

# **European Criminal Justice Training Guidelines**

**2011 Update**

**Working Group 'Programmes' - Subgroup 'Penal'**

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**Updates made for this guideline are highlighted in green.**

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## *Introductory Chapter*

In this document, the main fields relevant for judicial training in the area of European criminal justice will be assessed.

To do so, all potential topics have been accumulated and listed under the following six chapters (each of them hereinafter referred to as 'Chapter'):

- A) General principles of EU law from the European criminal justice angle
- B) Judicial cooperation in criminal matters
- C) European criminal procedure
- D) European criminal law
- E) Police cooperation
- F) Human rights

Each Chapter consists of several sub-chapters (each of them hereinafter referred to as 'Sub-Chapter') which should, taken as a whole, present the complete area of relevance for judicial training in European criminal justice.

Within each Sub-Chapter, different topics will be identified (each of them hereinafter referred to as 'Topic') and assessed according to the following five main categories (each of them hereinafter referred to as 'Main Category'):

### **1. Introduction**

For each topic, the main features of the applicable European legal instrument will be briefly presented as well as its relevance for the judiciary and the recommended content of the training programme will be outlined.

### **2. Instruments and case law**

Under this point there will be a list of the relevant legal instruments as well as landmark decisions of the ECJ/CFI and national courts. The key points of the decisions will be explained very briefly.

### **3. Trainers**

For each Topic or Sub-Chapter, the guidelines will draw up a recommended profile for trainers. Trainers can be categorised into six main groups as outlined below. Recommendations of certain categories of trainers do not exclude other categories but serve as a reference to those that are especially important.

#### *A) International experts*

Examples of international trainers are representatives of the European Court of Human Rights, the Council of Europe, the OSCE, etc. (this list is not exhaustive).

**B) *EU experts***

Examples of European experts are representatives of the EU organs such as the European Court of Justice, the Court of First Instance, the Council, Commission, and European Parliament. Further trainers might be representatives of the appropriate EU-agencies such as Eurojust, the European Judicial Network, Europol, and Frontex. European experts should, in particular, be deployed for specialised seminars, workshops, and study visits.

**C) *National practitioners***

National experts can be defined as practitioners with a special knowledge of EU criminal justice, its implementation in their home member state, and experience of cross-border cooperation in this regard. Trainers might be representatives of the national ministries of justice and the interior, judges and prosecutors, administrators, representatives of the law enforcement and border guards, and defence lawyers. With this professional background and experience, national experts should in particular be deployed for specialised seminars and workshops.

**D) *Scholars***

Academic experts would be university professors and associate professors, researchers, PhD candidates and assistant professors. Scholars would be representative of both national universities as well as 'EU universities' such as the College of Bruges, the European University Institute of Florence, etc. Academic experts should, in particular, be deployed for basic courses and distance learning courses.

**E) *Experts from training institutions***

Experts from the national training institutions can be defined as judges, prosecutors, magistrates and trainers working in the national judicial schools who are therefore very familiar with the special requirements in terms of contents, organisation, and pedagogy of judicial training. Experts of training institutions should in particular be deployed for basic seminars and distance learning courses.

**F) *Experts from NGOs***

Experts from NGO can be defined as lawyers, researchers, PhD candidates employed national and European NGO's. Examples of EU-NGOs active in the field of European criminal justice are: Statewatch, Fair Trials Abroad, etc. Depending on the topic, experts from NGOs should, in particular be deployed for specialised seminars.

**4. Trainees**

The potential trainees for each sub-topic are defined and assigned respectively. Trainees can be divided into the following categories:

**A) *Senior judges***

This group covers judges that have long-standing experience in the field and are extremely familiar with practical problems and solutions in daily juridical work.

#### B) *Junior judges*

This group covers young judges just starting their career within the jurisdiction as well as persons that have commenced magistrate's training at a national training institution with the aim of becoming judges or public prosecutors. Having just completed university, members of this group usually have a very state-of-the art theoretical legal knowledge but very little practical experience. Examples of the latter group are the French 'auditeurs de justice'.

#### C) *Senior prosecutors*

This group covers judges with long-standing experience in the field who are extremely familiar with practical problems and solutions in daily juridical work.

#### D) *Junior prosecutors*

This group covers young judges just starting their career within the jurisdiction as well as persons that have commenced magistrate's training at a national training institution with the aim of becoming judges or public prosecutors. Having just completed university, members of this group usually have a very state-of-the art theoretical legal knowledge but very little practical experience. Examples of the latter group are the French 'auditeurs de justice'.

#### E) *Future/trainee judges and prosecutors*

The following persons might fall within the group of future/trainee judges and prosecutors:

- Students at the end of their studies that have very good chances and proven interest in becoming a judge or prosecutor
- Post-graduate students in the relevant fields
- Trainees such as, for instance, the French *auditeurs de justice* or the German *Referendare* that have very good chances and proven interest in becoming a judge or prosecutor.

## 5. Methodology

A recommendation for the training method is given for each Topic or Sub-Chapter. Training methods can be divided as follows:

### A) *Training methods*

#### A1) *Training courses*

Training courses are defined as courses that run over several weeks (10-12) where training would take place regularly once a week. Training courses can be combined with *complementary e-learning courses*.

### *A2) Basic seminars*

Basic seminars are defined as training events in which the overall structure of the respective field of law is presented. Their optimal length should range between 3-5 days. The objective of these is to introduce participants to the topic and allow them to gain comprehensive understanding of the field. Basic seminars can be combined with *complementary e-learning courses*. In addition, a basic seminar can be *combined with a study visit* to, for instance, a European institution or agency, other judicial schools, etc.

### *A3) Specialised seminars*

Specialised seminars can be defined as training events in which a certain topic is presented in depth. The optimal length of such a seminar would be between 2-3 days. The objective of these should be to offer intensive training on a very specific topic. An in-depth training can include practical training methods such as case studies and workshops, the main training however would consist of presentations of the respective topics. Specialised seminars can be combined with *complementary e-learning courses*.

### *A4) Workshops*

Workshops are defined as events in which the focus is on practical training. The ideal length of a workshop would be 1-2 days. Training methods used in a workshop should range from case studies to moot courts and other role games.

### *A5) Study visits*

Study visits will offer participants the opportunity to obtain a realistic insight into the daily work of European institutions and agencies as well as their national counterparts such as courts, police cooperation centres etc. This experience will lead to a better understanding of the work of these institutions, the role they can play to support practitioners, obstacles that may emerge and can, in this way, further the (mutual) trust in and consequently usage of these institutions. EU institutions and agencies of special significance for the purposes of these guidelines are:

- European Court of Human Rights (ECHR)
- European Court of Justice (ECJ)
- Eurojust
- European Judicial Network (EJN)
- Europol
- International Criminal Court (ICC)

### *A6) Distance learning courses*

Within the framework of so-called e-learning, there are additional possibilities for distance learning courses. These courses can last for between 2 and 4 weeks. Courses can cover the area of basic courses as defined above, as well as provide in-depth courses although the main focus should be on basic courses that offer a very comprehensive overview of European criminal justice. Methods used in these courses can be: explanatory papers to be read, multiple-choice tests, case studies etc. *Furthermore, self-paced or self-directed distance learning could be offered, meaning training sessions that the trainee*

completes individually, at their own speed and in their own time, such as interactive, internet-based or CD-ROM training. The distance e-learning programme can be completed by a final session which trainees attend.

### *B) Complementary e-learning*

Basic seminars, specialised seminars and workshops can be backed up and complemented by e-learning programmes.

**B1)** Within the framework of *basic seminars*, these programmes could consist of introductory papers that the trainee reads beforehand and is then tested by multiple-choice questions.

**B2)** For *specialised seminars*, the e-learning tool can be used to permit participants to start the course at the same level of knowledge by offering them initial introductory training at home. Again, training can consist of explanatory papers on the topic and multiple-choice questions.

**B3)** In the framework of *workshops*, the e-learning tool can provide a method to prepare participants in-depth, so that during the workshop, time can be exclusively devoted to the problems of solving actual cases.

### *C) Priority*

The assessment of priorities in this updated guideline will, for the first time, base itself on the joint conclusions drawn in the EJTN workshop 'A joint framework for European criminal justice training in the EU – A workshop to set up common guidelines' that was conducted by the EJTN Sub-group 'Penal' in The Hague from 7-8 December 2009 together with ca. 26 trainers and experts specialised in criminal justice representing 15 judicial schools. Priorities refer to the years 2010-2011.

Three different priorities are assigned to each sub-topic:

- C1) Top priority*
- C2) Priority*
- C3) Recommended*

Again, it is essential to emphasise that these assignment of a sub-topic to a category might change considerably depending on the developments of EU criminal justice legislation.

### *D) Format*

Depending on the objective of the course, different training formats may be necessary. Potential formats are:

- D1) Local*

- D2) Regional*
- D3) National*
- D4) Trans-national*
- D5) EU-wide*

A training event that is either a basic seminars or a specialised seminars focussing on the national implementation of a European law should preferably be held at *district, regional, or national* level, depending both on whether a nation-wide approach is required as well as on mere practical reasons such as the size of a country and number of trainees.

Especially with regard to criminal justice in the EU, cross-border cooperation is becoming more and more important. Especially workshops, but also basic and specialised seminars that are held at *trans-national level*, can provide immense added value. They further understanding of the problems within and between different EU legal systems, enhance mutual trust and provide a network of contacts.

# **Chapter A**

## **General EU Law From The European Criminal Justice Angle**

### ***I. The European system***

#### **1. Introduction**

The European Judicial System has seen new light with the coming-into-force of the Lisbon Treaty on 1 December 2009. The Lisbon Treaty now is the latest consolidated version of the EU treaties replacing the Nice Treaty to govern the way in which the EU operates. It is composed of two treaties: the "Treaty on European Union" and the "Treaty on the Functioning of the European Union".

The Lisbon Treaty is intended to make the EU more adapted to its growing size and to the cross-border challenges which it is increasingly facing. It also aims at ensuring more democracy in the EU by enhancing the role of the European Parliament and that of national parliaments, it creates the positions of President of the European Council and High Representative for the Union in Foreign Affairs and Security Policy, it sets up a European External Action Service to support the High Representative, etc.

The Treaty also brought by the greatest reform that the area of police and judicial cooperation in criminal matters has seen since the Maastricht Treaty of 1992. Changes brought by the Lisbon Treaty include:

- The EU's three pillars are abolished in favour of a single structure. This brings the whole of Justice and Home Affairs back together. Formerly in two different pillars, asylum, immigration, visa policy, border control, judicial cooperation in civil matters, and police and judicial cooperation in criminal matters can be found under "Title V – Area of Freedom, Security and Justice" of the Treaty on the Functioning of the European Union.
- The right to propose legislation now belongs either to the Commission or a quarter of the member states.
- Unanimity voting in the Council and mere consultation of the European Parliament have been largely replaced by 'qualified majority' voting in the Council and co-legislation ('co-decision') between the Council and the European Parliament.
- New legislative acts will be adopted as regulations, directives or decisions, instead of framework-decisions and decisions before the Lisbon Treaty.
- The European Court of Justice gains additional powers.

However, certain exceptions to qualified majority and co-decision remain. For instance, the possibility of setting up of a European Public Prosecutor's Office requires unanimity in the Council and the European Parliament's consent. Also, measures concerning operational cooperation between police authorities,

conditions and limitations under which the competent authorities of a member state may carry out cross-border activities by operating on the territory of another member state in liaison and agreement with that state, require unanimity in the Council and the European Parliament's consultation.

### *Training contents*

Training in the European judicial system aims at familiarising trainees with the work of the European Court of Justice, and especially understanding the new role of the ECJ within the area of criminal justice.

- The basic structure of the judicial system (ECJ, CFI and CST + further potential judicial bodies)
- Legislative instruments
- Remedies and actions available in relation to criminal justice
- The preliminary references proceedings.
- The urgent preliminary ruling proceeding (Article 23a ECJ Statute; Article 104 b Rules of Procedure of the Court)

## **2. Instruments and case law**

### *a. Basic documents*

1. Draft Internal Security Strategy for the European Union: "Towards a European Security Model" (23 February 2010; 5842/2/10)
2. The Treaty of Lisbon and the Court of Justice of the European Union Court of Justice of the European Communities, PRESS RELEASE No 104/09, Luxembourg, 30 November 2009
3. Consolidated versions of the Treaty on the European Union and the Treaty Establishing the European Community (consolidated text), (OJ C 321E; 29.12. 2006)
4. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union
5. Consolidated version of the Treaty on the functioning of the European Union (OJ C115, 9.5.2008) – Title V
6. Consolidated Version of the Treaty on the European Union ((OJ C321, 29/12/2006 P. 5) – Title VI (pages 23-31)
7. Information note on references from national courts for a preliminary ruling, supplement following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice, March 2008
8. Statute of the Court of Justice, consolidated version, March 2008
9. Rules of procedure of the Court of Justice (1 March 2009)

### *b. Documents relating to the system of preliminary references*

1. Council Decision of 20 December 2007 amending the Protocol on the Statute of the Court of Justice (OJ L 24/42; 29.1.2008)

2. Amendments to the Rules of Procedure of the Court of Justice (OJ L24/39; 29.1.2008)
3. Information note by the Court of Justice on references by national courts for preliminary rulings OJ 2005/C 143/01, 11 June 2005
4. Supplement following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice,
5. Jurisdiction of the Court of Justice to give preliminary rulings on police and judicial cooperation in criminal matters, March 2008 (Table of countries that have accepted the Court's jurisdiction under Article 35 TEU)

### *c. Case-law*

#### 1. The need of judicial control and protection by the European Court of Justice

- Case 294/83 *Parti Ecologiste 'Les Verts' v. European Parliament* [1986] ECR 1339
- Case C-50/00 P, *Unión de Pequeños Agricultores*, ECJ, ECR 2002, I-6677
- Case 25/52 *Plaumann* [1963] ECR 1
- Case C-355/04 P *Segi and Others v Council* [2007] ECR I-0000
- C-402/05 *Kadi v. Council and Commission*, judgment from 3 September 2008

#### 2. On preliminary references

##### *On the admissibility and jurisdiction under Article 35 EC*

- Cases C-303/05 *Advocaten Voor de Wereld* [2007] ECR I-3633.
- Case C-103/05 *Pupino* [2005] ECR I-5285

##### *On the admissibility and jurisdiction of preliminary references in general*

- Case 244/80 *Foglia v. Novello* [1981] ECR 3045
- Case C-302/04 *Ynos* [2006] ECR I-371
- Joined cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763

##### *Definition of Court or tribunal and last instance*

- Case C-54/96 *Dorsch Consult* [1997] ECR I-4961
- Case C-99/00 *Lyckeskog* [2002] ECR I-4839
- Case C-210/06 *Cartesio*, judgment of 16 December 2008

##### *The obligation to refer matters to the ECJ*

- Joined cases 28-30/62 *Da Costa* [1963] ECR 31
- Case 283/81 *C.I.L.F.I.T.* [1982] ECR 3415
- Case 314/85 *Foto-Frost* [1987] ECR 4199
- Case C-495/03 *Intermodal Transports* [2005] ECR I-8151
- Case C-461/03 *Gaston Schul Douane expéditeur* [2005] ECR I-10513

##### *On the urgent preliminary rulings procedure*

- Order C-66/08

- C-296/08 PPU Esteban Goicoechea, judgment of 12 August 2008
- C-388/08 PPU Leymann, judgment of 1 December 2008

### **3. Trainers**

The trainers' profiles recommended for this topic are those of international experts, preferably from the European Court of Justice, scholars and national practitioners with experience of preliminary references.

### **4. Trainees**

This topic can be especially recommended to junior judges and future/trainee judges. Senior judges might however also benefit from the training, especially in view of the developments that have taken place in relation the urgent preliminary ruling procedure and the changes that the Lisbon Treaty will bring in the future.

### **5. Methodology**

#### *A) Training method*

Training can be carried out in the form of a basic seminar but it might not be necessary to dedicate a whole seminar to the topic. It could successfully be allocated to part (half a day, or a day) of another training course. One could imagine organising workshops on e.g. how to formulate preliminary questions, and to undertake a study visit to the European Court of Justice in Luxembourg.

#### *B) Complementary e-learning*

The basic seminar can be accompanied by complementary e-learning tools.

#### *C) Priority*

It is of fundamental importance that judges are familiar with the European judicial system and especially the preliminary rulings procedure, and this training should therefore be a top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

Training can be carried out in a local, regional or national setting or on a trans-national or EU-wide basis.

## ***II. The effect of European Union law on national systems***

### **1. Introduction**

European law primarily is effective in national systems through the national legislator implementing the European Instruments which later are applied by national administrations and courts. The Court of Justice has however developed

doctrines to increase further the effectiveness of Community law, such as the principles of supremacy, direct effect obliging judges to directly apply Community law instruments even if these have been incorrectly implemented or not implemented at all by the national legislator. The Court has also developed the doctrine of indirect effect (i.e. that national law must be interpreted, as far as possible, in the light of European law) and the doctrine of State liability, making the member states liable for damages for breaches against Community law rules.

When it comes to criminal law, under the Lisbon Treaty, *Framework Decisions* will no longer exist but be replaced by *Directives*. The impact of Directives and the question of them having direct effect also in the field of criminal law will give rise to many questions and discussions among European criminal justice experts. However, given that there is still a transitional period, next to the mentioned new questions, the existing questions regarding the application of the doctrine of direct effect and primacy to former Third Pillar measures will still remain important for a couple of years. In 2005, the Court of Justice delivered a seminal judgment, C-105/03 *Pupino*, in which it held that, even though the Treaty excludes that Third Pillar Framework Decisions can have direct effect, these are *not prevented from having indirect effect*.

### *Training contents*

- Basic Community law doctrines of supremacy, direct effect, indirect effect and State liability
- The former difference between the effect of Community law measures and 'Third Pillar' measures
- Difference between direct effect and indirect effect
- State liability doctrine
- Changes introduced by the EU Reform Treaty (Lisbon Treaty) and the result for the effect of criminal justice instruments - State liability and direct effect also in criminal matters in the future

## **2. Instruments and case law**

### *a. Basic Instruments*

Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community (consolidated text), (OJ C 321E; 29.12.2006), especially excluding direct effect for criminal instruments)

### *b. Case law*

#### *Supremacy*

1. Case 106/77 *Simmenthal* [1978] ECR 629
2. Case 6/64 *Costa v. ENEL* [1964] ECR 585

#### *Direct effect*

1. Case C-201/02 *Wells* [2004] ECR I-723

2. Case C-91/92 *Faccini Dori v. Recreb s.r.l.* [1994] ECR I-3325
3. Case 41/74 *Van Duyn v. Home Office* [1974] ECR 1337
4. Case 26/62 *Van Gend en Loos* [1963] ECR 1

#### *Indirect effect*

1. Case 105/03 *Pupino* [2005] ECR I-5285
2. Case C-397/01 *Pfeiffer* [2004] ECR I-8835
3. Case C-106/89 *Marleasing* [1990] ECR I-4135
4. Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969

#### *State liability*

1. Case C-224/01 *Köbler* ECR I-10239
2. Joined cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029
3. Joined cases C-6/90 and C-9/90 *Francovich* [1991] ECR I-5357

### **3. Trainers**

Trainers could be scholars and/or experts from training institutions.

### **4. Trainees**

Training on this issue is fundamental to everyone who applies Community and Union law in his/her work. It should encompass all groups of 'judicial staff', i.e. senior judges and senior prosecutors if need be, as well as junior judges and prosecutors, and future/trainee judges and prosecutors. Training of senior staff is particularly necessary in view of the changes brought about by the Lisbon Treaty and the potential direct effect of legal instruments.

### **5. Methodology**

#### *A) Training method*

Training can be carried out in the form of training courses, basic seminars and distance learning courses but it might not be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as part (half a day, or a day) of another training course. One could also imagine (especially once the Lisbon Treaty enters into force and criminal matters are subject to the general legislative regime) organising a workshop in which judges/prosecutors can become better acquainted with the doctrines of direct effect and State liability).

#### *B) Complementary e-learning*

Preparatory e-learning would be a good complement.

#### *C) Priority*

It is important that judges are acquainted with the fundamental doctrines of EU law and this training should therefore be a top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of

the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format*

Preferably in the national setting in order for judges to be able to understand the effect of Union law and the different doctrines in the practical setting of their own legal system.

## **Chapter B**

# ***Judicial Cooperation in Criminal Matters in the EU***

### ***Introduction: From mutual legal assistance to mutual recognition***

The classic concept of judicial cooperation in criminal matters is grounded on the sovereignty principle under which a sovereign State will only commit itself to cooperate with another sovereign State in the framework of pre-established conditions of its own acceptance. The rules under which this cooperation is requested (or granted) may be found either in the texts of the binding international legal instruments legally ratified by States or, in the absence of the latter, on the terms of ad-hoc agreements specifically drafted for that end under the well-known reciprocity rule. In any case, some doctrine, highlighting the strong political factor that presides to this type of international cooperation claims that it has been characterised by the "request" principle: one sovereign state makes a request to another sovereign state which then decides whether or not to comply with it. This traditional system, where direct contact between the judicial authorities of the countries involved is not admitted, has often proved slow, complex and completely unsuitable to answer nowadays challenges.

The idea of introducing a system of mutual recognition of decisions and enforcements of judgments in criminal matters, following the system already used in civil matters, has been discussed in the European Union since 1998. At the Tampere European Council in October 1999 it was decided that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union. In its programme of measures to implement the principle of mutual recognition of decisions in criminal matters, the Commission noted that the principle is founded on notions of equivalence and trust. The programme refers to decisions under criminal law (all rules laying down sanctions or measures to rehabilitate offenders) which are final (i.e. decisions by courts and certain administrative tribunals, the outcome of mediation procedures and agreements between suspects and prosecution services). Some forms of mutual recognition have already been embodied in the instruments of judicial cooperation adopted, before the Maastricht Treaty, in various forums, and subsequently in the European Union framework. Other aspects of mutual recognition have not been addressed in an international context, in particular those concerning pre-trial orders or the taking into account, in producing a court decision, of any foreign criminal judgments, especially in order to assess a person's criminal record and whether he/she is a persistent offender.

The first step in applying the principle of mutual recognition for decisions in criminal matters was made with the Framework Decision on the European Arrest Warrant in 2001. Other instruments followed being the latest ones the adoption

of the Framework Decisions regulating, in one's hand, the so-called European Evidence Warrant published in December 2008 and, on the other, the Framework Decision of 23 October 2009 on the application of the principle to the decisions on supervision measures as an alternative to provisional detention. The main areas in which member states are currently focusing their efforts to gradually achieve mutual recognition of criminal decisions in the European Union include the following:

- taking into account final criminal judgments already delivered by the Courts in another member state
- enforcement of pre-trial orders
- sentencing
- post-sentencing follow-up decisions
- peer evaluation
- See: Programme of measures to implement the principle of mutual recognition of decisions in criminal matters (OJ C 12/10, 15.01.2001)

## ***1. The EU's competence in relation to police and judicial cooperation in criminal matters***

### **1. Introduction**

The European Union only has the powers expressly conferred on it and hence does not have any universal competence to legislate on all criminal and police matters. Its competence is limited to the enumerated areas and aims mentioned in Articles 29-34 TEU. Its competence in this relation will however be altered five years after the entry into force of the Treaty of Lisbon (possibly 2014). The legal instruments, the legislative process (such as the power of initiative for member states and not just for the Commission) for legislative measures also differ slightly from the law-making procedure under the First Pillar. Criminal measures can also to a certain extent be enacted under the First Pillar. In such cases, the instrument, potentially, have the same effects as a First Pillar instrument (i.e. direct effect), which is why it is important for judges to know under which legal basis a certain criminal instruments has been adopted.

#### *Training content*

- Basic understanding of the EU's competence in relation to criminal and police matters
- Knowledge of the various legal instruments and their differences
- Basic understanding of the legislative procedures relating to police and judicial cooperation in criminal matters

### **2. Instruments and case law**

- a. Treaty of the European Union, Articles 29-34.
- b. Documents on the correct legal basis for adopting criminal instruments
- c. Criminal competence under the first pillar:

- Case C-176/03 Commission v. Council [2005] ECR I-07879
- Case C- 440/05 Commission v. Council [2007] ECR I-0000
- Case C-301/06 Ireland v. Parliament and Council (data retention)

Criminal competence under the first pillar:

- Case C-176/03 Commission v. Council [2005] ECR I-07879
- Case C- 440/05 Commission v. Council [2007] ECR I-0000
- Case C-301/06 Ireland v. Parliament and Council (data retention)

### **3. Trainers**

Trainers for this topic should be scholars or national practitioners (for example from the Ministry of Justice) or experts from training institutions.

