Module 10: Post-sentence cooperation (enforcement of sentences)

To download all the components of the Copen Training tool: <http://www.copen-training.eu>

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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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