

Newsletter

Issue no. 2, May – August 2009

News from the EU

Legislative Instruments

Adopted:

Europol

Council Decision 2009/371/JHA establishing the European Police Office (EUROPOL) (OJ L 121, 15 May 2009, p. 37)

This Decision will replace the Europol Convention. It was adopted on 6 April 2009 and has been already referred to in the previous issue of this newsletter. It is now published in the Official Journal.

Strengthening Eurojust

Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 4 June 2009, p. 14)

This Decision was adopted on 16 December 2008 and has been already referred to in the previous issue of this newsletter. It is now published in the Official Journal.

Agreed (not adopted yet):

***Ship source pollution* (new)**

Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (doc. PE-CONS 3664/09 DROIPE 37, 28 July 2009)

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 will insert in the existing Directive 2005/35/EC provisions on criminal sanctions for ship-source pollution. The text of the new

Directive has been agreed by the Parliament and the Council but is not formally adopted yet.

***European Supervision Order* (already in previous issue)**

Proposal for a Council Framework Decision 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 (doc. CONS 17506/08 COPEN 261, 6 March 2009)

This draft text – on which the Council reached a general approach (political agreement) on 27 November 2008 – 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. However, 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.

***Conflicts of Jurisdiction* (already in previous issue)**

Proposal for a Council Framework Decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings (doc. CONS 8338/09 COPEN 69, 6 April 2009)

The proposal – on which the Council reached a general approach on 6 April 2009 – 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.

In discussion:

Transfer of criminal proceedings (new)

Proposal for a Council Framework Decision on the transfer of proceedings in criminal matters (Doc. CONS 11119/09 COPEN 115, 30 June 2009)

This legislative proposal, submitted in June 2009 by 16 Member States (BE, BG, CZ, DK, EE, GR, ES, FR, LT, LV, HU, NL, RO, SI, SK, SE), aims 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.

Procedural safeguards (new)

Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (Doc. COM(2009) 338 final, 8 July 2009)

This proposal of the Commission is the first legislative draft under a new approach proposed by the Commission and the Swedish Presidency of the EU regarding the approximation of procedural safeguards in criminal proceedings. After a failure with a wider proposal for a Framework Decision on procedural safeguards, the idea is to move forward step by step, with each instrument covering limited issues. The first one would be limited to the right to interpretation and to translation but is accompanied by a proposal for a roadmap submitted by the Swedish Presidency (*see below*).

Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings (Doc. CONS 11457/09 DROIPEN 53, 1 July 2009)

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

For the last public version of this document, [click here](#) (Doc. CONS 12531/09 DROIPEN 78, 31 July 2009).

Trafficking in human beings (already in previous issue)

Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM(2009) 136 final, 25 March 2009)

The main objective of this proposal is 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 abrogate Framework Decision 2002/629/JHA.

The last public version of this instrument is still the original proposal.

Sexual exploitation and child pornography (already in previous issue)

Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (COM(2009) 135 final, 25 March 2009)

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 abrogate Framework Decision 2004/68/JHA.

The last public version of this instrument is still the original proposal.

Case Law

Standing of Victims

ECJ, 8 June 2009, reference for a preliminary ruling C-205/09 Eredics

A Hungarian court referred a question for a preliminary ruling to the ECJ on the interpretation of the Framework Decision 2001/220 JHA on the standing of victims ("the FD on victims").

First, the Hungarian court asked to clarify whether "a person other than a natural person" (Art. 1 (a) of the FD on victims) falls within the definition of "victim" in light of the obligation to promote mediation between parties (Art. 10 of the FD on victims).

Second, the Hungarian court requested the ECJ to interpret Art. 10 (1) of the FD on victims, which provides that "[e]ach Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure". Specifically, it seeks to determine whether the option of mediation in criminal proceedings must be generally available.

EU Terrorist Blacklist

ECJ, 3 June 2009, order to remove C-576/08 P People's Mojahedin Organization of Iran (PMOI II)

On 23 December 2008, People's Mojahedin Organization of Iran brought an appeal against the judgment of the Court of First Instance delivered on 23 October 2008 in Case T-256/07. The applicant essentially claimed that the Court of First Instance failed to provide a full review of Decision 2006/445/EC and ruled in error that the continued inclusion of the appellant on the EU terrorist blacklist was justified.