### **4. Trainees**

This topic can be especially recommended for junior judges and future/trainee judges.

### **5. Methodology**

#### *A) Training method*

The training can be carried out in the form of a basic seminar but it might not be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as part (one lecture) of another training course.

#### *B) Complementary e-learning*

The basic seminar can be accompanied by preparatory e-learning tools.

#### *C) Priority*

It is strongly recommended that judges and prosecutors have a rudimentary knowledge of this matter.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

The training can be carried out in a local, regional or national setting.

## ***II. The effect of Third Pillar instruments in national systems***

(see also above I.II)

### **1. Introduction**

Apparently the European system of penal law as a closed body of criminal legislation is still a utopia. The efforts of the European Union to approximate national legislation in several fields certainly indicate a certain degree of development towards a European system of penal law. The use of criminal sanctions in a number of First Pillar areas such as the environment or consumer

protection arising from recent decisions by the European Court of Justice leads us to the question: how far has the Court in Luxemburg gone in attributing competence in criminal law to the European Union and how far will the Court and the EU go in the future. Experience with the implementation of European criminal law instruments is another field that should be covered. Experience shows that there are different consequences in each member state, because traditions of legislation, interpretation and theoretical development of criminal law are very different. It is very important in this context that criminal law be approximated as well as the efforts of the EU in this field, as exemplified by the Corpus Juris.

### *Training content*

Training on European criminal law should also include a methodological introduction (general questions of European criminal law). As pointed out above, the implementation of European instruments relating to criminal law is very different in each member state and this situation needs to be clarified (For example: is the offence punishable in every member state? And is the degree of punishment the same?).

Training should include:

- Community competence for criminal law: positions and comments
- Overview of the methodological background and member state criminal law
- Practices and experience of national implementation of EU Directives and the Framework Decisions on criminal law
- European experience of the interpretation of EU legislation
- Case studies

## **2. Instruments and case law**

### *a. Basic documents*

- Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community (consolidated text), (OJ C 321E; 29.12. 2006)
- Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union (The Lisbon Treaty)
- The Implementation of the Corpus Juris in the Member States, Delmas-Marty/Vervaele (edit.), 4 volumes, Intersentia, ISBN 90-5095-097-3.

### *b. Case law*

1. Case C-440/05, ship-source pollution, annulment Framework Decision 2005/667/JHA, Judgment of 23 October 2007
2. Cases C-303/05 *Advocaten Voor de Wereld* [2007] ECR I-3633
3. Case C-103/05 *Pupino* [2005] ECR I-5285

## **3. Trainers**

Trainers recommended are EU experts, national practitioners, and scholars.

#### 4. Trainees

Training in this field should be addressed to practitioners who have a good understanding of their criminal system and who can exercise their jurisdiction in cases referred to it. Thus training is especially recommended for senior judges and prosecutors.

#### 5. Methodology

##### *A) Training method:*

Training should take the form of specialised seminars and workshops.

##### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update trainees, as the instruments are numerous and changes to the regulation framework are frequent.

##### *C) Priority:* Training should have priority.

##### *D) Format:*

Training should take place on a national, trans-national and EU-wide level

### ***III. Multi-annual programmes***

#### **Tampere, The Hague, Stockholm programmes**

To draw up policy guidelines and practical objectives for the area of justice and home affairs, with a timetable for their attainment, the European Council established multi-annual programmes of action. The first of these was approved at Tampere in 1999. The European Council approved a programme of action for creating an 'area of freedom, security and justice', covering civil and criminal justice, visas, asylum and immigration, and police and customs cooperation. The 'Tampere programme' was a five-year agenda that came to an end in 2004.

The successor to the Tampere Programme was adopted in November 2004 in The Hague under the Dutch Presidency. The Hague Programme is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It aims to make Europe an area of freedom, security and justice. Immigration and asylum topped the Hague agenda alongside the prevention of terrorism. EU leaders agreed to use qualified majority decision-making and co-decision in the fields of asylum, immigration and border control issues. Legal immigration remains subject to unanimity. In the fields of justice and security, the Hague Programme highlighted the following key measures: police information to be available to all EU countries, address the factors that contribute to fundamentalism and to the involvement of individuals in terrorist activities; make greater use of Europol and Eurojust, ensure greater civil and criminal justice cooperation across borders and the full application of the principle of mutual recognition.

As The Hague Programme was coming to an end in 2009, the Portuguese Presidency of the Council settled-up a high level advisory groups – Future Groups – to provide ideas and solutions for the future of EU criminal justice. On the basis of their reports, the European Commission launched a public consultation in September 2008 on defining priorities for what was to be the new Stockholm Programme. The latter was finally adopted early December 2009 and reflects the existing and future problems in the spheres of justice and internal affairs for the years 2010-2014. In the field of criminal justice, the Stockholm Programme focused on the following issues:

- Promotion of citizenship and fundamental rights: in the area of freedom, security and justice, above all, shall be an area in which fundamental rights are protected. One important aspect in this area for example is the rights of suspected and accused persons in criminal proceedings.
- Right to privacy of the individual in today's information society: existing data protection instruments shall be evaluated and present initiatives for improvement presented.
- A Europe of law and justice: furthering the implementation of the principle of mutual recognition in criminal law (and civil) law is one of the main objectives. One example is the idea to introduce a European Protection Order and a European Investigation Order. The European judicial area should also allow citizens to assert their rights anywhere in the EU and access to justice should be facilitated.
- A Europe that protects: an internal security strategy strengthening cooperation in law enforcement, border management, civil protection, disaster management as well as judicial cooperation in criminal matters should make Europe more secure. Trafficking in human beings has been given particular attention in the Programme. The European Council calls for new legislation on combating trafficking and protecting victims as well as enhanced cooperation with Europol, Eurojust and specific third states.
- The role of Europe in a globalised world – the external dimension: an implementation of the objectives of the Stockholm Programme cannot be successful without the external dimension of the EU's policy in the area of freedom, security and justice. This policy should also be integrated into the general policies of the EU and should be coherent with all other aspects of the EU's foreign policy.

To implement the Stockholm Programme, the Commission has published an Action Plan.

### **Justice Forum**

In order to discuss EU justice policies and practice, the Commission set up a multi-disciplinary and collaborative Justice Forum. The Justice Forum aims at providing a permanent mechanism for consulting stakeholders, receiving feedback and reviewing EU justice policies and practice transparently and objectively. The Justice Forum was officially launched on Friday 30 May 2008. The forum convenes practitioners and civil stakeholders, giving them the opportunity to discuss the implementation, evaluation, and consequences of Justice and Home Affairs instruments of the EU together with EU authorities.

The forum meets four times per year in Brussels. Subgroups were built to discuss specific issues in a more in-depth manner.

See:

[http://ec.europa.eu/justice\\_home/news/information\\_dossiers/justice\\_forum/index\\_en.htm](http://ec.europa.eu/justice_home/news/information_dossiers/justice_forum/index_en.htm)

### *Training content*

The multi-annual programmes provide for the key topics that the EU will address in the area of justice and home affairs in the respective periods. The programmes serve as guidelines for evolving and forthcoming measures to be expected in this field and therefore, potential topics for training can already be assessed.

Furthermore, the development and content of the programmes serve as important *background knowledge* to better understand the developing area of freedom, security and justice.

## **2. Instruments and case law**

- a) The EU Internal Security Strategy in Action: Five steps towards a more secure Europe (22.11.2010; COM(2010) 673 final)
- b) Action Plan Implementing the Stockholm Programme; Brussels, 20.4.2010; COM(2010) 171 final
- c) The Stockholm Programme - An open and secure Europe serving and protecting citizens (*OJ C 115 4/5/2010 P.1*)
- d) JHA Trio Presidency Programme January 2010 - June 2011 (*5008/10, 4/1/2010*)
- e) The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (OJ C53/01, 3.3.2005)
  1. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Justice, Freedom and Security in Europe since 2005: An evaluation of The Hague programme and action plan Brussels, (COM(2009) 263 final; 10.6.2009)
  2. Communication from the Commission to the Council and the European Parliament: Report on Implementation of the Hague Programme for 2007 (2.7.2008; COM(2008) 373 final)
  3. Communication from the Commission to the Council and the European Parliament: Report on the implementation of The Hague programme for 2006 (COM(2007) 373 final; 3.7.2007)
  4. Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198; 12/8/2005)
  5. The Hague Programme: strengthening freedom, security and justice in the European Union (*16054/04; 13 December 2004*)
- f) Tampere European Council 15 and 16 October 1999 – Presidency Conclusions
- g) Communication from the Commission to the Council and the European Parliament – Area of Freedom, Security and Justice:

Assessment of the Tampere programme and future orientations,  
(COM(2004) 4002 final; 2.6.2004)

## ***IV. Surrender of persons***

### **IV.1. Extradition**

#### **1. Introduction**

Extradition in Europe has been primarily shaped by the Council of Europe's Convention on Extradition of 1957 which served as the 'mother convention' for most other European laws on extradition. This European Convention for Extradition provides for extradition of persons being requested either to stand trial or serve a sentence of imprisonment in a foreign country. The Convention does not apply to political or military offences and any Party may refuse to extradite its own nationals to a foreign country. With regard to fiscal offences, extradition may only be granted if the parties have so decided in respect of any such offence or category of offence. The first additional Protocol to the Convention of 1975 excludes war crimes and crimes against humanity from the category of non-extraditable political offences. It also specifies certain cases in which extradition may be refused on the ground that the person charged with the offence has already been tried. The second additional Protocol is designed to facilitate the application of the Convention, in particular to include fiscal offences among the category of extraditable offences. The Protocol also contains additional provisions on judgments in absentia and amnesty. In November 2010, the Third Additional Protocol to the European Convention on Extradition was signed introducing a simplified procedure for extradition.

Two other Conventions have been signed in the EU framework regarding extradition – the 1995 Convention on the Simplified Extradition Procedure and the 1996 Convention related to Extradition. However, none of them is in force nowadays due to the introduction, in 2004, of the mechanism of the European Arrest Warrant, valid throughout the European Union, which has replaced the extradition procedure between EU-Member states (*see below*). Nevertheless, the Council of Europe's as well as the EU's Conventions on extradition still play an important role not only as important background documents to better understand the EAW but also, and mainly, because the former remain being the in-force legal basis for extradition between the EU and Council of Europe's non-EU member states.

Finally, considerable new developments have been achieved at the end of 2009 with the conclusion of a new agreement on extradition between the European Union and the United States of America.

#### *Training content*

Training on extradition should cover the following issues:

1. Definition and historical evolution

- 2. Extradition limits
  - 2.1. Related to the person
    - 2.1.1. Nationality
    - 2.1.2. Refugees
    - 2.1.3. The non-discrimination rule
    - 2.1.4. Immunities
    - 2.1.5. Humanitarian concerns
  - 2.2. Related to the crime
    - 2.2.1. The double criminality rule
    - 2.2.2. The seriousness of the crime
    - 2.2.3. The nature of the crime
    - 2.2.4. The applied penalty
      - 2.2.4.1. The death penalty
      - 2.2.4.2. Life imprisonment
      - 2.2.4.3. Other cases
    - 2.2.5. The principles of res judicata and ne bis in idem
    - 2.2.6. Conflicts on jurisdiction
  - 2.3. The reciprocity rule
- 3. Extradition effects
  - 3.1. Relating to the requested State
  - 3.2. Relating to the requesting State
    - 3.2.1. The speciality rule
      - 3.2.1.1. Definition
      - 3.2.1.2. Exceptions
- 4. International law
  - 4.1. The European experience – The Council of Europe
  - 4.2. The EU Approach
    - 4.2.1. The Schengen Agreements
      - 4.2.1.1. The SIS
    - 4.2.2. The former EU Conventions on Extradition
    - 4.2.3. The Council of Tampere
  - 4.3. Main bilateral treaties
- 5. The extradition procedure
  - 5.1. Our country as the requesting State
  - 5.2. Our country as the requested State
  - 5.3. Other actors of the Extradition Procedure
    - 5.3.1. SIS national office
    - 5.3.2. INTERPOL

## 2. Instruments and case law

### *Council of Europe*

1. 1996 Convention related to Extradition
2. 1995 Convention on the Simplified Extradition Procedure
3. **Third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010)**
4. Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978)

5. Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975)
6. European Convention on Extradition (Paris, 13.XII.1957)

## *EU*

1. Council Decision 2009/933/CFSP of 30 November 2009 on the extension, on behalf of the European Union, of the territorial scope of the Agreement on extradition between the European Union and the United States of America
2. Council Decision 2009/820/CFSP of 23 October 2009 on the conclusion on behalf of the European Union of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America
3. Agreement on extradition between the European Union and the United States of America of 25 June 2003 (OJ L 181, 19.7.2003, p. 27–33)
4. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1, 18.07.2002)

### **3. Trainers**

Trainers for the broad subject of extradition should be international experts, EU experts and national practitioners.

### **4. Trainees**

The subject can be recommended for young/trainee judges and prosecutors as well for future/trainee judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

The training method used for the general subject of extradition should be basic seminars, possibly combined with workshops.

The subject, together with training on the EAW, is also recommended for training courses and distance learning.

#### *B) Complementary e-learning*

Training on this legal instrument can be completed by e-learning.

#### *C) Priority*

Training on the topic should have top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

The training format recommended includes national and EU-wide training.

## IV.2. European Arrest Warrant (EAW)

### 1. Introduction

The European Arrest Warrant (EAW) has been designed to replace the current extradition system by requiring each national judicial authority (the executing judicial authority) to recognise, ipso facto, and with a minimum of formalities, requests for the surrender of a person made by the judicial authority of another member state (the issuing judicial authority).

As of 1 July 2004, the Framework Decision has therefore replaced the existing texts, such as:

- The 1957 European Extradition Convention and the 1978 European Convention on the suppression of terrorism as regards extradition
- the agreement of 26 May 1989 between 12 member states on simplifying the transmission of extradition requests
- the 1995 Convention on the simplified extradition procedure
- the 1996 Convention on extradition.

The European Arrest Warrant only applies within the territory of the EU. Relations with third countries are still governed by extradition rules.

The Framework Decision defines the "European Arrest Warrant" as any judicial decision issued by a member state with a view to the arrest or surrender by another member state of a requested person, for the purposes of: conducting a criminal prosecution; executing a custodial sentence; executing a detention order. The warrant applies where a final sentence of imprisonment or a detention order has been imposed for a period of at least four months; for offences punishable by imprisonment or a detention order for a maximum period of at least one year. In June 2008, the Council published a handbook on the practicalities of executing an EAW. In 2010, a revised version of the EAW handbook has been published. Furthermore, several evaluation reports on the practical application of the EAW in the Member States are available. On 11 April 2011, the Commission published its third report on the implementation of the Council Framework Decision on the EAW. Although since its coming-into-force on 1 January 2004, available statistics contrast favourably with the pre-EAW position (e.g. the average surrender time has dropped from a one-year average to an average of 14-17 days for requested persons that did consent to their surrender, and to 48 days for those surrendered without consent), the latest Commission report also reacts to the rising concerns in relation to the operation of the EAW and in particular its effects on fundamental rights.

#### *Training content*

Training on the EAW should cover:

1. The main principles of the Council's Framework Decision of June 13th, 2002
2. Scope and fields of application

3. Grounds for refusal
4. The request for guaranties
5. The speciality rule
6. The request for the surrender procedure (issuing an EAW)
7. The execution procedure (executing a foreign EAW)

Supports:

1. Case studies
2. National and ECJ case law (evaluation reports)
3. Handbook

## 2. Instruments and case law

### *a. Basic instrument*

- Standard Form on EAW Decision
- Commission Staff working document, Accompanying document to the third Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ((COM(2011) 175 final) SEC(2011) 430 final; 11.4.2011)
- Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ((SEC(2011) 430 final; COM(2011) 175 final; 11.4.2011)
- Revised version of the European handbook on how to issue a European Arrest Warrant (17195/1/10; 17.12.2010)
- Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant - Year 2007 (10330/08; 11.06.2008)
- Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (COM(2007) 407 final; 11.7.2007)
- Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190/1, 18.07.2002
- Statements made by certain Member States on the adoption of the Framework Decision
- Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway - Declarations (OJ L 292, 21.10.2006, p. 2–19)
- Final version of the European handbook on how to issue a European Arrest Warrant (8216/2/08; 24 June 2008)

### *b. Case law*

1. C-306/09 I.B.
2. C-261/09 Mantello
3. C-83/08 Leymann and Pustovarov (Art 27 para 2 EAW FD; scope of the speciality rule)
4. C-296/08 Goicoechea (Art. 31 and 32 EAW FD; relationship between EAW and 1996 Extradition Convention)
5. C-123/08 - Wolzenburg - Ruling of 6 October 2009 - Optional non-execution of an EAW - interpretation of Article 4(6)
6. C-66/08 Szymon Kozlowski (Art. 4 No. 6 of the EAW FD; definition of 'staying' and 'resident')
7. C-303/05 Wereld/Ministerraad, Judgment of the Court of 3 May 2007
8. Irish Supreme Court, Judgment of 23.7.2010
9. German Oberlandesgericht, Judgement EAW, 25.2.2010
10. Czech Constitutional Court, Judgement EAW, 03.05.2006 (<http://www.eurowarrant.net>)
11. Cypriot Constitutional Court, Judgement EAW, 07.11.2005 (Council doc 14281/05)
12. P 1/05 (judgment), Polish Constitutional Court, EAW, 27.04.2005
13. German Federal Constitutional Court, Judgement EAW, BverfG, 2 BvR 2236/04, 18.07.2005
14. Tribunale di Bolzano, Sezione per il riesame, Ordinanza 28 luglio 2005 Nr. 44/05 Reg. Riesami

### **3. Trainers**

Trainers recommended for the EAW are EU exerts and national practitioners.

### **4. Trainees**

The issue of the EAW is especially recommended for senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Being the first instrument of mutual recognition in the EU to come into force, the EAW is not only a new phenomenon in the judicial landscape but will also form the pattern for potential further instruments to come, such as, e.g., the European Evidence Warrant. The EAW should be part of basic seminars on European criminal justice and especially on extradition.

Particular attention, however, should be paid to specialised seminars or workshops on the EAW.

#### *B) Complementary e-learning*

Training on this legal instrument can be completed by e-learning.

#### *C) Priority*

Training on the EAW should be given top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of

the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

The training format recommended includes national, trans-national and EU-wide training.

### ***V. Mutual Legal Assistance***

The following Sub-Chapter on mutual legal assistance will deal with the legal instruments that have been initially set up within the framework of the Council of Europe. Some of their rules have been afterwards either completed or replaced by EU instruments. Therefore, to understand the background of many of the EU instruments as well as to complete the knowledge of the regulations applicable to mutual legal assistance within the EU, it is important to raise the awareness and legal knowledge of both the Council of Europe and EU instruments.

The first and major instrument for mutual legal assistance in criminal matters at European level was created in 1959 and since then amended twice by two additional Protocols. Under this Convention, parties agree to afford each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons, etc. The Convention sets out rules for the enforcement of letters rogatory by the authorities of a party ('Requested Party') which aim to procure evidence (hearing of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate the evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of another party ('Requesting Party'). The Convention also specifies the requirements that requests for mutual legal assistance and letters rogatory have to meet (transmitting authorities, languages, grounds for refusal).

The first additional Protocol to the Convention completes the convention by withdrawing the possibility to refuse assistance solely on the grounds that the request concerns an offence which the requested party considers a fiscal offence. It extends international cooperation to the service of documents concerning the enforcement of a sentence and similar measures. Thirdly, it adds provisions relating to the exchange of information on judicial records

The second additional Protocol, dated of 2001, modernises the provisions of the Convention by extending the range of circumstances under which mutual legal assistance may be requested, facilitating assistance and making it quicker and more flexible. Thus, it parallels completely the Convention of 29 May 2000 in MLA in Criminal Matters between the member states of the EU and in other provisions follows the Schengen Convention of 14 June 1990.

The Third Additional Protocol to the European Convention on Extradition was signed in November 2010 introducing a simplified procedure for extradition.

In drawing up the 2000 EU Convention, the Council relied on the Council of Europe's Convention on MLA in Criminal Matters of 1959. The primary aim of the Convention was to develop and modernise the existing provision of mutual assistance by extending the range of circumstances in which assistance may be requested, by facilitating assistance to make it quicker and more effective, and by developing new measures to facilitate and further cross-border investigations. It also introduces new techniques applicable for mutual assistance (video and telephone conferences). It adopts rules on data protection.

The 2001 Protocol to the EU Convention is an integral part of the Convention of 29 May 2000. It provides for supplementary measures such as requests for information on banking transactions to combat crime in general and organised crime in particular.

Due to the complete new quality of cooperation between the member states of the EU on the basis of the principle of mutual recognition, *mutual legal assistance* and *mutual recognition* are *separately presented* in these guidelines.

#### *Training content:*

Training on the Council of Europe Convention and its Protocols on mutual legal assistance should include the following fields:

- Rules for the enforcement of letters rogatory
- Service of writs and recording of judicial verdicts
- Appearance of witnesses, experts and prosecuted persons
- Judicial records
- Procedure
- Laying of information in connection with proceedings
- Exchange of information from judicial records

Training on the EU Convention and its Protocol should include the following fields:

- Relationship to other Conventions on mutual assistance and the Schengen Acquis
- Transmission of requests for mutual assistance
- Requests for certain specific forms of mutual assistance (temporary transfer of persons held in custody for purpose of investigation, video and telephone conferences)
- Interception of telecommunications
- Control deliveries
- Infiltration and undercover operations
- Mutual legal assistance with third states, e.g. the USA

Training on the 2001 Protocol will explain the special regulations for banking transactions

## **2. Instruments and case law**

### *a. Council of Europe*

1. Third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010)
2. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)
3. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17.III.1978)
4. European Convention on Mutual Assistance in Criminal Matter (Strasbourg, 20.IV.1959)

### *b. EU*

1. Convention on Mutual Assistance in Criminal Matters between the Member states of the European Union, OJ C 197/3, 12.07.2000
  - a. Council Decision 2009/820/CFSP of 23 October 2009 on the conclusion on behalf of the European Union of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the United States of America
  - b. Agreement between the European Union and Japan on mutual legal assistance in criminal matters, *OJ L 39, 12.2.2010, p. 20–35.*
  - c. Agreement on mutual legal assistance between the European Union and the United States of America, OJ L 181/34, 19.7.2003
  - d. Explanatory report on the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member states of the European Union, OJ C 257/1, 24.10.2002
  - e. Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member states of the European Union, OJ C 326/2, 21.11.2001
  - f. Explanatory Report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member states of the European Union, OJ C 379/7, 29.12.2000

## **3. Trainers**

Trainers recommended for the Conventions and their Protocols should be international experts, EU experts, and national practitioners.

## **4. Trainees**

Training on the Conventions can be especially recommended to junior judges and prosecutors, and future/trainee judges and prosecutors.

## **5. Methodology**

### *A) Training method*

The Conventions are the main overall instruments for mutual legal assistance in the EU. Hence, general knowledge of the instruments should be provided. The

methods recommended for this area are training courses, basic seminars and distance learning courses.

The individual sub-topics of the Conventions as well as training on the Protocol can be dealt with in specialised seminars and workshops (*see below*).

### *B) Complementary e-learning*

Training on this legal instrument can be completed by e-learning.

### *C) Priority*

Given the functions outlined above, training on the Convention and its Protocol should have top priority.

### *D) Format*

The training format recommended for the Convention includes local, regional, and national training.

## **V.1. Mutual legal assistance related to evidence gathering**

### **1. Introduction**

Obtaining evidence was traditionally done by using various international and EU instruments. As said, the basic framework was provided by the Council of Europe Convention on Mutual Assistance of 1959 and its additional Protocols and, within the EU, the supplementary rules introduced by the Schengen Conventions and the EU Convention on Mutual Assistance in Criminal Matters and its Protocol. The drawbacks of the system resulting from these arrangements have been, until now, a consistently slow and inefficient procedure, a variety of different rules and legal barriers arising from grounds of refusal (see above). In its programme of measures to implement the principle of mutual recognition of decisions in criminal matters, the Commission outlined the following aim: to ensure that evidence is admissible, to prevent its disappearance and to facilitate the enforcement of search and seizure orders so that evidence can be quickly secured in a criminal case. The programme looked to find feasible ways to ensure that the reservations and declarations provided for in Article 5 of the 1959 Convention, supplemented by Articles 51 and 52 of the CISA, the grounds for refusal of mutual aid provided for in Article 2 of the 1959 Convention, supplemented by Article 50 CISA are not invoked, at least in the extent until now allowed, in the relations between EU member states. Furthermore, steps should be taken to draw up an instrument on the recognition of the freezing of evidence. This was implemented by the Framework Decision on the execution of orders freezing property and evidence of 2003, although the transfer of the evidence seized has continued to be regulated under the classical mutual assistance procedures; however, in 2006, the European Commission presented a proposal to create a European Evidence Warrant (EEW) which was adopted in December 2008 (Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters). The EEW applies the principle of mutual recognition to obtaining certain types of evidence for

use in criminal proceedings. It does not address to the taking of evidence (in whatever manner) from suspects, defendants, witnesses or victims. EU-Member States were asked to implement the warrant into national laws by January 2011. However, for quite some time, the developed mechanisms with regard to gathering foreign evidence in the EU have been criticised for being fragmented and complicated. The limited scope of the Framework Decision on the execution of orders freezing property or evidence under which the transfer of the evidence is still subject to the rules of mutual legal assistance as well as its reluctant implementation by the Member States has resulted in many practitioners not seeing added value in the use of the instrument and thus, continue to apply the traditional ways of mutual legal assistance. An even more critical approach has been taken with regard to the Framework Decision on the European Evidence Warrant. Its limited scope only covering certain evidence that already exists as well as speculations about the likely issuing of either a second Evidence Warrant or a single comprehensive document covering all types of evidence has caused legislators to place its implementation low on their agendas and practitioners to prefer using the traditional procedures of mutual legal assistance.

Thus, at the end of April 2010, eight Member States (Belgium, Bulgaria, Estonia, Spain, Luxembourg, Austria, Slovenia, and Sweden) have launched an initiative for a Directive introducing a 'European Investigation Order (EIO)' in criminal matters. The EIO shall cover, as far as possible, all types of evidence and replacing all existing instruments in the area and form a major step in the field of mutual recognition in criminal matters in the EU.

### *Training content*

#### 1. Sources

- 1.1.1. The CE 59 Convention and its Protocols.
- 1.1.2. The added rules of the Schengen Agreements.
- 1.1.3. The EU 2000 Convention
- 1.1.4. Other treaties
- 1.1.5. The national law in international cooperation in criminal matters
- 1.1.6. The procedure in the European Union:
  - The Council's Framework Decision 2003/577/JHA of July 22<sup>nd</sup>.
  - The Council's Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant
  - Development with regard to the European Investigation Order

#### 2. Grounds for refusal

#### 3. The formalities of the international demand

#### 4. The possible ways to send a request

#### 5. Services and notices

#### 6. The procedure

#### 7. The legality of evidence obtained abroad

#### 8. Outlook: national implementation concepts of the EEW

## **2. Instruments and case law**

### *a. Council of Europe*

- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17.III.1978)
- European Convention on Mutual Assistance in Criminal Matter (Strasbourg, 20.IV.1959)

#### *b. EU*

1. Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility
2. Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350/72; 30.12.2008)
3. Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196/45; 2.8.2003)
4. Joint Action 98/427/JHA 29.6.98 on good practices on MLA request

#### *c. European Investigation Order (EIO)*

1. Council of the European Union, Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters - Opinion of Eurojust regarding the draft Directive (DGH 2B LIMITE COPEN 26 EUROJUST 22 EJM 15 CODEC 270 6814/11; 4.3.2011)
2. Council of the European Union, Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters - Follow-up document of the meeting of the Council on 8-9 November 2010 and the Working Party on 11-12 January 2011 (DGH 2 B LIMITE COPEN 10 EJM 5 EUROJUST 9 CODEC 91; 31.1.2011)
3. Council of the European Union, Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters - progress report (DGH 2 B COPEN 266 EJM 68 EUROJUST 135 CODEC 1369; 26.11.2010)
4. EIO Initiative – Commission Comments (10 September 2010; 13446/10)
5. Answers to the questionnaire related to the types of procedure to be covered by the application of the EIO initiative (31 August 2010; 13050/10)

6. EIO Initiative - Follow-up document of the meeting on 27-28 July 2010 (30 August 2010; 12862/10)
7. Discussion paper on the European Investigation Order (8 July 2010; 11842/10)
8. EIO Initiative – Financial Statement (23 June 2010; 9288/10)
9. EIO Initiative - Detailed Statement (23 June 2010; 9288/10)
10. EIO Initiative - Explanatory Memorandum (Brussels, 3 June 2010; 9288/10)
11. Initiative for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters: - Answers to the questionnaire on interception of telecommunications (DG H 2B COPEN 205 EUROJUST 100 EJM 44 CODEC 975 14591/10; 12.10.2010)
12. Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters - Answers to the questionnaire related to issuing authorities in application of the initiative for a Council Framework Decision on the European Investigation Order (DG H 2B COPEN 170 EJM 32 EUROJUST 81 CODEC 754 13049/1/10 REV 1; 4.10.2010)
13. Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (21 May 2010; 9288/10)
14. Initiative for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters; Brussels (29 April 2010; 9145/10)

### 3. Trainers

Trainer should be international experts, EU experts, and national practitioners.

### 4. Trainees

Training is recommended for senior judges and prosecutors.

### 5. Methodology

#### *A) Training method*

Training on the international legal instruments to obtain evidence should preferably take the shape of specialised seminars and workshops.

#### *B) Complementary e-learning*

Complementary e-learning can be used.

#### *C) Priority*

Training on the subject should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

Training should be offered on a national, trans-national and EU-wide level.

## **V.2. Mutual legal assistance related to the trace, seizure and confiscation of the assets of crime**

### **1. Introduction**

As financial gain remains the main objective of crime in general and of criminal organisations, arrest and conviction alone without the confiscation of illicit proceeds, are not enough to combat organised crime. At EU level the necessity to set up appropriate mechanisms to improve the identification, freezing, seizure and confiscation of the assets of criminals has been addressed in several legislative instruments. In 2001, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime was set up to restrict the scope for reservations relating to certain Articles of the CoE Convention on laundering and confiscation of the proceeds from crime. In 2006, the Framework Decision on the recognition of orders freezing property or evidence of 2003 was supplemented by Framework Decision on the application of the principle of mutual recognition to confiscation orders. In 2007, under the Council Decision concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Member States were asked to set up or designate a national Asset Recovery Office, and their cooperation and exchange of information regulated. Furthermore, a Criminal Assets Seizure Centre has been created within Europol with a view to helping the member states during the criminal assets identification phase to locate financial interests outside national boundaries.

#### *Training content:*

Legal assistance on the trace and seizure of illegal profits

##### 1. Sources

1.1. The CoE 1990 Convention

1.2. The national law on international cooperation in criminal matters

1.3. The procedure in the European Union:

1.3.1. The Council's Framework Decision 2001/500/JHA

1.3.2. The Council's Framework Decision 2003/577/JHA

1.3.3. The Council's Framework Decision 2006/783/JHA

1.3.4. The Council's Decision 2007/845/JHA

2. Grounds for refusal

3. The formalities of an international demand

4. The possible ways to send a request
5. Services and notices
6. The procedure

## 2. Instruments and case-law

### a. Council of Europe

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8.XI.1990)
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 16.V.2005)

### b. EU

1. Report from the Commission to the European Parliament and the Council based on Article 22 of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (DG H 2B COPEN 187 EUROJUST 89 EJM 38 13507/10; 13.9.2010)
2. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24–36)
3. Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member states in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332/103; 18.12.2007)
4. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328/59, 24.11.2006)
5. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence 2.8.2003 (OJ L 196/45, 2.8.2003)
6. Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182/1, 5.7.2001)

## 3. Trainers

Potential trainers would be EU experts and national practitioners.

## 4. Trainees

Training is recommended to senior judges and prosecutors

## 5. Methodology

*A) Training method:*

The recommended training method would be specialised seminars and workshops

*B) Complementary e-learning: recommended*

*C) Priority:*

Training on these instruments should have priority

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:*

Training should take place on a national, trans-national and EU-wide level.

## ***VI. Ne bis in idem, transfer of criminal proceedings and conflicts of jurisdiction***

### **1. Introduction**

The Council of Europe Convention on the Transfer of Proceedings in criminal matters was adopted in 1972. Yet, only thirteen Member States have ratified it. As a result, a number of other Member States rely only, for the purposes of enabling other Member States to bring proceedings, on the mechanism of the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters, in connection with the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union from 2000. However, as this mechanism is far from providing the same effects as the one resulting from the Council of Europe's Convention indicated above, the most frequently tool used to that end consists in the establishment of bilateral ad-hoc agreements, under the reciprocity rule, when the national laws involved provide that possibility.

Between the Member States of the European Communities an agreement on the transfer of proceedings in criminal matters was also signed in 1990, which has not, however, entered into force due to lack of ratifications. Accordingly, no common legal framework on the procedure of transfer of proceedings with e.g., criteria for requesting transfer, a procedure following a request, reasons for refusing a request and effects of a transfer, exists. In line with the aim of creating a common European area of freedom, security and justice, several Member States deemed it necessary to take action to eliminate the deficits of the absence of such framework. Their proposal for a Framework Decision aims to achieve the better determination of the place of the criminal proceedings and the increase transparency and greater objectivity in the way in which the place for the trial is chosen.

The principle of ne bis in idem is particular to criminal law; recognized at both national and international levels, initiating proceedings or reopening a judgment against the same person a second time is barred for the same offence or by courts of the same state. The principle of 'ne bis in idem' is acknowledged

in all member states of the EU. However, the international texts establishing this only guarantee this protection within national borders. The principle of *ne bis in idem* has therefore been included in several international conventions, the most important one being Article 54 of the 1995 Convention on implementing the Schengen Agreement. Article 54 has been the object of several judgments of the European Court of Justice. The principle is further established in Article 50 of the Charter of Fundamental rights. At EU level, in 2005, the Commission launched a Green Paper to start a process of reflection on conflicts of jurisdiction between the courts of the member states in criminal matters in the light of the *ne bis in idem* principle. To solve conflicts of jurisdiction between national courts, the Commission outlined the possibilities for the creation of a mechanism for allocating cases to an appropriate jurisdiction. In February 2009, the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, and the Kingdom of Sweden introduced an initiative for a Framework Decision on the prevention and settlement of conflicts of jurisdiction in criminal proceedings. The Framework Decision aims to prevent parallel proceedings where two or more States have jurisdiction for conducting criminal proceedings for the same facts through means of an early exchange of information. In the cases, where the conflict of jurisdiction has already arisen, it puts forward guidelines for settlement of the respective conflict. The Framework Decision was adopted in December 2009. Finally, Eurojust's legal framework provides for a role of Eurojust in the settling of conflicts of jurisdiction.

### *Training content*

#### *Ne bis in idem and conflicts of jurisdiction*

- Training should focus on the case law and jurisdiction of the European Court of Justice with regard to the principle of *ne bis in idem*.
- Scope, content and application of the proposed Framework Decision on transfer of proceedings in criminal matters

#### *Transfer of criminal proceedings*

1. International competence of national Courts
2. International delegation of competence
  - 2.1. Conditions
  - 2.2. Procedure
  - 2.3. Effects
3. Scope, content and application of the Framework Decision on conflicts of exercise jurisdiction in criminal proceedings

## **2. Instruments and case law**

### *a. Council of Europe*

European Convention on the transfer of proceedings in criminal matters  
(Strasbourg, 15.V.1972)

### *b. EU*

1. 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 328/42; 15.12.2009)
2. Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Latvia, the Republic of Lithuania, Republic of Hungary, the Kingdom of the Netherlands, Romania, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden for a Council Framework Decision 2009/.../JHA of ... on transfer of proceedings in criminal matters (OJ C 219/7; 12.9.2009)
3. 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 294/20; 11.11.2009)
4. Green Paper on conflicts of jurisdiction and the principle of ne bis in idem in criminal proceedings (COM(2005) 696)
5. Art. 54 Schengen Convention
6. Art. 50 Charta of fundamental rights
7. Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the application of the 'ne bis in idem' principle (OJ C 100/24; 26.4.2003)
8. Convention between the Member states of the European Communities on Double Jeopardy of 25 May 1987
9. Agreement of 6 November 1990 between the member states of the European Communities on the transfer of proceedings in criminal matters

### c. Case law

1. Case 17885/04, *Orchowski*, Judgment of 22 October 2009
2. Case 22635/03, *Sulejmanovic*, Judgment of 16 July 2009
3. C-491/07, *Turansky*, Judgment of 22 December 2008
4. Case C-297/07, *Bourquain*, Judgment of 11 December 2008
5. Case C-367/05, *Norma Kraaijenbrink*, Judgment of 18 July 2007
6. Case C-288/05, *Jürgen Kretzinger*, Judgment of 18 July 2007
7. Case C-150/05, *Rechtbank 's-Hertogenbosch* Judgment of 28 September 2006
8. Case C-467/04, *Gasparini*, Judgment of 28 September 2006
9. Case C-436/04, *van Esbroeck*, Judgment of 9 March 2006
10. Case C-469/03, *Mario Miraglia*, Judgment of 10 March 2005
11. Cases C-187/01 and C-385/01, *Gözütok and Brügge*, Judgment of 11 February 2003
12. Case-493703, *Hiebeler*, Reference for a preliminary ruling

### 3. Trainers

Trainers should be EU experts and scholars.

### 4. Trainees

Training on the conflicts of jurisdiction is recommended for senior judges and prosecutors.

## **5. Methodology**

### *A) Training method*

Training methods recommended are training courses, basic seminars and distance learning courses.

### *B) Complementary e-learning*

Training on this legal instrument can be completed by e-learning.

### *C) Priority*

Training is recommended

### *D) Format*

The training format recommended national and EU-wide training.

## ***VII. Enforcement of foreign criminal sentences***

### **1. Introduction**

In 1970, the Council of Europe provided a coherent legal framework establishing the rules under which it would be possible to enforce foreign criminal sentences. Despite its excellent technical quality, the proposed mechanism was not accepted due to its extreme complexity which led, in the end, to an insignificant number of ratifications. More or less the same reasons made the following attempt of the EU Member States equally unsuccessful: although a Convention on the same issue was signed in Brussels on 13 November 1991 which intended to complete and develop the principles contained in the former Council's of Europe Convention, the same lack of enthusiasm prevailed regarding its ratification. More recently, the development of the principle of mutual recognition in criminal matters opened the way to two major instruments, already into force, and related to the enforcement of financial penalties (2005) and confiscation orders (2006).

Closely related to this issue, and being also proposed to be dealt with in this same module are also:

The Framework Decision 2008/947/JHA 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 lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision. The Framework Decision does not apply to the execution of judgments in criminal matters imposing custodial

sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA (see below); the recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (see above) and Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders (see above). Member States are asked to implement the Framework Decision by December 2011.

The Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union establishes rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence. Member States are asked to implement the Framework Decision by December 2011.

Another development for the trial phase is the adoption of the Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings of August 2008. This Framework decision determines the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account. Member States are asked to implement the Framework Decision by August 2010.

The other main field in this area is the transfer of sentenced persons. In 1983, the Council of Europe Convention on the transfer of sentenced persons provided for the transfer of sentenced persons while the first EU instrument, the 1991 Convention on the enforcement of foreign criminal sentences of 1991, only provided for the transfer of the enforcement of custodial and pecuniary penalties. The latest EU instrument that has been adopted in November 2008 on this topic is a Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. One of the major novelties of this Framework Decision is the possibility to impose the transfer without the agreement of the person concerned.

### *Training content*

Training on the legislative instruments with regard to sanctions should currently distinguish between the instruments in force and those being adopted but not yet implemented.

Training on mutual recognition of confiscation orders and financial penalties should focus on the scope, content, pros and cons of the Framework Decisions, problems with the application, best practice and case studies.

Training on the adopted mutual recognition instruments from the pre-trial to post-trial phase would, at this point of time, focus more on discussions and debates on their added value, expected obstacles and problems arising within the individual national legal systems, improvements to be expected, impact on fundamental rights and the rights of the defence.

As - depending on the case - the instruments to enforce foreign sentences may also involve the application of the European Arrest Warrant and the Framework Decision 2009/299/JHA (judgements in absentia), training on these instruments should be included..

1. Admissibility
2. International request formalities
3. Procedure
4. The special case of transfer of sentenced persons
  - 4.1. Concept
  - 4.2. Conditions
  - 4.3. Sources
    - 4.3.1. 1983 COE Convention
    - 4.3.2. The Additional Protocol
    - 4.3.3. The Agreement between UE member States
    - 4.3.4. The Schengen Agreements
    - 4.3.5. The national Law
  - 4.4. Transfer to foreign countries
    - 4.4.1. Conditions
    - 4.4.2. Procedure
    - 4.4.4. Effects
  - 4.5. Transfer to own country
    - 4.5.1. Conditions
    - 4.5.2. Procedure
    - 4.5.3. Effects

## 2. Instruments and case law

### *a. General Council of Europe*

Convention on the international validity of criminal judgments (The Hague, 28.V.1970)

### *b. General EU*

Convention between the Member states of the European Communities on the enforcement of foreign criminal sentences of 13.11.1991

### *c. Transfer of sentenced persons*

1. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327/27; 5.12.2008)

2. EU Agreement on the application of the convention of transfer of sentenced persons of 25.05.1987
3. Council of Europe's Convention on the transfer of sentenced persons of 21.3.1983
4. Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18 December 1997

#### *d. Others*

1. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
2. Notification of a declaration of the United Kingdom to the General Secretariat of the Council of the European Union and the European Commission regarding the implementation of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (DG H 2B COPEN 214 EUROJUST 106 EJN 46 14750/10; 11.10.2010)
3. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 2220/32; 15.08.2008)
4. Framework Decision 2008/947/JA 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 (OJ L 337/102; 16.12.2008)
5. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328/59, 24.11.2006)
6. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76/16; 22.3.2005)
7. Council Framework Decision of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (*OJ L 68, 1.3.2005, P. 49*)
8. Green paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union (presented by the Commission), (30.04.2004, COM (2004) 334 final)

### **3. Trainers**

Trainers recommended are international experts, EU experts, national practitioners, scholars and experts of NGOs.

### **4. Trainees**

Concerning the several legislative instruments on mutual recognition and enforcement of criminal sanctions in the EU that are currently being discussed,

trainees should have a high level of experience in the fields to be able to contribute to the debate. Thus, training on this topic is mainly recommended for senior judges and prosecutors.

## **5. Methodology**

### *A) Training method*

Training should take the shape of specialised seminars and workshops.

### *B) Complementary e-learning*

With regard to the proposed instruments, complementary e-learning is not recommended.

### *C) Priority*

Training on the existing Framework Decisions should have priority, training on the proposals is recommended.

### *D) Format*

Training on the existing Framework Decisions can take place at a national, trans-national and EU-wide level.

Training (discussions and debate) on the proposals should take place EU-wide.

## ***VIII. Exchanging criminal records***

### **1. Introduction**

The former system of storage and exchange of criminal records of offences committed by their nationals was under critical scrutiny in a number of member states. In June 2006, Germany, France, Spain, Belgium, the Czech Republic and Luxembourg presented their common project on networking of national criminal registers providing for a secure electronic connection of their systems of national criminal records. At EU level, in 2005, the Council adopted a Decision on the exchange of information extracted from criminal records. The Decision of 2005 defines and extends the obligation of the convicting member states to transmit notice of convictions to the member state of nationality of the sentenced person; it also lays down the framework for a computerised conviction information exchange system. There is also a manual for procedure available which is intended to be a factual document to assist practitioners in making requests for information extracted from the criminal record of another Member State.

Additionally, in February 2009, the Council adopted a Framework Decision on the organisation and content of the exchange of information extracted from the criminal record between Member States which aims at improving the exchange of information on criminal convictions handed down against nationals of the Members States. The Framework Decision lays the ground rules for the mandatory transmission of information on convictions to the country of the

person's nationality as well as for the storage of such information by that country and for the retransmission, upon request, to other Member States.

Furthermore, the legal basis for a European Criminal records Information System (ECRIS) has been established. This information system will allow automated exchange of data between central criminal records and creates an obligation for Member States to use correlation tables (offences and sanctions) to transmit information on convictions. The information system will not allow direct access to the criminal records but will speed up the transmission of requests and replies.

### *Training content*

- Joint network
- Shortcomings of exchanging criminal records under the European Convention on Mutual Assistance in criminal Matters
- Scope, content, limitation of The Council Decision on the Exchange of Information Extracted from Criminal Records. Information on the manual of procedure.
- Scope, content, limitation of the Proposal for a Framework Decision on the Organisation and Content of the Exchange of Information Extracted from Criminal Record
- Functioning of the ECRIS
- Data protection issues

## **2. Instruments and case law**

1. Council of the European Union, Draft Manual for practitioners – ECRIS – Request for contributions (DGH 2 B LIMITE COPEN 84 JURINFO 21 EJUSTICE 34; 19.4.2011)
2. Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7 April 2009, p. 33)
3. Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93/23; 07.04.2009)
4. Council Decision on the exchange of information extracted from criminal records – Manual of Procedure (5459/09; 16.01.2009)
5. Proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA (Brussels, 27.5.2008; COM(2008) 332 final)
6. Council Decision on the exchange of information extracted from criminal records – Manual of Procedure (15 January 2007; 6397/5/06 REV 5)
7. Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record (OJ L 322/33, 9.12.2005)

## **3. Trainers**

Trainers recommended for the exchange of criminal records are EU experts and national practitioners.

#### **4. Trainees**

Given the in-depth knowledge and practical experience needed for this specialised topic, trainees should primarily be senior judges.

#### **5. Methodology**

##### *A) Training method*

Given the very in-depth knowledge that is needed for this topic, the recommended training method should be a specialised seminar and/or workshop.

##### *B) Complementary e-learning*

E-learning can complete training on this legal instrument.

##### *C) Priority*

With regard to the increasing cross-border cooperation in this regard, training on exchanging criminal records should be a priority.

##### *D) Format*

The training format recommended includes national and EU-wide training.

### ***IX. Institution and agencies***

#### **IX.1 European Judicial Network (EJN)**

##### **1. Introduction**

On the basis of the 1997 Action Plan to combat organised crime the Council adopted a Joint Action on the creation of a European Judicial Network. Inaugurated on 25 September 1998 by the Austrian Minister of Justice, the EJN was the first practical structured mechanism of judicial co-operation in the EU to become truly operational.

The EJN gained particular significance in the context of the proclamation of the principle of direct contacts between competent judicial authorities. The EJN is composed of contact points of the member states, as well as of the European Commission and of a Secretariat based in The Hague.

National contact points are designated by each member state among central authorities in charge of international judicial cooperation, judicial authorities and other competent authorities with specific responsibilities in the field of international judicial cooperation, both in general and for certain forms of serious crime, such as organised crime, corruption, drug trafficking or terrorism. Contact points have the task of facilitating judicial cooperation between member states, particularly in order to combat different forms of serious crime.

Other functions are: to provide the legal and practical information necessary for local authorities to prepare an effective request for judicial cooperation, as well as coordinating functions in cases where a series of requests from local judicial authorities in a member state needs coordinated action in another member state.

In December 2008, the Joint Action was replaced by Council Decision 2008/976/JHA which is more detailed than the Joint Action but mainly confirms the current functioning of the EJM. It also clarifies the relationship with Eurojust. At the 32nd plenary meeting of the EJM, held in Prague, from 24 to 26 June 2009, Guidelines were adopted to provide guidance for the structure of the EJM according to the EJM Decision, as well as for the organisation of regional meetings.

The European Judicial Network Manual was adopted in the 33rd Plenary meeting of the EJM on the 23-24 November 2009. The main purpose of this document is to identify actions required in order to achieve objectives regarding EJM as stated by European legal instruments. The second purpose of the EJM Manual is to locate responsibility for required action.

Finally, in February 2010, the EJM launched a new tool on its website called the 'EJM Forum'. The EJM Forum is a discussion platform for EJM contact points as well as all interested legal practitioners. Its first topic of discussion deals with the use and gathering of foreign evidence obtained through mutual legal assistance in criminal proceedings.