On 20 April 2009, the applicant informed the ECJ that it was withdrawing its appeal. The Court removed the case from the register on 3 June 2009.

CFI, 11 June 2009, judgment T-318/01 *Omar Mohammed Othman*

The Court of First Instance (CFI) annuls Council Regulation (EC) No 881/2002 (restrictive measures, including freezing of assets against members of Al-Qaeda and the Taliban), in so far as it concerns Mr Omar Mohammed Othman.

Mr Othman's name was added to the EU terrorist blacklist following the inclusion of his name in Resolution 1267 (1999) of the Security Council of the United Nations by the Sanction Committee. The CFI found the case very comparable to the Kadi case. The Court ruled that the Council of the EU has violated the applicant's right of defence and the right to an effective legal remedy by not communicating to him the evidence used against him.

In conclusion, the CFI emphasized that a regulation declared void in the first degree takes effect only from the date of expiry of the period in which an appeal may be brought before the ECJ.

Other News

New Multi-Annual Programme for Justice and Home Affairs

The Hague Programme coming to an end, a new multi-annual programme (so-called "Stockholm Programme") will be adopted in the coming months. It will define the objective in the Justice and Home Affairs sector (or Freedom, Security and Justice) for the next five years. The Commission adopted on 10 June 2009 its communication on "An area of freedom, security and justice serving the citizen" (Doc. COM(2009) 262 final) that will serve as an important basis for the Swedish Presidency of the EU which is in charge of the preparation of the programme. The Presidency will propose a first draft of the programme at the end of October. The programme will be discussed during the JHA Council of 30 November and should be adopted at the European Council of 10-11 December 2009. An action plan detailing the actions to be taken to implement the Stockholm programme should be discussed and adopted early in 2010.

News from ECLAN

Research Projects

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

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

Project team: Anne Weyembergh, Serge de Biolley, Gisèle Vernimmen-Van Tiggelen and Laura Surano.

To read more: <http://www.copen-training.eu>

Upcoming Events



Conference: *Fighting Financial Crime in Europe: Practical aspects of a pan European criminal law* (Cambridge, Faculty of Law-University of Cambridge, 21-22 September 2009).

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

5th European Jurists' Forum (Budapest, Hotel InterContinental, 1-3 October 2009).

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

Conference: *ECBA Autumn Conference* (Stockholm, Grand Hotel Stockholm, 2-3 October 2009).

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

ECLAN Conference: *Evidence in Criminal Matters in the EU: Admissibility and Acquisition* (Brussels, Institute for European Studies-ULB, 22 October 2009).

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

ECLAN Contact Points Annual Meeting (Brussels, Institute for European Studies-ULB, 23 October 2009).

4th Annual Forum: *Mutual recognition of judicial decisions in criminal matters – The role of the national judge* (Trier, ERA, 28-30 October 2009).

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

Publications

Adam Lazowski (ed.), *The Application of EU Law in the New Member States*, The Hague, T.M.C. Asser Press, available from October 2009, 650 pp.

Gisèle Vernimmen-Van Tiggelen, Laura Surano and Anne Weyembergh (eds.), *The future of mutual recognition in criminal matters in the European Union / L'avenir de la reconnaissance mutuelle en matière pénale dans l'Union européenne*, Brussels, Editions de l'Université de Bruxelles, August 2009, 608 pp.

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

Catherine Flaesch-Mougin, *Union européenne et sécurité: aspects internes et externes*, Brussels, Bruylant, July 2009, 442 pp.

Geert Corstens, Jean Pradel, Gert Vermeulen, *Droit pénal européen*, 3^e édition, Paris, Dalloz, May 2009, 834 pp.

Nico Keijzer and Elies Van Sliedregt (eds.), *The European Arrest Warrant in practice*, The Hague, T.M.C. Asser Press, May 2009, 464 pp.

Sophie Bot, *Le mandat d'arrêt européen*, Brussels, Larcier, April 2009, 736 pp.



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Justice Forum

Annual Meeting of the Justice Forum (Brussels, European Commission, 4-5 June 2009), ECLAN represented by Laura Surano [meeting report provided on request].

Next issue of the ECLAN Newsletter: January 2010

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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