Beginning of June 2011, the EJM has launched its restructured and redesigned website. The new website includes various new tools such as a Library or updates on the Member States' implementation of relevant EU instruments.

### *Training content*

Training on the EJM should cover the following topics:

- How the EJM can better facilitate judicial cooperation between member states;
- How the EJM can provide legal and practical information necessary for the local authorities to prepare an effective request for judicial cooperation;
- Coordinating functions in cases where a series of requests from local judicial authorities in a member state needs coordinated action in another member state;
- Use of the EJM 'Compendium', a tool that allows all the local judicial authorities to execute a complete letter of request;
- Information tools about videoconferencing and secure telecommunication networks.

## **2. Instruments and case law**

- a. EJM Website
- b. EJM Forum
- c. EJM Forum Registration
- d. Guidelines
- e. [European Judicial Network Manual](#)
- f. Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24 December 2008, p. 130)

- g. Joint Action on the Creation of a European Judicial Network (OJ L 191/4, 07.07.1998)

### 3. Trainers

Trainers for this topic should be EU experts, national practitioners and experts of training institutions.

### 4. Trainees

This topic can be especially recommended for junior judges and prosecutors as well as future/trainee judges and prosecutors.

### 5. Methodology

#### *A) Training method*

The ideal training method is a combination of basic seminars and workshops. The basic seminar will explain the role and competences of the EJN while during the working groups participants might have practical exercises on the use of the EJN compendium.

#### *B) Complementary e-learning*

Training can be completed by e-learning.

#### *C) Priority*

With regard to the role and powers of the EJN, training and working groups on the subject for judges and prosecutors should be a top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

The training format recommended includes local, regional and national training as well as study visits.

## IX.2 Liaison Magistrates

### 1. Introduction

In the light of the differences between member states' legal and judicial systems, in 1996 the Council adopted an act to increase the speed and effectiveness of judicial cooperation and at the same time facilitates better mutual understanding between systems.

The Joint Action established a framework for the posting or the exchange of magistrates or officials with special expertise in judicial cooperation procedures, referred to as 'liaison magistrates', between member states, on the basis of bilateral or multilateral arrangements.

The Council Decision of 16 December 2008 provided for the possibility for Eurojust to second liaison magistrates to third States.

The tasks of liaison magistrates normally include activities designed to encourage and accelerate all forms of judicial cooperation in criminal and, where appropriate, civil matters, in particular by establishing direct links with the relevant departments and judicial authorities in the host state. Under arrangements agreed between the home member state and the host member state, liaison magistrates' tasks may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems and legal data bases of the states concerned and to further relations between the legal professions in each of those states.

### *Training content*

Training contents should cover:

- Role and powers of the liaison magistrates
- How to best increase the speed and effectiveness of judicial cooperation in criminal matters via liaison magistrates
- Problems of translation and interpretation of legal terms
- Accelerating all forms of judicial cooperation in criminal matters establishing direct links with judicial authorities in the host state: problems and limits

## **2. Instruments and case law**

- a. Council Decision 2009/426/JHA of 16 Dec. 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA (OJ L 138/14; 4.6.2009)
- b. 96/277/JHA: Joint Action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member states of the European Union (OJ L 105/1, 27.04.1996)

## **3. Trainers**

Trainers for this topic should be EU experts, and national practitioners (liaison magistrates).

## **4. Trainees**

This topic can be especially recommended for junior judges and prosecutors, future/trainee judges and prosecutors as well as junior liaison officers.

## **5. Methodology**

### *A) Training method*

The ideal training method would be a combination of basic seminars and workshops. The basic seminar would explain the role and competences of liaison magistrates while during the working groups participants could carry out practical exercises led by liaison magistrates.

### *B) Complementary e-learning*

Training can be completed by e-learning.

### *C) Priority*

With regard to the role and powers of the liaison magistrates, training and working groups on the subject should be a priority.

### *D) Format*

The training format recommended includes national, trans-national and EU-wide training.

## **IX.3 OLAF**

(see in addition: Chapter D - Protection of the financial interests of the Communities)

### **1. Introduction**

OLAF was set up in 1999 with a view to expanding the scope and enhancing the effectiveness of action to combat fraud and other illegal activities detrimental to the Community's interests.

OLAF was given hybrid status: it is formally part of the Commission, enabling it to exercise Commission powers, but it enjoys functional autonomy, designed to make it operationally independent.

OLAF replaced the Task Force for Coordination of Fraud Prevention, which succeeded the Unit for the Coordination of Fraud Prevention (UCLAF), created in 1988 by the Commission within its Secretariat-General.

OLAF carries out external administrative investigations as part of the fight against fraud, corruption and any other illegal activity, which adversely affects the EU's financial interests. OLAF also carries out internal administrative investigations. Furthermore OLAF helps in strengthening cooperation with the member states in the field of fraud prevention and develops strategies for the fight against fraud (preparing legislative and regulatory initiatives in the areas of activity of the office, including initiatives relating to instruments covered by Chapters 1, 4 and 5 of Title IV of Part Three of the TFEU.).

In the field of European criminal justice, OLAF maintains direct contacts with the police and judicial authorities.

OLAF Director-General adopted 'the Manual' that describes Operational Procedures - OLAF's internal rules and procedures. They explain the processes of investigations, operations and follow-up. They are not intended to have any legal force.

On 17<sup>th</sup> March 2011 the European Commission adopted a proposal to reform OLAF by improving the efficiency, effectiveness and accountability of OLAF, while safeguarding its investigative independence. An important aspect of the proposal is the strengthening of the procedural guarantees for any person under investigation by OLAF. Besides each Member State will be asked to designate a contact point, which would facilitate the cooperation of national authorities with OLAF. The Commission has also proposed that if an investigation is not completed within 12 months, the Office should inform the Supervisory Committee of the reasons to extend this deadline. Furthermore, the Commission proposes that OLAF should be mandated to conclude administrative

arrangements with competent services in third countries, in coordination with the European External Action Service and the relevant Commission services.

### *Training content*

- Developing and implementing effective investigative techniques: how to improve cooperation between judicial authorities and OLAF?
- The use of administrative investigation reports as evidence in national criminal proceedings;
- What are the barriers to effective cooperation between judicial authorities and how can they be overcome? Role and powers of OLAF.
- Improving exchange of information and cooperation in the EU: the internal and external investigations conducted by OLAF and links with national authorities.
- OLAF examples of networking and good practice in Member States.

## **2. Instruments and case law**

- a. OLAF website
- b. Amended Proposal for a Regulation amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (EURATOM) No 1074/1999 (Brussels, 17.3.2011; COM(2011) 135 final)
- c. OLAF Manual - Operational Procedures (1.12.2009)
- d. Practical Agreement on arrangements of cooperation between Eurojust and OLAF (24.09.2008)
- e. Administrative arrangement between the European police office (EUROPOL) and the European Anti-fraud Office (OLAF)
- f. Regulation (CE) 1073/1999 of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OJ L 136, 31.05.1999)
- g. Regulation (Euratom) 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OJ L 136, 31.05.1999)
- h. Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) (OJ L 136, 31.05.1999)
- i. Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.05.1999)

For further legislation on the protection of the financial interests of the Communities, combating fraud and corruption, see Chapter D 'European criminal law'

## **3. Trainers**

Trainers recommended for this topic should be EU experts, and national practitioners.

## **4. Trainees**

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors.

## 5. Methodology

### *A) Training method*

The ideal training method is a combination of basic seminars and workshops. A combined training on OLAF, protecting the financial interest of the European Union, counterfeiting of the Euro and corruption could also be a topic for training courses and distance learning courses.

Main topics of the seminar might be:

- a. The system of protecting the financial interests of the EU;
- b. Prevention and enforcement within the EU: improving exchange of information and cooperation in corruption and fraud investigations
- c. Prevention of corruption in the framework of international organisations – best practices in the Commission

The working groups should focus on concrete OLAF fraud and corruption cases and on concrete experiences made by prosecutors in member states.

### *B) Complementary e-learning*

Training can be completed by e-learning.

### *C) Priority*

With regard to the role and powers of OLAF, training and working groups on the subject should be a priority.

### *D) Format*

The training format recommended includes local, regional and national training.

## IX.4 Eurojust

### 1. Introduction

Eurojust is a body of the European Union competent to act in investigations and prosecutions relating to serious crime concerning at least two member states. Its role is to promote coordination between competent authorities in the member states but also to facilitate the implementation of international mutual legal assistance and of extradition requests. Eurojust also has a key role to play in the fight against terrorism.

Each member state must appoint a 'National Member' to Eurojust: a prosecutor, judge or police officer (the latter must have competencies equivalent to the judge or the prosecutor). The National Member is subject to the national law of the member state which appointed them. Furthermore, each member state determines the length of the term of office as well as the nature of the judicial powers conferred on its national representative.

Regarding investigations and prosecutions (concerning at least two member states) in relation to serious crime, Eurojust has competence for promoting coordination between the competent authorities of the various member states

and facilitating the implementation of international mutual legal assistance and of extradition requests.

Eurojust may fulfil its tasks through one or more of the national members or as a College. Eurojust may ask the authorities of the member states concerned, inter alia, to undertake an investigation or prosecution or/and to set up a joint investigation team.

In December 2008, a new Council Decision to strengthen Eurojust has been adopted which shall harmonise and increase the powers of Eurojust's national members, strengthen Eurojust's College and promote cooperation with the European Judicial Network (EJN). The Council Decision includes new powers for Eurojust's national members, the reinforcement of their status, on-call coordination, and increased exchange of information with their national authorities. Eurojust's College will be able to decide on conflicts of jurisdiction and conflicts in the area of application. Finally, Eurojust's relations with partners such as Europol, third states and liaison magistrates are strengthened. A major change with regard to the exchange of data with Eurojust will be the establishment of a Eurojust National Coordination System (ENCS).

Since 2009, Eurojust awards grants for the financing of JITs for two common types of expenses, namely travel and accommodation costs and translation and interpretation costs.

Finally, Eurojust has several cooperation agreements and Memoranda of Understanding with several third states (Croatia, Iceland, FYROM, Norway, Switzerland, USA), Cepol, Europol, IBER-RED, OLAF and the UNODC.

### *Training content*

Training should cover:

- New tasks of Eurojust
- Harmonised competences of its National Members
- New Competences of the College
- The Eurojust National Coordination System (ENCS)
- Jurisdiction of Eurojust
- Cooperation between Eurojust and national authorities: how to work together?
- Strengthening cooperation between Eurojust and national authorities;
- Judicial control of Eurojust's activities
- Using Eurojust to help fight organised crime
- Using Eurojust in cross border cases;
- Developing Eurojust's coordination powers
- Relationships between Eurojust and other EU Institutions (Europol, EJN, OLAF, etc.)
- Concrete case studies (support of Eurojust, double criminality issues, compliance with time limits)
- Future role of Eurojust

## 2. Instruments and case law

- a. Eurojust Website
- b. [http://www.eurojust.europa.eu/jit\\_funding.htm](http://www.eurojust.europa.eu/jit_funding.htm)
- c. Memorandum of Understanding between Eurojust and UNODC
- d. Memorandum of Understanding between Eurojust and CEPOL
- e. Agreement between Eurojust and Europol
- f. Council Decision 2009/426/JHA of 16 Dec. 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA (OJ L 138/14; 4.6.2009)
- g. Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 063/1, 06.03.2002 (consolidated version)
- h. Practical Agreement on arrangements of cooperation between Eurojust and OLAF (24.09.2008)
- d. Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ 2003 L 245/44; 29.9.2003)

## 3. Trainers

Trainers for this topic should be EU experts, and national practitioners.

## 4. Trainees

Due to the reforms within Eurojust, this topic can currently be recommended for all, senior and junior judges and prosecutors, and future/trainee judges and prosecutors.

## 5. Methodology

### *A) Training method*

The ideal training method is a combination of basic seminars and workshops as well as study visits.

The workshop discussion should focus on concrete case studies, preferably using former cases that have been dealt with by Eurojust, double criminality issues, compliance with time limits, etc.

### *B) Complementary e-learning*

Training can be completed by e-learning.

### *C) Priority*

With regard to the role and powers of Eurojust, training and working groups on the subject should be a top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

### *D) Format*

The training format recommended includes local, regional and national training.

## IX.5 European Police Office (Europol)

### 1. Introduction

On 1 January 2010 Europol acquired a stronger mandate and new capabilities to fight international serious crime and terrorism. Europol is the European Law Enforcement Agency.

The Europol Convention has been replaced by a Council Decision. Although differences to the Convention are fairly limited, it is hoped that further reforms for Europol will be less cumbersome and more quickly achieved. Additionally, the European Parliament will be involved. Differences include an extension of the competence of Europol (abolition of the requirement of the existence of a criminal organisation involved in the case concerned). Europol is founded by EU. Various Decisions of the Council and of the Management Board of Europol have been adopted on 30 November 2009 in order to implement the new Europol Decision (2009/934/JHA, 2009/935/JHA, 2009/956/JHA).

The objective of Europol is to improve police cooperation between the EU-member states to combat terrorism, unlawful drug trafficking and other serious forms of international organised crime. Europol takes action when one or two EU-member states are affected by serious international crime.

Europol does not have executive powers. It cannot detain individuals nor can it conduct home searches. Its task is to facilitate the exchange of information, analyse it and coordinate operations involving several member states.

As part of police cooperation between the member states, Europol facilitates the exchange of information between them, it collates and analyses information and intelligence, it aids investigations, it maintains a computerised system of information collected, it helps to train members of the competent authorities and it facilitates technical assistance between member states.

#### *Training content*

- Role and tasks of Europol
- Cooperation between Europol and national authorities: how to work together?
- Strengthening cooperation between Europol and national authorities
- Judicial control of Europol's activities
- Using Europol to help fight organised crime
- Using Europol in cross border cases
- Relationships between Europol and other EU Institutions (Eurojust, EJM, OLAF, etc.)
- Participation of Europol in Joint Investigation Teams
- Europol information systems
- Concrete case studies
- The future of Europol: role and powers

### 2. Instruments and case law

- a. Europol Website
- b. OCTA 2011
- c. Europol Work Programme 2011 (11 October 2010; 10098/10)
- d. The State of Internal Security in the EU - A Joint Report by EUROPOL, EUROJUST and FRONTEX
- e. Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements (OJ L 325/12; 11.12.2009)
- f. Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files ( OJ L 325/14;11.12.2009)
- g. Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information (OJ L 332/17; 17.12.2009)
- h. Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information (OJ L 325/6; 11.12.2009)
- i. Decision of the Management Board of Europol of 8 July 2009 laying down the rules concerning access to Europol documents
- j. Council Decision of 6 April 2009 establishing the European Police Office (Europol)
- k. The Protocol drawn up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) amending that Convention – (the 'Money Laundering Protocol') (Official Journal C 358, 13/12/2000 P. 0002 – 0007)
- l. The Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol – (the 'JIT Protocol') (Official Journal C 312, 16/12/2002 P. 0002 – 0007)
- m. The Protocol drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), amending that Convention – (the 'Danish Protocol') (Official Journal C 002, 06/01/2004 P. 0003 – 0012)
- n. The Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) (Official Journal C 316, 27/11/1995 P. 0002 – 0032)
- o. The Council Decision of 3 December 1998 supplementing the definition of the form of crime 'traffic in human beings' of the Convention on the establishment of a European Police Office (Europol Convention) (Official Journal C 26, 30/01/1999 P. 0021)

### 3. Trainers

Trainers for this topic should be EU experts, and national practitioners.

### 4. Trainees

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors.

## **5. Methodology**

### *A) Training method*

Training methods are basic seminars as well as study visits.

The seminar should give a comprehensive overview of the role and tasks as well as the reforms that are envisaged for Europol. Role and powers of police officers, judges and prosecutors should be analysed in this context.

### *B) Complementary e-learning*

Training can be completed by e-learning.

### *C) Priority*

Given the role and powers of Europol, training and working groups on the subject should be a priority.

### *D) Format*

The training format recommended includes local, regional and national training.

## **IX.6 European Public Prosecutor**

### **1. Introduction**

According to Article 86 TFEU in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

The regulations referred to in Article 86 TFEU shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

From 20-22 September 2010, Eurojust in cooperation with the Belgian Presidency organised a strategic seminar "Eurojust and the Lisbon Treaty: towards more effective action. Director General of the Directorate-General for Justice of the European Commission, Françoise Le Bail, who attended the seminar, informed the participants that Vice-President and Commissioner, Viviane Reding, had

already announced her intention to put forward a proposal for the establishment of an EPPO during her mandate.

In a Communication from May 2011 on the protection of the financial interests of the European Union by criminal law and by administrative investigations, the European Commission underlined that a thorough analysis will be conducted on the ways in which the European structures need to be reinforced to deal with criminal investigative measures: "a specialised European prosecution authority such as a European Public Prosecutor's Office could contribute to establishing a common level playing field by applying common rules on fraud and other offences against the financial interests of the Union in a consistent and homogeneous way, investigating, prosecuting and bringing to court the perpetrators of, and accomplices in offences against the Union's financial interests"

### *Training content*

Training at this point in time would focus on policy debates on the pros and cons of such an Office:

- General institutional questions related to the establishment of the EPP
- The scope of competence of the EPP
- Cooperation between the EPP and national authorities: how to deal with mixed cases?
- Diversity of national rules on evidence – is the mutual admissibility of evidence feasible?
- Cooperation with other competent EU organs
- The EPP in the context of the reform of the European institutions

## **2. Instruments and case law**

- a. Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of the financial interests of the European Union by criminal law and by administrative investigations - An integrated policy to safeguard taxpayers' money, COM (2011) 293
- b. Eurojust and the Lisbon Treaty: Towards more effective action Conclusions of the strategic seminar organised by Eurojust and the Belgian Presidency (Bruges, 20-22 September) (17625/10; 8.12.2010)
- c. The European Public Prosecutor's Office in the European judicial area (Brussels, 15 April 2010; 8614/10)
- d. Art. 86 of Consolidated version of Treaty on the Functioning of the European Union
- e. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (OJ C 306/01; 17.12.2007)
- f. Follow-up Report on the Green Paper on the criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor (COM(2003) 128 final)

- g. Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor (COM (2001) 715 final; 11.12.2001)

### **3. Trainers**

Trainers for this topic should be EU experts, national practitioners and scholars.

### **4. Trainees**

Policy debates on this topic can be especially recommended for senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Specialised seminars in the form of policy debates.

#### *B) Complementary e-learning*

At this point in time, e-learning is not recommended.

#### *C) Priority*

Considering that the office so far is only under discussion, information on the state of play only is recommended.

#### *D) Format*

The training format recommended includes national and EU-wide training.

## **Chapter C**

# **European Criminal Procedure**

### ***I. Procedural rights***

#### **1. Introduction**

With a view to facilitating application of the principle of mutual recognition, in 2003 the Commission issued a Green Paper in which it examined whether it was appropriate and necessary to introduce in EU member states common minimum standards for procedural safeguards for persons suspected or accused of, and prosecuted or sentenced for, criminal offences. In its Green Paper, the Commission came to the conclusion that, at this stage, priority should be given to the following fundamental rights: the right to legal assistance and representation; the right to an interpreter or translator; the right of vulnerable groups to proper protection; the right of nationals of other member states and of third countries to consular assistance; and the right to information about rights. In 2004, the Hague Programme reaffirmed the mutual recognition principle and called for measures to secure and strengthen it, including the establishment of minimum safeguards for persons facing criminal investigation. The Commission's proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the EU of 2004 is to be understood in this context. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), with which all EU member states comply, serves as the starting point for the regulations contained in the Framework Decision. The Framework Decision was to adopt certain fundamental judicial rights from the ECHR. Furthermore, it was to accord rights not provided for in the ECHR, for example to persons in respect of whom a European arrest warrant has been issued. Since a Framework Decision must be agreed to by all EU member states, the contents and scope of the minimum standards was to be reflected in the national legal systems, thereby enhancing compliance with these standards by criminal prosecution authorities and courts. Furthermore, the Court of Justice of the European Communities (ECJ) was to be authorised during on-going criminal proceedings to examine whether member states are complying with the requirements of the Framework Decision. Thus, such an examination could be undertaken only by the national courts or, after the exhaustion of all domestic remedies, by the European Court of Human Rights.

However, a number of problems have been encountered in discussing the document. In May 2006, after 18 months of discussion, the Commission's proposal was replaced by a proposal drawn up by the Austrian Presidency. This proposal was again replaced by a draft text drawn up by the German Presidency. This text was more limited than the Commission's original proposal as certain member states could not accept the text as this would have meant very major changes to their criminal legislation. Nevertheless, no agreement had been reached.

One first new attempt in the direction to enhance the procedural rights in the EU was made in March 2009 with the adoption of Council Framework Decision 2009/2099/JHA. This Framework Decision modifies the existing ones on mutual recognition (EAW, financial penalties, confiscation orders, custodial sentences, supervision of probation measures) with regard to the ground for non-recognition related to cases where the decision to be executed was rendered in the absence of the person concerned at the trial. It aims at harmonising and bringing more details to these grounds for non recognition as well as to the exceptions.

Finally, in 2009, under the Swedish Presidency, EU justice ministers finally agreed on a roadmap to foster protection of suspected and accused persons in criminal proceedings. By means of a step-by-step approach, the roadmap outlines six measures (A. Right to interpretation and translation; B. Information on rights and information about the charges; C. Legal advice and legal aid; D. Communication with relatives, employers and consular advice; E. Special safeguards for vulnerable suspects and accused persons; F. Green Paper on Pre-Trial Detention) to be introduced one after the other in the years to come.

The year 2010 then saw the adoption of the first measure under the roadmap, a Directive on the right to interpretation and translation in criminal proceedings.

The adoption of the second measure, the Directive on the right to information in criminal proceedings introducing the so-called "Letter of Rights" is expected for this July 2011.

On 8 June 2011, the Commission has issued the third measure of the roadmap, a Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

### *Training content*

The new Directive on the right to interpretation and translation in criminal proceedings will require in-depth training for judges.

The on-going debate on potential EU legislation as well as information about the pros and cons of such legislation should be included in the training on procedural rights.

Further training on procedural rights in the EU, should encompass the regulations set up under the European Convention of Human Rights and the jurisdiction of the European Court of Human Rights (*see Chapter F 'Human Rights'*).

## **2. Instruments and case law**

### *a. Council of Europe*

- European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5)

## *b. ECHR Case law:*

### Right to a fair, speedy and impartial trial (Article 6 ECHR)

- *Case Shabelnik vs. Ukraine, 19 February 2009*
- *Case Panovits vs. Cyprus, 11 December 2008*
- *Case Salduz v. Turkey, 27 November 2008*
- *Cases Scordino, Riccardi Pizzati, Music, Giuseppe Mostacciuolo, Coccharella, Apicell, Ernesto Zullo and Giuseppa and Orestina Procaccini v. Italy, 29 March 2006*
- *Case Pisano v. Italy, 24 October 2002*
- *Cases T. and V. vs. United Kingdom, 16 December 1999.*
- *Case Incal v. Turkey, 9 June 1998*
- *Case Sekina v. Austria, 25 August 1993*
- *Case Hausschildt v. Denmark, 24 May 1989*
- *Case Brozicek v. Italy, 19 December 1989*
- *Case Salabiaku, 7 October 1988*
- *Case Ekbatani v. Sweden, 26 May 1988*
- *Cases Lutz, Englert, Nölkenbockhoff v. Germany, 25 August 1987*
- *Case Colozza and Rubinat v. Italy, 12 February 1985*
- *Case Campbell and Fell v. UK, 28 June 1984*
- *Case Goddi v. Italy, 9 April 1984*
- *Case Piersack v. Belgium, 1 October 1982*
- *Case Eckle v. Germany, 15 July 1982*
- *Case Engel and others v. the Netherlands, 8 June 1976*
- *Case Ringeisen v. Austria, 16 July 1971*

### **1. The right to fair trial and the interpretative activity of the European Court of Human Rights:**

- *Case Doorson vs. Holland, 26 March 1996.*
- *Case Artico vs. Italy, 13 May 1980.*
- *Case De Wilde, Ooms y Versyp vs. Belgium, 18 June 1971.*
- *Case Wemhoff vs. Germany, 27 June 1968.*

### **2. The right to judge predetermined by law.**

- *Case Dorozhko and Pozharskiy vs. Estonia, 24 April 2008.*
- *Case Mathony vs. Luxemburg, 15 February 2007.*
- *Case Whitfield, Pewter, Gaskin and Clarke vs. United Kingdom, 12 April 2005.*
- *Case Brudnicka and others vs. Poland, 3 March 2005.*
- *Case Pesador Valero vs. Spain, 17 June 2003.*
- *Case Kleyn and others vs. Holland, 6 May 2003.*
- *Case Castillo Algar vs. Spain, 28 October 1998.*
- *Case Pullar vs. United Kingdom, 10 June 1996.*
- *Case Procola vs. Luxemburg, 28 September 1995.*

- *Case Albert et Le Compte vs. Belgium, 10 February 1983.*

### **3. The right to an independent and impartial tribunal.**

- 
- *Case Dorozhko and Pozharskiy vs. Estonia, 24 April 2008.*
- *Case Mathony vs. Luxemburg, 15 February 2007.*
- *Case Whitfield and others vs. United Kingdom, 12 April 2005.*
- *Case Brudnika vs. Poland, 3 March 2005.*
- *Case Pesador Valero vs. Spain, de 17 June 2003.*
- *Case Lavents vs. Latvia, 28 November 2002.*
- *Case Gosç vs. Turkey, 11 July 2002.*
- *Case Garrido Guerrero vs. Spain, 2 March 2000.*
- *Case Castillo Algar vs. Spain, 28 October 1998.*
- *Case Pullar vs. United Kingdom, 10 June 1996.*
- *Case Procola vs. Luxemburg, 28 September 1995.*

### **4. The right to a criminal trial with all the guarantees.**

#### **4.1 The right to a public trial.**

- *Case Campos Damasco vs. Portugal, 24 April 2008.*
- *Case Abrahamian vs. Austria, 10 April 2008.*
- *Case Z vs. Finland, 25 February 2007.*
- *Case Birnleitner vs. Austria, 24 February 2005.*
- *Case Ernst vs. Austria, 15 July 2003.*
- *Case Meftah and others vs. France, 26 July 2002.*
- *Cases T and V vs. United Kingdom, 16 December 1999.*
- *Case Pauer vs. Austria, 28 May 1997.*
- *Case Helmers vs. Sweden, 29 October 1991.*
- *Case Jan Ake Anderson vs. Sweden, 29 October 1991.*
- *Case Leconte, Van Leuven and De Meyere vs. Belgium, 10 February 1983.*

#### **4.2 The right to presumption of innocence.**

- *Case Jalloh vs. Germany, 11 July 2006.*
- *Case X vs. France, 20 December 2005.*
- *Case Radio France vs. France, 30 March 2004.*
- *Case Hewitsonn vs. United Kingdom, 27 May 2003.*
- *Case M.M. vs. Holland, 8 April 2003.*
- *Case Allan vs. United Kingdom, 5 November 2002.*
- *Case Böhmer vs. Germany, 3 October 2002.*
- *Case Telfner vs. Austria, 20 March 2001.*
- *Case Valenzuela Contreras vs. Spain, 30 July 1998.*
- *Case Allenet de Ribemont vs. France, 10 February 1995.*
- *Case Kruslin vs. France, 24 April 1990.*
- *Case Barberà Messegué and Jabardo vs. Spain, 6 December 1988.*
- *Case Salabiaku vs. France, 7 October 1988.*

### **4.3. The right to know the nature and cause of the accusation.**

- *Case Galuashvili vs. Georgia, 17 July 2008.*
- *Case Saadi vs. United Kingdom, 29 January 2008.*
- *Case Sipavicius vs. Lithuania, 21 February 2002.*
- *Case Dallos vs. Hungary, 1 March 2001.*
- *Case Vaudelle vs. France, 30 January 2001.*
- *Case Pélissier and Sassi vs. France, 25 March 1999.*
- *Case Steel and others vs. United Kingdom, 23 September 1998.*
- *Case Brozicek vs. Italy, 19 December 1989.*

### **4.4 The right against self-incrimination.**

- *Case Sequeira vs. Portugal, 20 October 2009.*
- *Case Ramanauskas vs. Lithuania, 5 February 2008.*
- *Case Shanon vs. United Kingdom, 4 October 2005.*
- *Case Blanca Rodríguez Porto vs. Spain, 22 March 2005.*
- *Case Weh vs. Austria, 8 April 2004.*
- *Case Allan vs. United Kingdom, 5 November 2002.*
- *Case Cónka vs. Belgium, 5 May 2002.*
- *Case J.B. vs. Switzerland, 3 May 2001.*
- *Case Averill vs. United Kingdom, 6 June 2000.*
- *Case Saunders vs. United Kingdom, 17 December 1996.*
- *Case Murray vs. United Kingdom, 8 February 1996.*

### **4.5 The Right to a free assistance of an interpreter.**

- *Case Hermi vs. Italy, 28 October 2006.*
- *Case Kamasinski vs. Austria, 19 December 1989.*
- *Case Luedicke, Belkacem y Koç vs. Germany, 28 September 1978.*

### **4.6 The right to equality of arms.**

- *Case Steel and Morris vs. United Kingdom, 12 February 2005.*
- *Case Borgers vs. Belgium, 30 October 2001.*
- *Case Platakou vs. Greece, 11 January 2001.*
- *Case Berger vs. France, 3 December 2000.*
- *Case Niedbala vs. Poland, 4 July 2000.*
- *Case Koupila vs. Finland, 27 April 2000.*
- *Case Ankerl vs. Switzerland, 23 October 1996.*
- *Case Dombo Beher vs. Holland, 27 October 1993.*
- *Case Lamy vs. Belgium, 30 March 1989.*

### **4.7 The right to legal assistance.**

- *Case Lanz vs. Austria, 31 January 2002.*
- *Case Meftah vs. France, 26 April 2001.*
- *Case Göç vs. Turkey, 9 November 2000.*
- *Case Biba vs. Greece, 26 September 2000.*

- *Case Dikme vs. Turkey, 11 July 2000.*
- *Case Schöpfer vs. Switzerland, 20 May 1998.*
- *Case Van Mechelen and others vs. Holland, 23 April 1997.*
- *Case Benham vs. United Kingdom, 10 June 1996.*
- *Case Tripodi vs. Italy, 24 February 1994.*
- *Case Edwards vs. United Kingdom, 16 December 1992.*
- *Case Croissant vs. Germany, 25 September 1992.*
- *Case S. vs. Switzerland, 28 November 1991.*
- *Case Quaranta vs. Switzerland, 28 March 1990.*
- *Case Kamasinski vs. Austria, 19 December 1989.*
- *Case Pakelli vs. Germany, 25 April 1983.*

#### **4.8 The right of the accused to appear at trial.**

- *Case Da Luz Domingues Ferreira vs. Belgium, 24 May 2007.*
- *Case Kaya vs. Austria, 8 June 2006.*
- *Case Sejdivic vs. Italy, 1 March 2006.*
- *Case Harizi vs. France, 20 March 2005.*
- *Case Sejdivic vs. Italy, 10 November 2004.*
- *Case Meftah and others vs. France, 26 July 2002.*
- *Case Medenica vs. Switzerland, 14 July 2001.*
- *Case Krombach vs. France, 13 February 2001.*
- *Case Van Geyselghen vs. Belgium, 21 January 1999.*
- *Case Zana vs. Turkey, 25 November 1996.*
- *Case Poitrimol vs. France, 23 November 1993.*
- *Case Llaloch vs. Holland, 23 November 1993.*
- *Case Kremzov vs. Austria, 21 September 1993.*
- *Case F.C.B. vs. Italy, 28 August 1991.*
- *Case Colozza vs. Italy, 12 February 1985.*

#### **4.9 The right to have adequate time and facilities for the preparation of his defence. In particular the right to examine or have examined witnesses.**

- *Case Bocos-Cuesta vs. Holland, 10 November 2005.*
- *Case Mild and Virtanu vs. Finland, 26 July 2005.*
- *Case Rachdad vs. France, 12 November 2003.*
- *Case S.N. vs. Sweden, 2 July 2002.*
- *Case P.S. vs. Germany, 20 December 2001.*
- *Case Lucà vs. Italy, 27 February 2001.*
- *Case A.M. vs. Italy, 14 December 1999.*
- *Case Asch vs. Austria, 26 April 1999.*
- *Case Van Mechelen Case Doorson vs. Holland, 26 March 1996.*
- *Case Lüdi vs. Switzerland, 15 June 1992.*
- *Case Vidal vs. Belgium, 22 April 1992.*
- *Case Isgró vs. Italy, 19 February 1991.*
- *Case Kostovski vs. Holland, 20 November 1989.*

#### **4.10 The right to know the reasons of the decision of the Tribunal.**

- *Case Gouru vs. Greece, 20 March 2009.*
- *Case Benderskiy vs. Ukraine, 15 November 2007.*
- *Case Boldea vs. Romania, 15 February 2007.*
- *Case Alija vs. Greece, 7 April 2005.*
- *Case Hirvisaari vs. Finland, 27 September 2001.*
- *Case Jahnke and Lenoble vs. France, 29 August 2000.*
- *Case Ruiz vs. Spain, 21 January 1999.*
- *Case Higgins vs. France, 19 February 1998.*
- *Case Hiro Balani vs. Spain, 19 December 1994.*
- *Case Van den Hurk vs. Holland, 19 April 1994.*
- *Case Delcourt vs. Belgium, 17 January 1970.*

#### **4.11 The right that the process is conducted in a reasonable time.**

- *Case Rizzotto vs. Italy, 24 April 2008.*
- *Case Intiva vs. Turkey, 24 May 2005.*
- *Case Gorolov and Rousiaiev vs. Russia, 17 March 2005.*
- *Case Lutz vs. France, 17 June 2003.*
- *Case Laine vs. France, 17 January 2002.*
- *Case Cultraro vs. Italy, 27 February 2001.*
- *Case Pirón vs. France, 14 November 2000.*
- *Case García vs. France, 26 September 2000.*
- *Case Bertín-Mourot vs. France, 2 August 2000.*
- *Case Péllisier and Sassi vs. France, 25 March 1999.*
- *Case Laino vs. Italy, 18 February 1999.*
- *Case Mavronichis vs. Cyprus, 24 April 1998.*
- *Case A. and others vs. Denmark, 8 February 1997.*
- *Case Venditelli vs. Italy, 18 July 1994.*
- *Case Muti vs. Italy, 23 March 1994.*
- *Case Scopelliti vs. Italy, 23 November 1993.*
- *Case Dobbertin vs. France, 25 February 1992.*
- *Case Vernillo vs. France, 20 February 1991.*
- *Case Hache vs. France, 24 October 1989.*
- *Case Pretto vs. Italy, 8 December 1983.*

#### **c. EU**

1. Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (8 June 2011; COM(2011) 326/3)
2. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280/1; 26.10.2010)
3. Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings (Brussels, 20.7.2010; COM(2010) 392 final; 2010/0215 (COD))
4. Project of the Maastricht University: Effective Criminal Defence Rights in Europe

5. **Taru Spronken and Marelle Attinger: Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union**
6. Initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings - Summary of the detailed statement in accordance with Article 5 of Protocol No 2 to the Lisbon Treaty (Brussels, 16 December 2009,16801/09)
7. Initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings - Explanatory memorandum ((Brussels, 15 December 2009,16801/09)
8. Initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings ((Brussels, 11 December 2009,16801/09)
9. Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (OJ C 295/1; 4.12.2009)
10. Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings - IMPACT ASSESSMENT{COM(2009) 338 final; SEC(2009) 916}
11. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.03.2009)
12. Commission Green Paper Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union (COM(2003) 75 final)

#### *d. Case law ne bis in idem*

1. C-261/09 (judgment) ne bis in idem - Mantello, Judgment
2. C-288/05 (judgment) ne bis in idem - Jürgen Kretzinger
3. C-150/05 (judgment) ne bis in idem - van Straaten
4. C-467/04 (opinion) ne bis in idem - Gasparini and others
5. C-436/04 (judgment) ne bis in idem - van Esbroeck
6. C-469/03 (judgment) ne bis in idem - Miraglia
7. C-385/01 (judgment) ne bis in idem – Gözütok and Brügge

### **3. Trainers**

Trainers should be international experts, EU experts and national practitioners.

### **4. Trainees**

Training on procedural rights provided under the Council of Europe legislation and the ECHR jurisdiction is primarily recommended for junior judges and prosecutors and future/trainee judges and prosecutors.

Training in the form on the Framework Decision for in absentia judgements is recommended for senior judges and prosecutors.

## 5. Methodology

### *A) Training method*

Training on procedural rights should take the shape of specialised seminars.

### *B) Complementary e-learning*

Recommended for training on the Council of Europe's legislation and the ECHR's jurisdiction.

### *C) Priority*

Training on the Council of Europe legislation and the ECHR's jurisdiction is recommended.

### *D) Format*

Training can take part at national and EU-wide level.

Discussion and debate about possible EU legislation should take place EU-wide.

## ***II. Victims / Restorative justice***

### **1. Introduction**

Concerns for victims of crime have emerged in the context of the United Nations in the 1980s. Already in the VI. UN Congress for the prevention of crime and the offender, held in Caracas, experts were asked to address the problem of crime victims from the point of view of international law. The VII. Congress for the Prevention of Crime and Treatment of Offenders, held in Milan in August and September 1985, recommended to the General Assembly the elaboration of a declaration on the rights of victims.

At the level of the Council of Europe, the rights of victims were dealt with for the first time in 1983 in under the Convention on the Compensation of Victims of Violent Crimes. Victims' rights are also mentioned in the Convention on Action against Trafficking in Human Beings of 2005 as well as in the Council of Europe Convention on the Prevention of Terrorism of 2005. Two recommendations deal with the right of victims, the most recent ones adopted in 2008 (R(85)11 and R(2006)08). The need to protect the victim's rights was also especially addressed in a Resolution on victims of crimes of October 2006. In 2008, guidelines on mediation in penal matters were set up.

At the level of the European Union, procedural penal rights of victims is so far addressed by the Framework Decision on the standing of victims in criminal procedures of 2001. Compensation by civil law is addressed in a Directive of 2004. The Directive, however, only refers to the laws of the member states. Under the newly appointed Commission, the rights of victims are one of the top priorities. Hence, the Commission has begun to carry out a wide ranging impact assessment to consider what legislative and practical measures to take in 2011 to further improve the position of victims. This is shown by several instruments currently discussed: first, the Proposal to update the Directive on combating the sexual abuse, sexual exploitation of children and child pornography that shall

improve criminal action against perpetrators and update the protection of victims. In particular, the proposal aims at covering new forms of crime such as grooming. Second, the Framework Decision on standing of victims in criminal proceedings of 15 March 2001 (2001/220/JHA) and the Council Directive 2004/80/EC of 29 April 2004 relating to compensating to crime victims are under review by the European Commission. Third, the initiative for a European Protection Order that would extend judicial protection across the EU for victims of violence or someone under the threat of violence.

On 18 May 2011, the European Commission released a legislative package aiming at strengthening the rights of victims in the EU. The package contains two legislative proposals, one Proposal in criminal matters for a Directive establishing minimum standards on the rights, support and protection of victims of crime, and one Proposal in civil matters for a Regulation on mutual recognition of protection measures in civil matters. Furthermore, the package includes a Communication making further reference to specific concerns and future action in the area of civil law, especially with regard to victims of road traffic offences.

## **Restorative justice**

The broader area of restorative justice, at EU level, so far, is only regulated by Article 10 of the Framework Decision on the standing of victims in criminal proceedings that refers to mediation. Nevertheless, training on restorative justice measures must be kept in mind for the future.

### *Training content*

Training should include the regulations made by the Council of Europe regulation and especially undertaken within the EU Framework Decision on the standing of victims in criminal proceedings. Attention should also be paid to the regulations in Article 10 of this provision.

## **2. Instruments and case law**

### *a. Council of Europe*

1. Recommendation No. R (2006)16 of the Committee of Ministers to member states on quality improvement programmes for organ donation (8.11.2006)
2. Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims
3. Council of Europe Convention on the Prevention of Terrorism (Warsaw, 16.V.2005)
4. Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16.V.2005)
5. Guidelines on the Protection of Victims of Terrorist Acts (Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies)

6. Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters
7. Recommendation No. R (87) 20 of the Committee of Ministers to member states on social reactions to juvenile delinquency
8. Recommendation No. R (87) 21 of the committee of ministers to member states on assistance to victims and the prevention of victimisation
9. Recommendation No. R (85) 11 of the Committee of Ministers to member states on the position of the victim in the framework of criminal law and procedure (28 June 1985)
10. European Convention on the Compensation of Victims of Violent Crimes (Strasbourg, 24.XI.1983)
11. Resolution (77) 27 on the compensation of victims of crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies)

#### *b. EU*

1. Putting Victims first – Better protection and support for victims of crime – Speech held by Vice-President of the European Commission, EU Justice Commissioner Viviane Reding at ERA on 09 June 2011
2. Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime
3. Proposal for a Regulation on mutual recognition of protection measures in civil matters
4. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - Strengthening victims' rights in the EU (COM(2011) 274/2)
5. Amendment 231, Draft report on the initiative for a directive of the European Parliament and of the Council on the European Protection Order (23.11.2010, 2010/0802(COD))
6. Initiative for a Directive of the European Parliament and of the Council on the European Protection Order (Brussels, 19 April 2010; 8703/10)
7. 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, 25.03.2009)
8. 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; 25.3.2009)
9. Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.1.2004)
10. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261/15, 6.8.2004)
11. Green Paper - Compensation to crime victims (Brussels, 28 September 2001)

12. Council Framework Decision of 15 March 2001 on the standing of victims in criminal procedures (OJ L 82/1, 22.03.2001)
13. Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, (16.02.2004, COM(2004)54 final/2)

#### *Case law*

1. C-404/07, Katz/Sós, Judgment of 22 November 2008
2. T-412/07, Ammayappan Ayyanarsamy, Order of 1 April 2008

#### *c. United Nations*

1. Resolution 2005/20 of the Economic and Social Council. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 22 July 2005.
2. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000.
3. Resolution 2002/12 of The Economic and Social Council on Basic principles on the use of restorative justice programmes in criminal matters, 24 July 2002.
4. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly resolution of 25 May 2000 entered into force on 18 January 2002.
5. Resolution General Assembly 52/86 on the Crime prevention and criminal justice measures to eliminate violence against women, 2 February 1998.
6. Declaration General Assembly 48/104 on the Elimination of Violence against Women, 20 December 1993.
7. Declaration General Assembly 40/34 of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.

### **3. Trainers**

Trainers should be national practitioners, NGO and training institutions experts.

### **4. Trainees**

Training can be recommended for junior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training on the rights of victims should be performed in the form of specialised seminars.

#### *B) Complementary e-learning:*

Training can be completed by e-learning.

### *C) Priority*

Training should be a priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

### *D) Format*

Training should take part at local and regional level.

## **III. Data protection**

### **1. Introduction**

With regard to police and judicial cooperation in criminal matters, existing international and European legislative instruments for data protection are either extremely broad, non-binding, or expressly exclude their application for police and judicial cooperation in criminal matters such as the EU's main legislative First Pillar instrument Directive 95/46.

In fact, within the scope of the police and judicial cooperation in criminal matters, data protection rights have only been established within the respective frameworks of its agencies and instruments, e.g. regulations can be found within the Europol Convention, the Eurojust Decision, the Schengen Convention, etc. At the same time, enhancing the exchange of data to combat organised crime and terrorism, however, has become one of the priorities within the EU and several legislative instruments to facilitate this exchange have been launched. Hence, after nearly five years of discussion, in December 2008, a general Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters was adopted. Although the Framework Decision confirms the applicability of general data protection principles (legality, proportionality, accuracy, right to access, erasure and rectification, judicial remedies, etc.) to the sector of police and judicial cooperation in criminal matters, it is still limited to the processing of data in cross-border cases and thus, not applicable for data processed only nationally. The FD also does not affect the more specific regimes provided for Eurojust, Europol, the Schengen Information System or the Customs Information System.

The new Treaty on European Union has no immediate practical effect on the matter, but there are effects on the overall configuration of the sources of law, the powers of the EU institutions and in the field of data protection in their incardination. Indeed, the new Article 6.2 TEU enables the Union as such is a party to the ECHR, and therefore should apply to all its legislation in Article 8 ECHR, confers binding European Charter of Fundamental Rights. The new Article 16 of the Treaty on the Functioning of the EU (before 286 TEC) makes it compulsory to protect data not only to the Union but to "the Member States when carrying out activities which fall within the scope of Union law".

The newly adopted Stockholm Programme, the five year roadmap for the area of freedom, security and justice for the period 2010-2014, as well as its

implementing Action Plan will put first flesh on the bones of the Lisbon Treaty. The Stockholm Programme calls for a comprehensive strategy to protect citizens' data within the EU and in its relations with other countries and asks the Commission, amongst others, to:

- "evaluate the functioning of the various instruments which form the basis for the data protection regime in the EU (first pillar and third pillar) and present, where necessary, further legislative and non-legislative initiatives to maintain the effective application of the above principles,
- propose a Recommendation for the negotiation of a data protection and data sharing agreement with the United States of America, based on the work carried out by the EU-US High Level Contact Group on data protection and data sharing,
- consider a legal instrument laying down the data protection principles regarding the transfer of privately held data to third States for law enforcement purposes
- improve compliance with the principles of data protection through the development of appropriate new technologies, based on greater public/private sector cooperation, particularly in the field of research,
- examine the introduction of a European certification scheme for "privacy-aware" technologies, products and services,
- conduct information campaigns, in particular to raise awareness among the public."

In November 2010, the Commission has published a Communication on a comprehensive approach on personal data protection in the European Union. The strategy sets out proposals on how to modernise the EU framework for data protection rules through a series of key goals such as: strengthening individuals' rights so that the collection and use of personal data is limited to the minimum necessary; enhancing the Single Market dimension by reducing the administrative burden on companies and ensuring a true level-playing field; revising data protection rules in the area of police and criminal justice so that individuals' personal data is also protected in these areas; ensuring high levels of protection for data transferred outside the EU by improving and streamlining procedures for international data transfers; and more effective enforcement of the rules, by strengthening and further harmonising the role and powers of Data Protection Authorities.

### *Training content*

Training on data protection in the field of police and judicial cooperation should cover:

- Introduction to data protection: principles
- Existing international instruments: UN, ODCE
- European structure for data protection and existing instruments:
  - Directive 95/46
  - Article 8 Charter of fundamental rights
  - Framework Decision for PJCCM
  - Data protection requirements for Europol

- Data protection requirements for Eurojust
- Data protection requirements for Frontex
- Data protection requirements for SIS
- Control: European and national independent supervisory authorities
- Judicial control
- Lisbon Treaty
- Plans under the new Communication

## 2. Instruments and case law

### *a. Council of Europe*

1. Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and cross border data flows (Strasbourg, 8.XI.2001)
2. Recommendation No. R (87) 15 of the Committee of Ministers to Member states regulating the use of personal data in the police sector (17.09.1987)
3. Convention for the Protection of Individuals with regard to automatic processing of personal data (Strasbourg, 28.I.1981)
4. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (Rome, 4.XI.1950)

### *b. Organisation for Economic Co-operation and Development (OECD)*

5. Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Trans border Flows of Personal Data (23.09.1980 - C(80)58/Final) Declaration on Trans border Data Flows (11.04.1985)
6. Guidelines for Cryptography Policy (27.03.1997)

### *c. United Nations*

- Guidelines for the Regulation of Computerized Personal Data Files (adopted by General Assembly resolution 45/95 of 14.12.1990)

### *d. EU*

1. Council conclusions on the Communication from the Commission to the European Parliament and the Council - A comprehensive approach on personal data protection in the European Union (3071st JUSTICE and HOME AFFAIRS Council meeting, Brussels, 24 and 25 February 2011)
2. Commission Communication on a comprehensive approach on personal data protection in the European Union (COM(2010) 609 final, 04.11.2010)

3. Commission Recommendation No (2009/387/EC) of 12 May 2009 on the implementation of privacy and data protection principles in applications supported by radio-frequency identification.
4. Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30 December 2008, p. 60)
5. Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending
6. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (Article 5. Data Protection)
7. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)
8. Directive 2002/22/EC of the European Parliament and of the Council relating on universal service and users' rights relating to electronic communications networks and services
9. Charter of Fundamental Rights of the European Union (Arts. 7 y 8)
10. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data
11. Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.
12. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23/11/1995)

#### *e. Case Law*

1. Case C-275/06, Productores de Música de España (Promusicae) v Telefónica de España, Judgment of 29 January 2008
2. Cases C-317/04 and C-318/04, Passenger Name Records, Judgment of 30 May 2006
3. Case C-101/01, Bodil Lindqvist, Judgment of 6 November 2003
4. Cases C-465/00, C-138/01 and C-139/01, Österreichischer Rundfunk and Others, Judgment of 20 May 2003
5. Case C-101/01, Bodil Lindqvist, Judgement of 6 Nov 2003

#### *f. ECHR-Case Law*

1. Case Bykov vs. Russia, 10 March 2009

2. Case *Calmanovici vs. Romania*, 1 July 2008
3. Case *Ilillas Stefanov vs. Bulgaria*, 22 May 2008
4. Case *Wieser and Bicos Beiligungen Gmbh vs. Austria*, 16 October 2008
5. Case *Copland vs. United Kingdom*, 3 April 2007
6. Case *Amann vs. Switzerland*, 16 February 2000
7. Case *Rotaru vs. Romania*, 4 May 2000
8. Case *Laender vs. Sweden*, 26 March 1987
9. Case *Malone vs. United Kingdom*, 2 August 1982.

### **3. Trainers**

Trainers should be EU experts, experts of NGOs and scholars.

### **4. Trainees**

Training is recommended for junior judges and prosecutors, senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training can take the shape of specialised seminars.

#### *B) Complementary e-learning:*

Additional e-learning can be recommended.

#### *C) Priority:*

Until the entry into force of the Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, training can be recommended.

Once it has come into force, training on the Framework Decision should have priority.

#### *D) Format:*

Training should take place at local, regional, and national level.

## **Chapter D**

# **European Criminal Law**

### **I. Organised crime**

#### **1. Introduction**

Since 1997, several action plans against organised crime have been adopted at European Union level. Within the Amsterdam Treaty on the European Union, which came into force in May 1999, a legal framework has been provided for accelerating efforts to strengthen law enforcement, judicial cooperation and to fight against trans-border organised crime. With regard to legislation against organised crime, much progress has been made at sectoral level, based on the Framework Decisions adopted in a variety of areas such as trafficking in human beings, cyber crime, confiscation of proceeds of organised crime etc. The objective of these Framework Decisions is to establish common definitions and to approximate national legislation, in particular through defining proportionate and dissuasive penal sanctions. Work along those lines is continuing with a view to covering all relevant sectors that allow organised crime to flourish. In the field of judicial cooperation, continued efforts have been undertaken to strengthen mutual recognition and mutual legal assistance provisions, with a view to ensuring equivalent criminal law protection to all citizens in the EU, to facilitate judicial cooperation in general and fill the legal loopholes between national jurisdictions which are being exploited by organised crime. Enhanced confiscation powers and witness protection provisions offer examples of additional policy initiatives that have been taken.

At its meeting on 24 October 2008, the Council formally adopted the Framework Decision on the fight against organised crime. The Framework Decision aims at harmonising the substantive criminal law of the Member States by defining offences relating to the participation of a criminal organisation. The FD also takes up the common scheme of laying down “minimum maximum penalties” for individuals, defining criminal liability and penalties for legal persons as well as the jurisdiction and coordination of proceedings.

#### *Training content*

Training should focus on the forthcoming implementation of the Framework Decision on organized crime.

#### **2. Instruments and case law**

##### *a. UN*

- United Nations Convention against Trans-national Organized Crime of 2000

##### *b. EU*

1. Council Framework Decision of 24 October 2008 on the fight against organised crime (OJ L 300/42 ; 11.11.2008)
2. Joint Action to make it a criminal offence to participate in a criminal organisation in the Member states of the European Union (OJ L 351, 29.12.1998)

### 3. Trainers

Trainers on the regulations under the new Framework Decision should be EU experts, national experts and scholars.

### 4. Trainees

Training is recommended for senior judges and prosecutors.

### 5. Methodology

#### *A) Training method*

Training can take the shape of specialised seminars.

#### *B) Complementary e-learning:*

Additional e-learning can be recommended.

#### *C) Priority:*

Training should have priority.

Furthermore, as outlined above, organised crime has been addressed by several legislative instruments at a sectoral level. Given the manifold differences between these sectors, training on combating organised crime should also be set-up sector-wise. Thus, within this guideline, training options on each of these sectors have been **individually assessed below**.

## ***II. Money laundering***

### **1. Introduction**

Money laundering has been given strategic priority at European Union level. In 2000, a decision was adopted by the EU Council of Ministers concerning arrangements for cooperation between financial intelligence units of the member states. The Europol Convention was extended to money laundering in general, not just drugs related. In 2001, a Framework Decision on money laundering, dealing with the identification, tracing, freezing and confiscation of criminal assets and the proceeds of crime was also adopted. The EU member states have signed the Protocol to the Convention on mutual assistance in criminal matters between the member states. A second anti-money laundering Directive was agreed, widening the definition of criminal activity giving rise to money laundering to include all serious crimes, including offences related to terrorism. In 2005, the third money-laundering Directive was adopted. The third Directive incorporates into EU law revisions made to the Financial Action Task Force on Money Laundering's (FATF) recommendations in June 2003. It also extends the provisions to any financial transaction which might be linked

to terrorist activities. Further provisions of the third Directive include identity checks on customers opening accounts, checks applying to any transaction over €15,000, stricter checks on 'politically exposed persons', and penalties for failure to report suspicious transactions to national financial intelligence units.

### *Training content*

Training should include:

- Background and development of the three money laundering Directives
- Scope, content of the third anti-money laundering Directive
- National implementation of the Directives
- Exchange of best practices and experiences
- Case studies

## **2. Instruments and case law**

### *a. Council of Europe*

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Warsaw, 16.V.2005

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, ETS 141, 8.XI.1990)

### *b. EU*

1. Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309/15, 25.11.2005) (3rd money laundering Directive)
2. Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196/45; 2.8.2003)
3. Directive 2001/97/EC of 4 December 2001 amending Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 344/76, 28.12.2001)
4. Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182/1, 05.07.2001) (2nd money laundering Directive)
5. Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member states in respect of exchanging information (OJ L 271/4, 24.10.2000)
6. Council Decision concerning arrangements for cooperation between financial intelligence units of the Member states in respect of exchanging information (OJ L 271/4, 24.10.2000)
7. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.06.1991)

## **3. Trainers**

Trainers recommended are EU experts, national practitioners, and scholars.

#### **4. Trainees**

Training in this matter should be addressed to practitioners who have a good understanding of their criminal system and who can exercise their jurisdiction in cases referred to it. Thus, training is especially recommended for senior judges and prosecutors.

#### **5. Methodology**

##### *A) Training method:*

Training should take the form of specialised seminars and workshops.

A combined training on OLAF, protecting the financial interest of the European Union, counterfeiting of the Euro, corruption and money laundering could also form a topic for training courses and distance learning courses.

##### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update as the instruments are numerous and the change of regulation framework are frequent.

##### *C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

##### *D) Format:*

Training should take place at national, trans-national and EU-wide level.

### **III. Counterfeiting of the Euro**

#### **1. Introduction**

The 1929 International Convention for the Suppression of Counterfeiting Currency is the basic instrument of protection by penal sanctions against counterfeiting at international level.

At the level of the European Union, Framework Decision 2000/383/JHA supplements the 1929 Convention by requiring member states to introduce effective, proportional and dissuasive penalties, including terms of imprisonment which can give rise to extradition, for any fraudulent making or altering of currency; the fraudulent circulation of counterfeit currency; the import, export, transport, receiving, or obtaining of counterfeit currency with a view to circulating the same; the fraudulent making, receiving, obtaining or possession of articles, computer programs, holograms or other instruments or means for the counterfeiting or altering of currency. Framework Decision 2001/888/JHA

supplements Framework Decision 2000/383/JHA with regard to the recognition of previous convictions.

Furthermore, Europol and Eurojust have mandates for combating euro counterfeiting. In particular, OLAF has responsibilities in three areas: legislation (Regulation 1338/2001) and Framework Decision on the protection of euro banknotes and coins with criminal sanctions; training and technical assistance, co-ordination of member states actions for the technical protection of euro coins against counterfeiting, including the European Technical & Scientific Centre (ETSC).

### *Training content*

Training should include:

- Development of legislation
- Scope, content of the Framework Decision
- Differences in implementation and national legislation
- Best practices
- Possibilities of support by Europol, Eurojust, OLAF

## **2. Instruments and case law**

### *a. International instrument*

International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol (No 2623, p. 372. League of Nations Treaty Series 1931. Signed in Geneva on 20 April 1929)

### *b. EU*

1. Council Regulation 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181/6, 04.07.2001)
2. Council Framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment (OJ L 149/1, 02.06.2001)
3. Council Decision of 6 December 2001 on the protection of the euro against counterfeiting (OJ L 329/1, 14.12.2001)
4. Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ L 329, 14.12.2001)
5. Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (2000/383/JHA) (OJ L 140, 14.6.2000)

## **3. Trainers**

Trainers recommended are EU experts, national practitioners, and scholars. Combined training on OLAF, protecting the financial interests of the European Union, counterfeiting of the Euro, corruption and money laundering could also form a topic for training courses and distance learning courses.

## 4. Trainees

Training is especially recommended for senior judges and prosecutors as training in this matter is addressed to practitioners that have a good understanding of the criminal system and thus are able to exercise their jurisdiction in cases referred to it. Furthermore, specialisation in criminal matters is more and more frequent.

## 5. Methodology

### *A) Training method:*

Training should take the form of specialised seminars and workshops.

### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update the trainees as instruments are numerous and changes in the legislation are frequent.

### *C) Priority:* Training should have priority

### *D) Format:* Training should take place at national, trans-national and EU-wide level.

## ***IV. Protection of the financial interests of the Communities***

### **1. Introduction**

European Union policies are financed by the Community budget. Fraud affecting the Community's financial interests is a major risk. Those interests need, therefore, to be effectively protected. In order to combat fraud and other illegal activities affecting those interests, the member states signed the Convention of 26 July 1995 on the protection of the European Communities' financial interests and its three additional protocols which provide for measures aimed in particular at aligning national criminal laws. As these so-called PFI instruments ('Protection of Financial Interests') have not been ratified by all the member states, in 2002 the Commission presented a proposal for a Directive on the criminal-law protection of the Communities' financial interests. No agreement has yet been reached, however, the Commission is planning to further examine possible approaches opened up by the reform of the EU/EC Treaty.

To further combat fraud, corruption and any other illegal activity adversely affecting the Community's financial interests, the Community Institutions established the European Anti-Fraud Office (*see separate Chapter B 'OLAF'*).

### *Training content*

### **2. Instruments and case law**

- a. Second Report from the Commission - Implementation of the Convention on the Protection of the European Communities' financial interests and its protocols (Brussels, 14.2.2008; COM(2008) 77 final)
- b. Report from the Commission - Implementation of the Convention on the Protection of the European Communities' (Brussels, 25.10.2004; SEC(2004) 1299)
- c. Proposal for a Directive on the criminal-law protection of the Communities' financial interests (COM (2001) 272 final, 23.05.2001)
- d. Second Protocol of the Convention on the protection of the European Communities' financial interests (OJ C 221, 19.7.1997, p. 11–1)
- e. Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996, p. 1–1)
- f. Convention on the protection of the European Communities' financial interests (OJ C 316 , 27/11/1995 P. 0048 – 0048)
- g. *Money laundering*: Second Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 221, 19.07.1997)
- h. *Corruption*: Convention on the fight against corruption involving officials of the European communities or officials of Member states of the European Union (OJ C 195, 25.06.1997)
- i. *Corruption*: Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996)
- j. *Fraud*: Council regulation 2988/95 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995)
- k. *Fraud*: Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995)

### 3. Trainers

Trainers recommended are EU experts and national practitioners.

### 4. Trainees

Training is especially recommended for senior judges and prosecutors as training in this matter is addressed to practitioners that have a good understanding of the criminal system and thus are able to exercise their jurisdiction in cases referred to it. Furthermore, specialisation in criminal matters is more and more frequent.

### 5. Methodology

#### *A) Training method:*

The training method recommended is specialised seminars and workshops.

Combined training on OLAF, protecting the financial interest of the European Union, counterfeiting of the Euro, corruption and money laundering could also form a topic for training courses and distance learning courses.

#### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update the trainees as instruments are numerous and changes in the legislation are frequent.

### *C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:* Training should take place at national, trans-national and EU-wide level.

## **V. Corruption**

### **1. Introduction**

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997 was the first global legal instrument to fight foreign bribery. Two other important international conventions with a wider scope are the Council of Europe Criminal Law Convention of 1999 on Corruption and the United Nations Convention against Corruption of 2003. While the OECD Convention addresses only the bribery of foreign public officials in international business transactions (not passive bribery), the Council of Europe Convention covers a broad range of offences, including the active and passive bribery of domestic and foreign public officials, bribery in the private sector and trading in influence. The United Nations Convention against Corruption is the most comprehensive international anti-corruption convention to date as it covers the broadest range of corruption offences, including the active and passive bribery of domestic and foreign public officials, obstruction of justice, illicit enrichment, and embezzlement.

At EU level, the Convention on the protection of the European Communities' financial interests and several additional Protocols as well as OLAF have been set up. In 2008, a Council Decision on a contact-point network against corruption has been adopted.

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The fight against corruption in the private sector has been tackled by Council Framework Decision on combating corruption in the private sector. Finally, the mandates of Europol and Eurojust cover fraud and corruption.

On 6 June 2011, the European Commission re-launched its anti-corruption policy by adopting a new package, consisting of:

- A Communication on fighting corruption in the EU;
- A Commission Decision establishing an EU anti-corruption reporting mechanism;

- A report on the implementation of Council Framework Decision 2003/568/JHA on combating corruption in the private sector;
- A report on the modalities of EU participation in the Council of Europe Group of States against Corruption (GRECO).

These initiatives are part of a wider agenda to protect Europe's economy, as identified in the EU Internal Security Strategy in Action presented by the Commission in November 2010 (IP/10/1535). In autumn 2011, the Commission will also propose a revised EU legal framework on confiscation and asset recovery.

### *Training content*

- Substantive legislation covering active and passive bribery in the public and the private sector
- Compliance and enforcement possibilities.
- Overview of existing anti-corruption legislation at European and international level
- Experiences and best practice when detecting and reporting corruption,
- Obstacles to the bringing of prosecutions in respect of transnational corruption
- Prevention measures
- Cooperation: initiative for an EU network

## **2. Instruments and case law**

### *a. UN*

- United Nations Convention against Corruption (adopted by the United Nations General Assembly on 31 October 2003 (Resolution 58/4)).

### *b. OECD*

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (November 1997)

### *c. Council of Europe*

1. Report on the modalities of EU participation in the Council of Europe Group of States against Corruption (GRECO). Brussels, 6.6.2011; (COM(2011) 307 final)
2. Additional Protocol to the Criminal Law Convention on Corruption 2003 (Strasbourg, 15.V.2003)
3. Criminal Law Convention on Corruption Strasbourg, (ETS 173, Strasbourg, 27.I.1999)

### *d. EU*

1. Communication - Fighting Corruption in the EU (6.6.2011; COM(2011) 308 final)
2. Report from the Commission based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (Brussels, 6.6.2011; COM(2011) 309 final)

3. Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption ( OJ L 301, 12.11.2008, p. 38–39)
4. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003)
5. *Corruption*: Convention on the fight against corruption involving officials of the European communities or officials of Member states of the European Union (OJ C 195, 25.06.1997)
6. *Corruption*: Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996)
7. *Fraud*: Council regulation 2988/95 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995)
8. *Fraud*: Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995)

#### *e. Case law*

- German *Bundesgerichtshof*, judgement of 29.08.2008, 2 StR 587/07

### **3. Trainers**

Trainers recommended are international experts, EU experts and national practitioners.

### **4. Trainees**

Training is especially recommended for senior judges and prosecutors as training in this matter is addressed to practitioners that have a good understanding of the criminal system and thus are able to exercise their jurisdiction in cases referred. Furthermore, specialisation in criminal matters is more and more frequent.

### **5. Methodology**

#### *A) Training method:*

The training method recommended should be specialised seminars and workshops. Combined training on OLAF, protecting the financial interests of the European Union, counterfeiting of the Euro, corruption and money laundering could also form a topic for training courses and distance learning courses.

#### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update trainees as instruments are numerous and changes in the legislation are frequent.

#### *C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:* Training should take place at national, trans-national and EU-wide level.

## ***VI. Illicit drug trafficking***

### **1. Introduction**

In its 1988 Convention, the UN aimed at promoting co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. Contracting parties are asked to established criminal offences with regard to certain activities concerning drugs when committed internationally. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

The EU's approach to address drug trafficking comprises an EU Drug Strategy 2005-2012, an EU Drugs Action Plan 2009-2012, special Europol drug trafficking reports etc. Special actors to address drug trafficking within the EU include, for instance, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and more specific in the field of criminal law the Maritime Analysis and Operations Centre – Narcotics (MAOC-N). Furthermore, several agreements with third states and partners are into force or envisaged.

Several legislative instruments of the EU address drug trafficking and the manufacturing of drugs. Framework Decision 2004/757/JHA lays down minimum provisions on criminal acts and the penalties applicable to drug trafficking.

In its meeting in November 2009, the JHA Council adopted Conclusions on establishing a European system for forensic drug profiling that had been proposed by the Swedish Presidency in September 2009. Such a law enforcement driven system is seen as an additional tool to combat organised crime and drug production and/or trafficking. The objective of the system should be to carry out and compare forensic profiling analysis according to reliable and well-defined standards. In its Conclusions, the Council invites Member States to inter alia to encourage their law enforcement personnel and judicial authorities dealing with drug related offences to use the results of law enforcement intelligence/information and related forensic drug profiling in their work; to designate National Contact Points in law enforcement organisations as part of a network for information exchange, to ensure enhanced collaboration and exchange of information between law enforcement agencies (including Europol) and forensic institutes

#### *Training content*

Training should include:

- Scope and content of the Framework Decision
- Differences in implementation and national legislation
- Best practices
- Possibilities of support by Europol and Eurojust

## 2. Instruments and case law

### a. UN

- UNGASS Drugs Assessments
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988

### b. EU

1. Council Conclusions on a European system for forensic drug profiling (2979th Justice and Home Affairs Council meeting, Brussels, 30 November 2009)
2. Council Conclusions on the strengthening of the fight against drug trafficking in West Africa: (2979th Justice and Home Affairs Council meeting; Brussels, 30 November 2009)
3. EU Drugs Strategy 2005-2012 (15074/04; 22.11.2004)
4. EU Drugs Action Plan for 2009-2012 (2008/C 326/09)
5. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA: <http://www.emcdda.europa.eu/>)

### *Addressing drug trafficking*

1. Report from the Commission on the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (10.12.2009, COM(2009)669 final)
2. Council Framework Decision 2004/757/JAI of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. (OJ L 335 of 11.11.04)
3. Council Recommendation of 25 April 2002 on improving investigation methods in the fight against organised crime linked to organised drug trafficking: simultaneous investigations into drug trafficking by criminal organisations and their finances/assets (OJ C 114 of 15.05.2002)
4. Council Resolution of 29 November 1996 on the drawing up of police/customs agreements in the fight against drugs (OJ C 375 of 12.12.1996)

### *Fight against the manufacture of drugs:*

1. Council Decision 2008/206/JHA of 3 March 2008 on defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions (OJ L 63/45; 7.3.2008)
2. Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127/32; 20.05.2005)

3. Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (OJ L 22 of 26.01.05)
4. Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors

### 3. Trainers

Trainers recommended are EU experts, national practitioners, and experts of NGOs.

### 4. Trainees

Training is especially recommended for senior judges and prosecutors.

### 5. Methodology

*A) Training method:* Training should take the form of specialised seminars and workshops.

*B) Complementary e-learning:* recommended

*C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:* Training should take place at national, trans-national and EU-wide level.

## VII. Environmental crime

### 1. Introduction

In 1998, the Council of Europe opened for signature the European Convention on the protection of the environment through criminal law. This was significant because it represented the first international convention to criminalise acts causing or likely to cause environmental damage.

At European Union level, in 2000 Denmark took the main elements of this Convention and made a proposal for a Framework Decision on combating serious environmental crime based on Articles 29, 31(e) and 34(2)(b) TEU ('Third Pillar'). In 2001, the Commission adopted a proposal for a Directive on the protection of the environment through criminal law based on Art. 175 EC ('First Pillar') In 2003, the Council adopted Framework Decision 2003/80/JHA on the protection of the environment through criminal law. On 13 September 2005, the European Court of Justice annulled this, stating that it encroached on Community competences as it should have been adopted under Article 175 of the EC Treaty. In 2007, the Commission adopted a new proposal for a Directive

on the protection of the environment through criminal law which aims to replace the annulled Framework Decision 2003/80/JHA. Directive 2008/99/EC has been adopted in December 2008. It obliges Member States to provide for effective, proportionate and dissuasive criminal penalties in their national legislation in case of serious infringements of EC law on the protection of the environment.

### *Training content*

Training should include:

- Scope and content of the Framework Decision
- Differences in implementation and national legislation

## **2. Instruments and case law**

### *a. Council of Europe*

- Convention on the Protection of the Environment through Criminal Law (Strasbourg, 4.XI.1998)

### *b. EU*

1. Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law (OJ L 328/28, 6 December 2008)
2. Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255/11; 30.9.2005)
3. Annulled: Council Framework Decision of 27 January 2003 on the protection of the environment through criminal law (OJ L 29, 05.02.2003)
4. Annulled: Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ L 255/164; 30.9.2005)

### *c. Case law*

1. Case C-440/05, *ship-source pollution*, annulment Framework Decision 2005/667/JHA, Judgment of 23 October 2007
2. C-176/03, protection of the environment, annulment Framework Decision 2003/80/JHA, Judgment of 13 September 2005

## **3. Trainers**

Training should focus on the scope and content of the Directive. Trainers recommended are EU experts, national practitioner.

## **4. Trainees**

Training on the Framework Decision at this point in time is recommended for senior judges and prosecutors.

## **5. Methodology**

### *A) Training method:*

Training should take the form of specialised seminars and workshops.

***B) Complementary e-learning***

As the Directive is not yet into force, complementary e-learning is not necessary.

***C) Priority:***

Until the Directive enters into force, training is recommended. Once it has come into force, training should have top priority.

***D) Format:*** Training should take place at national, trans-national and EU-wide level.

***VIII. Trafficking in human beings and sexual exploitation*****1. Introduction**

Trafficking in human beings is a major problem in Europe today (trafficking in human beings is to be distinguished from smuggling of migrants. While the aim of smuggling of migrants is unlawful cross-border transport in order to obtain, directly or indirectly, a financial or other material benefit, the purpose of trafficking in human beings is exploitation. Furthermore, trafficking in human beings does not necessarily involve a trans-national element, it can exist at national level). Annually, thousands of people fall victim to trafficking for sexual exploitation or other purposes, whether in their own countries or abroad. Most identified victims of trafficking are women but men also are sometimes victims of trafficking in human beings. Furthermore, many of the victims are young, sometimes children.

A strategy for combating trafficking in human beings must adopt a multidisciplinary approach incorporating prevention, protection of human rights of victims and prosecution of traffickers, while at the same time seeking to harmonise relevant national laws.

At the legislative level, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Trans-national Organised Crime ('Palermo Protocol') laid the foundations for international action on trafficking.

In the European context, legislative measures have first been taken at EU level, starting with the 2002 Framework Decision on combating trafficking in human beings and Directive 2004/81/EC residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings would also be relevant in the field of trafficking in human beings. In 2005, the Council of Europe Convention on trafficking in human beings was adopted, taking the Palermo Protocol as a starting point and taking into account other international legal instruments relevant to combating trafficking in human beings.

At EU level, the Framework Decision on combating trafficking in human beings aims to approximate the laws and regulations of member states in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It also aims to introduce at European level common framework provisions to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition. In February 2010, the Council adopted an Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings. The paper includes an analysis of the issue and the EU's objectives, drawing on relevant information from the EU's institutions; a summary of current action being carried out both by the Commission and by Member States; and identification of what needs to be done at the political, technical and operational levels in order to meet EU objectives.

In April 2011, a new Directive on preventing and combating trafficking in human beings, and protecting victims replacing the 2002 Framework Decision entered into force. The Directive builds upon the Council of Europe Convention on Action against Trafficking in Human Beings and adopts the same holistic approach including prevention, prosecution, protection of victims, and monitoring. The Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

The Framework Decision on combating the sexual exploitation of children and child pornography is to harmonise the legislative and regulatory provisions of the member states concerning police and judicial cooperation in criminal matters with a view to combating trafficking in human beings, the sexual exploitation of children and child pornography. It introduces common European provisions to address certain issues such as the creation of offences, penalties, aggravating circumstances, jurisdiction and extradition. A proposal to update the Framework Decision by a Directive that shall improve criminal action against perpetrators and update the protection of victims is currently discussed. In particular, the proposal aims at covering new forms of crime such as grooming

Furthermore, the fight against trafficking in human beings and the sexual exploitation of children has an impact on a number of European institutions. Europol has the competence to prevent and combat trade in human beings including forms of sexual exploitation and assault of minors or trade in abandoned children. Eurojust has the competence for combating trafficking in human beings in the context of investigations and prosecutions concerning two or more member states.

#### *Training content*

- National and international THB context and concepts
- Scope and content of legislation, especially the Framework Decisions and Directive 2011/36/UE of the Council and the European Parliament on

preventing and combating trafficking in human beings and protecting victims, as well as repealing Framework Decision 2002/629/JHA

- National implementation of the Framework Decisions
- Bilateral, regional and international cooperation including Europol and Eurojust's measures against THB
- Links between THB and other criminal networks
- Victims Protection: Characteristics of this type of victims, protection mechanisms, compensation mechanisms.
- The financial aspect of prosecution in trafficking in human beings. seizure and confiscation

## 2. Instruments and case law

### *a. UN*

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Trans-national Organized Crime

### *b. Council of Europe*

Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16.V.2005)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8.XI.1990)

### *c. EU*

1. Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
2. Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (Brussels, 30 March 2010; 8155/10)
3. Action Oriented Paper (AOP) on strengthening the EU external dimension on action against trafficking in human beings (Brussels, 25 February 2010; 6865/10)
4. Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.1.2004)
5. Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261; 06.08.2004)
6. Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13 of 20.01.2004, p. 13)
7. Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.01.2004)

8. Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203/1, 01.08.2002): **REPLACED BY DIRECTIVE 2011/36/EU**

### 3. Trainers

Trainers recommended are EU experts, experts of NGOs and national practitioners.

### 4. Trainees

Training is especially recommended for senior and junior judges and prosecutors.

### 5. Methodology

#### *A) Training method:*

Training should take the form of specialised seminars and workshops.

*B) Complementary e-learning:* Complementary e-learning is recommended.

#### *C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:* Training should take place at national, trans-national and EU-wide level.

## ***IX. Racism and xenophobia***

### **1. Introduction**

Within the framework of the Council of Europe, racism and xenophobia have not been particularly tackled within any legal instrument. However, over the last few years, discussions have started within the Council of Europe to specifically address the fight against racism and xenophobia on the world-wide web. In 2001, the Council of Europe adopted its Convention on Cybercrime which aims, amongst other things, at banning the distribution of child pornography via the internet. The Convention, however, does not address the issue of racism, xenophobia, hate speech and racial discrimination on the internet. Therefore, in 2003, the issue was addressed in an additional Protocol to the Convention, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

In December 2008, the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law was adopted. The Framework Decision aims at ensuring that racist and xenophobic offences are sanctioned in all Member States by at least a minimum level of effective, proportionate and dissuasive criminal penalties. Within the scope of the Framework Decision, racism and xenophobia shall mean belief in race, colour,

descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals. The Framework Decision applies to all offences committed within the territory of the European Union, by a national of a member state or for the benefit of a legal person established in a member state. Certain forms of conduct committed for a racist or xenophobic purpose will be punishable as criminal offences such as public incitement to violence or hatred, public insults or threats, public condoning of genocide or crimes against humanity as defined in the Statute of the International Criminal Court, public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia, directing of a racist or xenophobic group. Instigating, aiding, abetting or attempting to commit the above offences will also be punishable. With regard to the above racist offences, member states must ensure that they are punishable by effective, proportionate and dissuasive penalties. In all cases, racist or xenophobic motivation will be considered as an aggravating circumstance in determining the penalty to be applied to the offence.

Furthermore, on 1 March 2007, the European Union Agency for Fundamental Rights (FRA) came into being, following the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia (EUMC) (*see separate Chapter F 'Human Rights'*).

#### *Training content*

Training should focus on the content of the new Framework Decision, offer discussions and debates on its added value, expected obstacles and problems arising within the individual national legal systems, improvements to be expected, impact on fundamental rights and the rights of the defence.

Training should also cover the role of the European Agency for Fundamental Rights and the support it can offer to the practitioners (*see separate Chapter F 'Human Rights'*)

## **2. Instruments and case law**

- a. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328; 06.12.2008)
- b. European Parliament resolution of 26 April 2007 on homophobia in Europe (P6\_TA(2007)0167)
- c. Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia (96/443/JHA) (OJ L 185, 24.7.1996) will be repealed by the FD.

## **3. Trainers**

Recommended experts are: EU experts, national practitioners, scholars.

## **4. Trainees**

Trainees should be well familiar with practical implications in this field. Thus, training is recommended to senior judges and prosecutors and law enforcement

## **5. Methodology**

### *A) Training method*

Training should take the shape of a specialised seminar focusing on discussions and debate.

Case law from different European countries should be included.

### *B) Complementary e-learning*

Complementary e-learning is not recommended at this point.

### *C) Priority*

In its Communication 'Non-Discrimination and Equal Opportunities For All – a Framework Strategy' (COM(2005) 224 final) of June 2005, the Commission recommended to raise awareness on this issue by, amongst other things, providing training for legal practitioners. Hence, training should be a priority.

### *D) Format*

Training should take place at EU-wide level.

## **X. Terrorism**

### **1. Introduction**

It is often said that the attacks of 11 September 2001 as well as the following terrorist attacks of Madrid and London in 2004 and 2005 have served as a catalyst for counter-terrorism legislation. Since then, the fight against terrorism has become a declared EU objective and consequently numerous legislative instruments have been adopted in the last year, of which two are of particular importance for the area of criminal justice: the Framework Decision of 13 June 2002 on combating terrorism and the Council Decision of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences. The Framework Decision on combating terrorism introduced, for the first time, common EU-wide minimum rules to define terrorist offences and lays down the penalties that member states must incorporate in their national legislation. On 18 April 2008, the Council reached a common approach on the amendment of the Framework Decision by the Commission on 6 November 2008. The amendment up-dates the Framework Decision making public provocation to commit a terrorist offence, recruitment and training for terrorism punishable behaviour, also when committed via the Internet.

The Council Decision on the exchange of information and cooperation concerning terrorist offences aims at improving the exchange of information between the member states as well as Europol and Eurojust.

The latest development in the fight against terrorism is the insertion of the offences of 'public provocation to commit a terrorist offence', 'training for

terrorism' and 'recruitment for terrorism' to the Council Framework Decision on combating terrorism.

Furthermore, since the establishing of the so-called 'EU terrorist blacklists, the European Court of Justice has delivered several judgments in which it annuls a Council Decision ordering the freezing of funds.

### *Training content*

Training should include:

- International counter-terrorism legislation
- EU criminal justice counter-terrorism instruments, especially amendments to the FD on combating terrorism
- Interplay EU – domestic legislation
- Case law ECJ
- Role of Europol and Eurojust
- Role of the private sector
- European Arrest Warrant and the terrorism crime.
- Framework Decision on double incrimination
- Definition of the crime of being part of a terrorist organization
- International cooperation instruments ( EAW, Joint Investigation Teams)
- Crime of financing terrorist organizations.

## **2. Instruments and case law**

### *a. Council of Europe*

1. Council of Europe Convention on the Prevention of Terrorism (Warsaw, 16.V.2005)
2. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 16.V.2005)
3. Protocol amending the European Convention on the Suppression of Terrorism (Strasbourg, 15.V.2003)
4. European Convention on the Suppression of Terrorism (Strasbourg, 27.I.1977)

### *b. EU*

1. Report on EU Action Plan on combating terrorism (17 January 2011; 15893/1/10)
2. EU Terrorism Situation and Trend Report (TE-SAT) 2011
3. Judicial dimension of the fight against terrorism – Recommendations for action (13318/10, 7 September 2010)
4. Report on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS), 7 April 2010

5. EU-US Agreement on the Transfer of Financial Messaging Data for purposes of the Terrorist Finance Tracking Programme (6265/10, 9 February 2010)
6. EU Terrorism Situation and Trend Report (TE-SAT) 2010
7. Report on the implementation of the revised Strategy on Terrorist Financing (8864/1/09 REV 1, 5 May 2009)
8. Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (OJ L 330, 9 December 2008, p. 21)
9. Council Decision 2008/651/CFSP/JHA of 30 June 2008 on the signing, on behalf of the European Union, of an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service (OJ L 213/47, 8 August 2008)
10. Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253/22; 29.9.2005)
11. Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism Official Journal L 068 , 15/03/2005 P. 0044 – 0048
12. Council Decision of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism 24.12.2002 EN Official Journal of the European Communities L 349/1
13. Council Framework Decision of 13 June 2002 on combating terrorism, OJ L 164/3, 22.6.2002

#### *c. ECJ case law*

1. Case T-348/07 Al Aqsa v Council, Judgment of 9 September 2010
2. Case C-550/09 E & F, Judgment of the Court of 29 June 2010
3. Case C-340/08, M and others v. United Kingdom, Judgment of the Court of 29 April 2010
4. Joined Cases C-399/06, Hassan v. Council and Commission, Judgment of the Court of 3 December 2009
5. Case T-318/01, Othman v. Council and Commission, Judgment of the Court of 11 June 2009
6. Case T-287/08, People's Mojahedin Organization of Iran (PMOI), Judgment of 4 December 2008
7. C-402/05 P and C-415/05 P,, Kadi and Al Barakaat, Judgment of
8. C-354/04 P and C-355/04 P, Gestoras Pro Amnistía, Juan Mari Olano, Julen Zelarain Errasti v Council of the European Union, Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland, Judgment of 27 February 2007
9. Case C-266/05 P, Jose Maria Sison v Council of the European Union, Judgment of 1 February 2007
10. Case C-229/05, PKK and KNK, Judgment of 18 January 2007
11. Case C-415/05 P, Appeal brought on 23 November 2005 by Ahmed Yusuf and Al Barakaat International Foundation against the judgment of the Court of

First Instance (Second Chamber (Extended Composition)) of 21 September 2005 in Case T-306/01 Ahmed Yusuf and Al Barakaat International Foundation v the Council of the European Union and Commission of the European Communities

#### *d. ECHR case law*

1. Article 5 ECHR: Right to liberty and security
2. Ilascu and others v. Moldova and Russia (8 July 2004)
3. Article 2 ECHR: Right to life
4. McCann and Others v. the United Kingdom (5 September 1995)
5. Article 8 ECHR: Right to respect for private and family life
6. Klass v. Germany (6 September 1978)
7. Article 3 ECHR: Prohibition of torture
8. Ireland v. The United Kingdom (18 January 1978)

### **3. Trainers**

Trainers recommended are EU experts, national practitioners and scholars.

### **4. Trainees**

Training is especially recommended for senior judges and prosecutors as training in this matter is addressed to practitioners who have a good understanding of the criminal system and thus are able to exercise their jurisdiction in cases referred to it.

### **5. Methodology**

#### *A) Training method:*

Training should take the form of specialised seminars and workshops.

#### *B) Complementary e-learning:*

Complementary e-learning should be designated as a permanent method to update the trainees as instruments are numerous and changes in the legislation are frequent.

#### *C) Priority:*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

*D) Format:* Training should take place at national, trans-national and EU-wide level.

## ***XI. Cybercrime***

### **1. Introduction**

Prosecuting crimes in cyberspace can be viewed as a key challenge for the coming years. Through the use of ICTs, potentially, almost all forms of

“traditional” crimes can be committed via internet in the future. This is the case of recruitment and training of terrorists, the organisation of drug smuggling via a simple exchange of emails, illegal online gambling, fraud committed using cloned credit cards, the trade of child sexual image material. All these crimes can be committed anonymously via the internet by perpetrators located anywhere in the world. Therefore it is essential for them to have at least a basic understanding of the cybercrime phenomenon. In this context, there is also an increasing need to talk with the private sector (public/private partnership). If potentially all crimes can be committed with the use of internet, the bilateral cooperation between judges and between prosecutors (also from different countries) is insufficient. High-tech crimes cannot be adequately investigated, prosecuted and adjudicated without cooperation with industry. Dialogue with internet service providers such as Google, AOL, Yahoo!, Skype, Facebook, eBay and many others will be key for judges and prosecutors to prevent, detect and respond to crimes committed using the ICT facilities.

In 2001, the Council of Europe adopted its Convention on Cybercrime which aims, amongst other things, at banning the distribution of child pornography via the world wide web.

The European Union has already taken action to fight cybercrime but more needs to be done through collective action, in partnership with the private sector. The aim is to set the scene for further progress of both e-commerce in Europe and for the Information Society on a global scale. The European Commission has presented a legislative package to approximate specific areas of substantive criminal law in the area of high-tech crime. In 2005, the Council Framework Decision of 24 February 2005 on attacks against information systems entered into force. The Framework Decision aims at improving judicial and other law enforcement cooperation through the approximation of laws in the EU Member States in the area of attacks against information systems. In essence, the Framework Decision obliges Member States to punish certain computer-related offences with “effective, proportional and dissuasive criminal penalties”. Punishable offences are illegal access to information systems, illegal system interference, and illegal data interference. In 2008, the Commission published its first evaluation report.

### *Training content*

Training should focus on the means and methods of cybercrime, new phenomena (e.g. phishing), basic ICT knowledge, and the new legislation such as Framework Decision on attacks against information systems.

## **2. Instruments and case law**

### *a. Council of Europe*

1. Council of Europe – Global Project on Cybercrime – Summary February 2009

2. Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, 28.I.2003)
3. Convention on Cybercrime (Budapest, 23.XI.2001)

#### *b. EU*

1. Proposal for a Directive of the European Parliament and of the Council on attacks against information systems and repealing Council Framework Decision 2005/222/JHA (30.9.2010, COM(2010) 517 final 2010/0273 (COD))
2. Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (20.9.2010; 13799/10)
3. 3010th General Affair Council meeting: Conclusions concerning an Action Plan to implement the concerted strategy of combat cybercrime, Luxembourg 26 April 2010
4. Council of the European Union, Multidisciplinary Group on Organised Crime (MDG): "Proposal by the Spanish presidency for an action plan on the concerted strategy to combat cybercrime" (Council of the European Union, doc 5071/10, 08.01.2010)
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Critical Information Infrastructure Protection - Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience (30.3.2009, COM(2009) 149 final)
6. Communication from the Commission to the European Parliament, the Council and the Committee of Regions - Towards a general policy on the fight against cyber crime (COM (2007) 267 final)
7. Report from the Commission to the Council based on Article 12 of the Council Framework Decision of 24 February 2005 on attacks against information systems (14.7.2008; COM(2008) 448 final)
8. Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (OJ L 69/67; 16.3.2005)
9. Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13/44; 20.1.2004)

### **3. Trainers**

Trainers should be international experts, EU experts and national practitioners.

### **4. Trainees**

Given the rapid growth of crimes committed by ICT, training on cybercrime should address all judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training should take the shape of a specialised seminar focusing on discussions and debate.

### *B) Complementary e-learning*

Complementary e-learning is not recommended at this point.

### *C) Priority*

Training should have top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

### *D) Format*

As long as the EU Framework Decision is not in force, training at national level is sufficient.

## ***XII. Intellectual property rights, counterfeiting and piracy***

### **1. Introduction**

The protection of intellectual property is governed by various international conventions to which the EU has signed up, such as the Charter of Fundamental Rights, which states that intellectual property shall be protected, the Berne, Brussels and Paris Conventions, the World Intellectual Property Organisation (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the World Trade Organisation (WTO) with the agreement on trade-related aspects of intellectual property rights (TRIPS).

In order to bring itself into line with these international commitments, the EU adopted the Directive on the Enforcement of Intellectual Property Rights (also labelled the 'IPR Enforcement Directive'), in March 2004. This Directive sought to consolidate the fragmented body of EU legislation on intellectual property - i.e. disparate measures on copyrights, trade marks, authors' rights, designs, counterfeiting and piracy, computer programmes, etc. - to create more clarity and predictability for European businesses. It also gave national authorities increased powers to pursue infringers and obtain compensation for rights-holders.

However, as the counterfeiting and piracy phenomenon grows, the Commission saw the need for additional measures. In July 2005, the Commission presented a double proposal for a Directive and a Council Framework Decision aimed at introducing criminal sanctions for IPR infringements. The proposal was redrafted in April 2006, to take into account a judgment by the ECJ of 13 September 2005 (C-176/03), which holds that the EU has powers to harmonise member state criminal law, if required for the effective implementation of Community law. If adopted, the Directive would be the first ever to harmonise member state criminal law. In April 2007, the Directive was adopted in the

Parliament plenary session. In April 2008, examination by member states in the Council took place. The Directive is still awaiting its adoption by the Council. Once adopted, it will enter into force immediately following its publication in the Official Journal. Member states would then have 18 months to transpose the Directive.

To ensure the protection of intellectual property rights against the massive violations they are subjected to via the internet as well as the repression of these violations, it should be noted that: Directive 2009/140 of the Parliament and the Council (25/11/2009), modifies, amongst others, Directive 2002/21 relative to a common regulating framework for networks and services of electronic communications.

Its Article 1)b - § 3 bis states that: "Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to effective and timely judicial review shall be guaranteed." This provision has allowed some Member States to internalize administrative procedures aiming at eliminating and sanctioning behaviours which harm intellectual property rights via the Internet. (Sinde Law)

With regard to case law, it is necessary to consider the doctrine which the European Court of Justice is establishing in matters relating to intellectual property as an interpreter of EU law. In this sense the following cases are relevant:

**C-275/06 *Promusicae*, Judgment of the Court (Grand Chamber) of 29 January 2008:** prejudicial decision issued by the Mercantile Court number 5 in relation to the interpretation of articles 15 §2 and 18 of Directive 2000/31/EC (08/06/2000) relative to specific areas of information society services, and in particular, to electronic trade in the internal market (DO L 178, p. 1); of article 8 §1 and §2 of Directive 2001/29/EC (22/05/2001) relative to the harmonization of specific aspects of copyright in the information society (DO L 167, p. 10); and of article 8 of Directive 2004/48/EC (19/04/2004) regarding the respect of intellectual property rights (DO L 157, p. 45) – Treatment of general data produced via established communications during the provision of a service for the information society – Obligation to keep and make available the above mentioned data, which is the responsibility of network operators and electronic communication

services, network telecommunication access providers and data hosting service providers – Exclusion from civil procedures.

**C-467-08 *Padawan*, Judgment of the Court (Third Chamber) of 21 October 2010** (“digital canon”): prejudicial question raised by the Provincial Court of Barcelona. This case brings before the European Court of Justice the interpretation of Directive 2001/29/EC about copyright as well as other related rights, the uniform interpretation of private copy and the concept of fair compensation.

### *Training content*

As long as the EU Directive is not yet in force, training would focus on the international instruments and their implementation and give an outlook on the forthcoming EU instruments.

## 2. Instruments and case law

### *a. Basic instruments*

1. Directive 2009/140/EC of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ L 337/37;18.12.2009)
2. Amended proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property right (Brussels, 26.4.2006; COM(2006) 168 final)
3. Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (12.7.2005, COM(2005)276 final)
4. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157; 30.04 2004 )

### *b. Case law*

1. C-467-08 *Padawan*, Judgment of the Court (Third Chamber) of 21 October 2010
2. C-275/06 *Promusicae*, Judgment of the Court (Grand Chamber) of 29 January 2008
3. C-176/03, *Commission of the European Communities v Council of the European Union*

## 3. Trainers

Trainers should be international experts, EU experts and national practitioners.

## 4. Trainees

As long as the EU Directive is not in force, training in the form of policy debates is recommended to senior judges and prosecutors.

## 5. Methodology

### *A) Training method*

Training should take the shape of a specialised seminar focusing on discussions and debate.

### *B) Complementary e-learning*

Complementary e-learning is not recommended at this point.

### *C) Priority*

As long as the EU Directive is not in force, training in the form of policy debates is recommended to senior judges and prosecutors.

### *D) Format*

As long as the EU Framework Decision is not in force, policy debates should take place on a national and EU-wide level.

## ***XIII. Employment of Illegal Migrants***

### **I. Introduction**

In May 2007, a proposal for a Directive providing sanctions against employers of illegally staying third-country nationals has been published. The Directive would prohibit the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe this prohibition. The European Parliament approved the proposal in February 2009. The Directive was adopted in June 2009 Member States now have 2 years for the transposition of this directive into their national laws before it will be fully applicable in practice.

### **2. Instruments and case law**

Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

### **3. Trainers**

Trainers should be EU experts.

### **4. Trainees**

Training is recommended to senior judges and prosecutors.

## **5. Methodology**

### *A) Training method*

Training should take the shape of a specialised seminar focusing on discussions and debate.

### *B) Complementary e-learning*

Complementary e-learning is not recommended at this point.

*C) Priority*

As long as the EU Directive is not in force, training in the form of policy debates is recommended to senior judges and prosecutors.

*D) Format*

As long as the EU Framework Decision is not in force, policy debates should take place on a national and EU-wide level.

# Chapter E

## Police cooperation

### 1. Interpol

#### 1. Introduction

Interpol is the world's largest international police organisation, with 186 member countries. Created in 1923, it facilitates cross-border police cooperation, and supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime. Interpol aims to facilitate international police cooperation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights.

#### *Training content*

Training on Interpol would include information on the role and tasks of the organisation and aim to raise awareness of the support it can offer to the national practitioner.

#### 2. Instruments and case law

- Interpol website
- ICPO-INTERPOL Constitution and General Regulations

#### 3. Trainers

Trainers should be international experts (Interpol staff) and experts from the training institutions.

#### 4. Trainees

Information on the support that Interpol can offer is of interest for junior judges and prosecutors and future/trainee judges and prosecutors.

#### 5. Methodology

##### *A) Training method*

Training could be included in training courses and basic seminars and, in particular, study visits could be offered.

##### *B) Complementary e-learning:*

Complementary e-learning on Interpol can be included in basic seminars.

##### *C) Priority*

Informing on the role and tasks of the organisation is recommended.

##### *D) Format*

Training can take place at local and regional level.

## **II. Europol (see Chapter B)**

### **III. CEPOL**

#### **1. Introduction**

CEPOL is an EU Agency, established in 2005 and located in Bramshill, UK. CEPOL's mission is to bring together senior police officers from police forces in Europe - essentially to support the development of a network - and encourage cross-border cooperation in the fight against crime, public security and law and order by organising training activities and research findings. CEPOL has set up cooperation agreements with Europol, Frontex and Eurojust.

On its meeting from 11-12 April 2011, the JHA Council adopted the Work Programme of Cepol for the year 2011. Priorities of the programme include Cepols' support to the national colleges in implementing common curricula; the development of e-learning modules covering Joint Investigation Teams and the Lisbon Treaty; evaluation of its training activities, strengthening its external relations, especially its cooperation with Frontex, Eurojust and Interpol; the police exchange programme for 2011 – 2012, and the support of relevant research and science as well as taking a leading role in comprehensive relevant European Law Enforcement Projects, especially with regard to professional cybercrime training.

#### *Training content*

Training on CEPOL would basically involve information about the role and tasks of the college and aim to raise awareness of the support it can offer to the national practitioner.

#### **2. Instruments and case law**

- CEPOL Website
- Council of the European Union, CEPOL Work Programme 2011 (DGH 3 A ENFOPOL 58 7645/11; 14.3.2011)
- Council of the European Union, CEPOL strategy (DG H 3 A ENFOPOL 293 15068/10; 18.10.2010)
- European Parliament, Committee on Budgetary Control, Draft Second Report on discharge in respect of the implementation of the budget of the European Police College for the financial year 2008 (C7-0198/2009 – 2009/2127(DEC)) (2009/2127(DEC); 21.6.2010)
- Draft Council conclusions on the exchange programme for police officers inspired by Erasmus (Brussels, 13 April 2010; 8309/1/10)
- Council Decision of 22 December 2000 establishing a European Police College (CEPOL) (OJ L 336 , 30/12/2000)

#### **3. Trainers**

Trainers could be EU experts and experts from the training institutions.

## 4. Trainees

Information on the institution is of interest for junior judges and prosecutors, and future/trainee judges and prosecutors.

## 5. Methodology

### *A) Training method*

Training could be included in training courses and basic seminars.

### *B) Complementary e-learning:*

Given CEPOL's role as a training institution, complementary e-learning is not recommended.

### *C) Priority*

Information on the college is recommended.

### *D) Format*

Training should preferably take place at local and regional level.

## **IV. Information exchange**

### **1. Introduction**

In the fight against organised crime and terrorism, it is commonly understood that exchanging information is one of the most important tools. Since the terrorist attacks in New York in 2001 as well as in Madrid and London, several legislative initiatives and instruments have been launched at EU level to facilitate the exchange of information between EU law enforcement authorities.

By setting up the so-called principle of availability, direct online access to available information and to index data for information that is not accessible online should have become possible between all law enforcement authorities in the EU in relation to certain types of data (profiles, fingerprints, ballistics, vehicle registration information, telephone numbers and other communications data, with the exclusion of content data and traffic data unless the latter data are controlled by a designated authority, minimum data for the identification of persons contained in civil registers).

At this point in time, finding a unanimous agreement on this very ambitious idea is not in sight. Nevertheless, several smaller steps have been taken to enhance the exchange of information in the EU. In 2005, the exchange of information on terrorist offences with Europol and Eurojust was enforced by a Council Decision. The so-called Swedish Initiative that came into force in 2006 simplifies the exchange of information between law enforcement authorities by introducing time limits for responses and limiting grounds for refusal. The biggest step was taken by the so-called 'Treaty of Prüm', an initiative between several member states of the EU that introduces mutual access to each other's DNA, fingerprint and vehicle registration information systems. The Council Decision which transfers the 'Third Pillar' regulations of the Treaty of Prüm into

the framework of the EU has been adopted in August 2008. Member States must implement general aspects such as the automated sharing of DNA files by August 2009, provisions on on-line access by August 2011. An agreement has been set up allowing EU Member States and Iceland and Norway to grant one another access rights to their 'Prüm data'. In March 2010, the Spanish Presidency launched a proposal on a Model Agreement for setting up Joint Cooperation Teams under the Prüm Decision (joint patrols and other joint operations in cases of disasters, serious accidents, mass gatherings and other major events). The draft model agreement which is very similar but not to be confused with the Model Agreement on Joint Investigation Teams (see below: V.) foresees standard provisions for setting up such joint teams (e.g. place and period of the operation; responsible officers; specialists, advisers; executive powers of the seconded officers; logistic modalities; costs; etc.).

The current system of information systems and instruments in the EU has become more and more non-transparent which caused JHA Ministers to call for the setting-up of an Information Management Strategy for EU Internal Security. One future major factor in this strategy could be the envisaged Agency for the operational management of large-scale information technology IT systems that would be responsible for the operational management of the Schengen Information System (SIS II), Visa Information System (VIS), Eurodac and possible other large-scale IT systems. While Europol's and law enforcement authorities' access to the Visa Information System has been agreed, their access to Eurodac is still debated.

### *Training content*

Training on the exchange of information should include:

- An introduction to the principle of availability
- The regulations set up under the Swedish Initiative
- The regulations set up under the Treaty of Prüm

## **2. Instruments and case law**

### *General*

- a. Council Conclusions on an Information Management Strategy for EU internal security Communication from the Commission: Legislative package establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (11709/09; 3.7.2009)
- b. Proposal for a Council Framework Decision on the exchange of information under the principle of availability (12.10.2005 COM(2005) 490 final)

### *Joint cooperation Teams*

- a. Proposal for a Council Resolution on a Model Agreement for setting up joint cooperation teams under Chapter 5 of Decision 2008/615/JHA (Brussels, 26 March 2010; 7991/10)

### *Swedish Initiative*

- a. Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member states of the European Union (OJ L 386/89; 29.12.2006)

### *Prüm Decisions*

- a. Draft discussion paper on the state of play on the implementation of Council Decisions 2008/615/JHA and 2008/616/JHA ("Prüm Decisions") (28 October 2010;15567/10)
- b. Implementation of the provisions on information exchange of the "Prüm Decisions" - overview of documents and procedures; overview of declarations; state of play of implementation of automated data exchange (April 2010; 5904/1/10)
- c. Prüm/VRD evaluation of Finland: - Report of the evaluation visit (17-19 March 2010) (27 April 2010, 9032/10)
- d. Implementation of the "Prüm Decisions" regarding fingerprints– Search capacities (27 April 2010;5860/3/19)
- e. Council Decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto (26 January 2009;5060/09)
- f. Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210; 06.08.2008)
- g. Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210; 06.08.2008)
- h. Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration ('Treaty of Prüm') (7 July 2005 (28.07), 10900/05)
- i. Prüm Convention (10900/05; 7 July 2005)

### *Large-scale IT Agency*

- a. Proposal for a Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale

IT systems in the area of freedom, security and justice- Preparation for the high-level dialogue (11 March 2011;7638/11)

- b. Opinion of the European Data Protection Supervisor on the proposal for a Regulation of the European Parliament and of the Council establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and on the proposal for a Council Decision conferring upon the Agency established by Regulation XX tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty (OJ C 70/13, 19.3.2010)
- c. Proposal for a Council Decision conferring upon the Agency established by Regulation XX tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty (COM(2009) 294 final, 24.6.2009)
- d. Proposal for a Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Brussels, 24.6.2009; COM(2009) 293 final)

#### *Law enforcement access to VIS*

1. Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218/129; 13.8.2008)
2. Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60–81)
3. Opinion of 20 January 2006 on the Proposal for a Council Decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (COM (2005)600 final), (OJ C 97, 25.04.2006, p. 6)
4. Council Decision of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213/5; 15.6.2004)

#### *Law enforcement access to Eurodac*

- a. EDPS Opinion on the Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (Recast version) (15.12.2010)

- b. Amended proposal of the European Commission for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (*DG H 1 B 14919/10 GK/es EURODAC 44 CODEC 1034 Interinstitutional File 2008/0242 (COD) of 13 October 2010*)
- c. Amended proposal of the European Commission for a Regulation of the European Parliament and of the Council concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (*COM(2009) 342 final; 10.09.2009*)
- d. Proposal of the European Commission for a Council decision on requesting comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes (*COM(2009) 344 final; 10.09.2009*)
- e. Proposal for a Regulation of the European Parliament and the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (3.12.2008; COM(2008) 825 final)
- f. Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316/1; 15.12.2000)

### *Passenger Name Records*

- Opinion of the European Data Protection Supervisor on the Proposal for a 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 (25 March 2011)
- Proposal for a Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (Brussels, 2.2.2011; COM(2011) 32 final)
- Proposal for a Council Framework Decision of 6 November 2007 on the use of Passenger Name Record (PNR) for law enforcement purposes (COM(2007) 654 final)

### *Case law*

C-482/08 UK v Council (Access for consultation of the Visa Information System)

### **3. Trainers**

Trainers should be EU experts and national practitioners.

### **4. Trainees**

Training should be especially provided for senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training should take the shape of specialised seminars and workshops.

#### *B) Complementary e-learning*

Complementary e-learning is recommended.

#### *C) Priority*

Given the fact that the provisions of the Treaty of Prüm will be applicable throughout the EU in due course, training on the issue should be given top priority.

#### *D) Format*

Training should take place at national, trans-national and EU-wide level.

## ***V. Joint Investigation Teams (JITs)***

### **1. Introduction**

A new and important tool for police cooperation within the EU is the possibility to set-up joint investigation teams under Article 13 of the 2000 MLA Convention (respectively the Framework Decision of 13 June 2002 on JITs). Training on the legal basis laid down to set up these teams under the Convention/ Framework Decision is therefore highly relevant, not only to law enforcement authorities, but also to the judiciary, and especially prosecutors.

The existing solutions for joint police cooperation under the Council of Europe second additional protocol to the Convention of mutual assistance and the CISA were seen as too cumbersome and did not offer solutions for complex, cross-border investigations involving several states. JITs under Article 13 of the EU Convention on mutual assistance of 2000 can be established for a limited period and a specific purpose between two or more member states. Special regulations are foreseen with regard to the organisation and composition of the team (e.g. team leader, involvement of Europol and Eurojust), operating rules, seconded members, needs of the team, and information exchange.

On 23 September 2009, Eurojust and Europol published the first JIT Manual. The Manual intends to inform practitioners about the legal basis and requirements for setting up a JIT and to provide advice on when a JIT can be usefully employed. Furthermore, the Manual offers advice on how to draft the written JIT Agreement. Finally, the Manual gives an overview on the EU Member States national laws implementing JITs.

Since July 2009, JITs are eligible for direct and targeted financial support from Eurojust. In order to receive funding from Eurojust, interested parties need to submit an application for financial assistance to the JIT Project Manager at Eurojust. If the application is successful, a specified amount will be reserved pending the submission of a request for reimbursement.

In March 2010, an updated Model Agreement for setting up JITs was published in the Official Journal of the EU. The updated Model Agreement is now based on best practices where establishing JITs.

Besides the cooperation in JITs, one of the latest initiatives for police cooperation concerns the use of police dogs in the European Union. In March 2011, the Council adopted a resolution inviting EU Member States to create a network of police dog professionals in Europe. The network shall be called KYNOPOL and aim at enhancing cooperation and coordination of the activities of the Member States' law enforcement authorities regarding the use of police dogs.

### *Training content*

1. Differences between JITs under Article 13 of the 2000 MLA Convention and JITs under other legal instruments
  - 1.1 Schengen Convention: hot pursuit and cross-border observation
  - 1.2. 1997 Naples II Convention (Art. 20)
  - 1.3. 2000 UN Convention on trans-national organised crime (Art. 19)
  - 1.4. 2001 CoE 2nd additional protocol
2. Legal issues for JITs under 2000 MLA Convention
  - 2.1. Information exchange
3. Usage of information obtained while part of a JIT
4. Liability of members and seconded members
5. Differences in national legislation implementing JITs (see Europol-Eurojust guide)
6. Setting-up a JIT agreement
7. Role of Eurojust and Europol
8. Role of JIT national experts
9. Experience and best practice

## **2. Instruments and case law**

- a) Council of the European Union, Draft Council Resolution on the use of police dogs in the European Union (DGH 3 A ENFOPOL 78 8178/11; 25.3.2011)
- b) Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (Official C 70/1; 19.3.2010)
- c) Joint Investigation Teams Manual (13598/09; 23.09.2009)
- d) Eurojust JIT funding
- e) Eurojust JIT funding application form
- f) Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (*OJ C 70/1; 19.3.2010*)

- g) Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT) (OJ C 121/1; 23.5.2003)
- h) Council Framework Decision of 13 June 2002 on joint investigation teams (OJ L 162/1; 20.6.2002)

### **3. Trainers**

Trainers should be EU experts and national practitioners.

### **4. Trainees**

Training on JITs is recommended for senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training on JITs should take the shape of specialised seminars and workshops.

#### *B) Complementary e-learning*

Complementary e-learning, especially by means of case studies, is recommended.

#### *C) Priority*

Article 13 of the 2000 MLA Convention for the first time offers an in-depth legal basis for joint police investigations within the EU. Training on these issues should have top priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

#### *D) Format*

Training should take place at national, trans-national, and EU-wide level.

## ***VI. The Schengen Acquis and the Schengen Information System(s)***

### **1. Introduction**

To counterbalance the abolition of the internal borders introduced within the Schengen area, so-called "compensatory" measures were established. This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and in particular to tackle organised crime effectively. With regard to judicial cooperation in criminal matters, the main measure included the strengthening of judicial cooperation through a faster extradition system and faster distribution of information on the enforcement of criminal judgments.

In the area of police cooperation, cross-border rights of surveillance and hot pursuit for police forces in the Schengen states was introduced.

At the heart of the Schengen mechanism, an information system was set up: the Schengen Information System (SIS). SIS is a sophisticated database used by the authorities of the Schengen member countries to exchange data on certain categories of people and goods.

Since the coming-into-force of the EU Convention on mutual legal assistance of 29 May 2000, and its Protocol, mutual legal assistance between the member states of the EU is mainly based on these legal instruments as well as on the Convention implementing the Schengen Agreement (CISA).

Regarding border control at the moment, various new measures are proposed under the so-called 'European Integrated Border Management'. New initiatives include the introduction of an entry/exit system, the facilitation of border crossing for bona fide travellers, the development of a European Border Patrols Network, the creation of a European Border Surveillance System (EUROSUR), the use of passenger name records for law enforcement purposes.

Furthermore, access of the law enforcement to the Visa Information system is envisaged.

### *Training content*

Training on the Schengen Convention and its protocols should include the following fields:

1. Schengen Acquis: General background, associated countries, opt-ins and opt-outs
2. Schengen Convention (CISA):
3. Judicial cooperation:
  - Mutual assistance in criminal matters under the CISA
  - Application of the 'ne bis in idem' principle and respective case law of the ECJ
  - Extradition
  - Transfer of the execution of criminal judgments
4. Police cooperation under Schengen
5. Schengen Information Systems: SIS I, SISone4all, SIS II
6. Certain specific forms of mutual assistance:
  - 6.1. Cross border surveillance
  - 6.2. Cross border pursuit
  - 6.3. Data exchange

## **2. Instruments and case law**

- Updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation (25.01.2011; 15785/2/10)
- Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the

### Member States of the European Union (2010/252/EU) (OJ L 111/20; 4.5.2010)

- Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions Preparing the next steps in border management in the European Union of 13.2.2008 (*COM(2008) 69 final*)
- Commission Recommendation of 6 November 2006 establishing a common "Practical Handbook of Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C(2006) 5186 final) as amended by Commission Recommendation of 25 June 2008 (*C(2008) 2976 final*)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code of the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p.1) as amended by regulation (EC) No 296/2008 of the European Parliament as regards the implementing powers conferred on the Commission (*OJ L 97, 9.4.2008, p.60*)
- The Schengen Acquis as referred to in Article 1(2) of Council Decision 1999/435/EC of 20 May 1999 (OJ L 239/1, 22.9.2000)
- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19–62)

### *Schengen Information System (SIS)*

- Council Decision of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (*OJ L 166, 1.7.2010, p. 17*)
- Reintroduction of border controls under Articles 23 et seq. of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), (*27.05.2010, 8584/10*)
- 2010/252/: Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (*OJ L 111, 4.5.2010, p. 20–26*)
- Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis (COM(2009)102 final; 4.3.2009)
- Proposal for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen acquis (COM(2009)105 final; 4.3.2009)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code of the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p.1) as amended by regulation (EC) No

- 296/2008 of the European Parliament as regards the implementing powers conferred on the Commission (*OJ L 97, 9.4.2008, p.60*)
- Analysis of the impact of SISone4ALL on the SIS1+ and SIS II projects from the Council Secretariat in Brussels, (*20.11.2006; 14773/06*)
  - Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)(*OJ L 105/1; 13.4.2006*)
  - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (*OJ 2000 L 239, p. 19 – 62*)
  - Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles (Text with EEA relevance) (*OJ L 191, 22.7.2005, p.18*)
  - Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (*OJ L 68, 15.3.2005*)

#### *Schengen Information System II (SIS II):*

1. CEPS Paper: *The Difficult Road to the Schengen Information System II: The legacy of 'laboratories' and the cost for fundamental rights and the rule of law*, Joanna Parkin (April 2011)
2. Commission staff working document, Report on the global schedule and budget for the entry into operation of the second generation Schengen Information System (SIS II), SEC(2010) 1138 final, Brussels, 21.09.2010.
3. Council note from the Austrian and German delegations on the further direction of SIS II, no. 10833/10 of 7 June 2010.
4. Council Regulation (EU) No 541/2010 of 3 June 2010 amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (*OJ L 155 22.06.2010, p.19*)
5. Council Regulation 542/2010 amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) *OJ L 155/23, 22.6.2010*
6. Press release, 3018th Council meeting Justice and Home Affairs, 3-4 June 2010
7. Council Conclusions on SIS II (*6.05.2010; 8932/1/10*)
8. Report from the Commission to the European Parliament and the Council on the development of the second generation Schengen Information System (SIS II) - Progress Report July 2009 - December 2009 (*COM(2010)0221 final; 6.5.2010*)
9. 2010/261/: Commission Decision of 4 May 2010 on the Security Plan for Central SIS II and the Communication Infrastructure (*OJ L 112, 5.5.2010, p.31*)

10. Report on the proposal for a Council regulation amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System A7-0127/2010, 29.04.2010.
11. Council Regulation amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (31.03.2010; 9925/10)
12. Council Regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (31.03.2010; 9920/10)
13. Council Conclusions on SIS II, 2927th Justice and Home Affairs Council meeting, 26 and 27 February 2009
14. Second generation of Schengen Information System (SIS II) - Implementation of measures (03.02.2009; 6067/09)
15. Council Decision on the tests of the second generation Schengen Information System (SIS II) (13.02.2008; 6071/08)
16. Council Regulation on the tests of the second generation Schengen Information System (SIS II) (09.01.2008; 5135/08)
17. Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007)
18. Commission Decision of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar) (OJ L 79, 20.3.2007)
19. Council Decision 2006/1007/JHA of 21 December 2006 amending Decision 2001/886/JHA on the development of the second generation Schengen Information System (SIS II) (OJ L 27, 2.2.2007, p. 43)
20. Council Regulation (EC) No 1988/2006 of 21 December 2006 amending Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 27/3; 2.2.2007)
21. Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381 , 28.12.2006, p. 4-23)
22. Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ L 381, 28.12.2006, p. 1-3)
23. Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 068; 15/03/2005)
24. Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, p.4)

### 3. Trainers

Trainers for this topic should be EU experts and national practitioners.

## 4. Trainees

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors

## 5. Methodology

### *A) Training method*

The Schengen Convention and its protocols serves as important background information for a better understanding of the EU Convention on mutual legal assistance and further EU measures in the field of police and judicial cooperation in criminal matters as well as it still constitutes an important in the framework of cross-border judicial cooperation with other Council of Europe member states. Thus general knowledge of the instrument should be provided. Hence, the method recommended for this area are basic seminars and distance learning courses.

### *B) Complementary e-learning*

Training on this legal instrument can be completed by e-learning.

### *C) Priority*

Training should have priority.

Training on this topic has been selected to form part of a common national training curriculum in European criminal justice by the participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU'.

### *D) Format*

The recommended training format includes local, regional and national training.

## ***VII. Joint cooperation centres***

### **1. Introduction**

In 1997 France and Germany founded the first common centre as a pioneer in order to facilitate and enhance cooperation between police and customs officials along the common border between the two countries. Since then this example of practical cross-border cooperation was duplicated along many borders between Member States. The tasks of the common centres vary. The legal basis was negotiated individually for every centre.

Within the Council of the EU, discussions were initiated by a number of Member States with the aim to consolidate the numerous legal frameworks into one common legislative framework, in particularly with a view to setting up new centres in the future.

### **2. Instruments and case law**

- Conclusions of the PCCCs seminar: "PCCCs, national bodies and Europol: 3 levels, 1 goal?!" (27 October 2010)

- Evaluation of the Police and Customs Cooperation Centre (PCCC): model questionnaire (29 May 2009; 10454/09)
- European Best Practice Guidelines for Police and Customs Cooperation Centres Brussels, (13815/08; 03.10.2008)

### **3. Trainers**

Trainers should be EU experts.

### **4. Trainees**

Training is recommended to senior judges and prosecutors.

### **5. Methodology**

#### *A) Training method*

Training should take the shape of a specialised seminar focusing on discussions and debate.

#### *B) Complementary e-learning*

Complementary e-learning is not recommended at this point.

#### *C) Priority*

Training should take form of policy debates and is recommended to senior judges and prosecutors.

#### *D) Format*

Policy debates should take place on a national and EU-wide level.

# Chapter F

## Human Rights

### I. European Convention on Human Rights

#### 1. Introduction

The European Convention on Human Rights is an outstanding document in a number of respects. World-wide it is the most successful document of international human rights protection. It is an innovative instrument as it provided for the first time in the history of international law the possibility for a citizen to sue its own country before a court that had unconditional jurisdiction. Today it is an instrument that has a large influence through the jurisprudence of the European Court of Human Rights on the respect of fundamental rights by the member states of the Council of Europe.

The Convention was elaborated in the framework of the Council of Europe and entered into force in 1953. 14 additional protocols have been elaborated amending the Convention. Today countries can only accede to the Council of Europe if they recognise the Convention, the obligatory jurisdiction of the Strasbourg Court and the right to individual petition. The Convention and its additional protocols as construed by the European Court of Human Rights – as any other fundamental rights document – has an impact on all fields of law. Legal practitioners of all kinds cannot practice law without at least basic knowledge of the provisions of the ECHR and the case law of the Court.

The right of individual petition is now recognized in all member states of the Council of Europe. Petitioning the Court of Human Rights is subject to a number of admissibility criteria, most prominently the duty to exhaust all internal judicial remedies. Since 1998 the European Court of Human Rights works as a permanent court based in Strasbourg.

The relation between the European Convention and national law is a question of national law itself and the rules of general public international law and varies between the different member states.

#### 2. Instruments and case-law

In the following the articles of the European Convention on Human Rights most relevant in the area of criminal law will be given and a number of leading cases for every article, bearing in mind that the jurisprudence of the ECtHR is abundant and every week there are new judgments delivered.

A. European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5)

##### 1. *Right to life (article 2)*

Case *Matrometteo v. Italy*, 24 October 2002

Case McCann and other v. UK, 27 September 1995  
 Case Akman v. Turkey, 26 June 2001

2. *Prohibition of torture and inhuman and degrading treatment (article 3)*

Case Tomasi v. France, 27 August 1992  
 Case Aksoy v. Turkey, 18 December 1996  
 Case Selmouni v. France, 28 July 1999  
 Case Ireland v. UK, 18 January 1978  
 Case Kalashnikov v. Russia, 15 July 2002  
 Case Soering v. UK, 7 July 1989  
 Case Mouisel v. France, 14 November 2002  
 Case Ramirez Sanchez v. France, 4 July 2006  
 Case Herczegfalvy v. Austria, 24 September 1992  
 Case Mamatkulov and Askarov v. Turkey, 4 February 2005  
 Case Salah Sheek v. the Netherlands, 11 January 2007

3. *Prohibition of slavery and forced labour (article 4)*

Case De Wilde, Ooms and Versyp v. Belgium, 18 June 1971  
 Case Siliadin v. France, 26 July 2005  
 Case Rantsev v. Cyprus and Russia, 7 January 2010

4. *Right to liberty and security (article 5)*

Case Guzzardi v. Italy, 6 November 1980  
 Case Bouamar v. Belgium, 29 February 1988  
 Case Kurt v. Turkey, 25 May 1998  
 Case Schiesser v. Switzerland, 4 December 1979  
 Case Huber v. Switzerland, 23 October 1990  
 Case Skoogström v. Sweden, 2 October 1984  
 Case Brogan and others v. UK, 29 November 1988  
 Case Lawless v. Ireland, 1 July 1961  
 Case Brannigan and McBride v. UK, 28 May 1993  
 Case Neumeister v. Austria, 27 June 1968  
 Case Letellier v. France, 26 June 1991  
 Case Toth v. Austria, 12 December 1991  
 Case De Wilde, Ooms and Versyp v. Belgium, 18 June 1971  
 Case Lamy v. Belgium, 30 March 1989  
 Case Weeks v. UK, 2 March 1987  
 Case M v. Germany, 17 December 2009

5. *Right to a fair, speedy and impartial trial (article 6)*

Case Colozza and Rubinat v. Italy, 12 February 1985  
 Case Piersack v. Belgium, 1 October 1982  
 Case Hausschildt v. Denmark, 24 May 1989  
 Case Incal v. Turkey, 9 June 1998  
 Case Campbell and Fell v. UK, 28 June 1984  
 Case Pisano v. Italy, 24 October 2002  
 Case Engel and others v. the Netherlands, 8 June 1976  
 Case Ekbatani v. Sweden, 26 May 1988

Cases Scordino, Riccardi Pizzati, Music, Giuseppe Mostacciuolo, Coccharella, Apicell, Ernesto Zullo and Giuseppa and Orestina Procaccini v. Italy, 29 March 2006  
 Case Ringeisen v. Austria, 16 July 1971  
 Case Eckle v. Germany, 15 July 1982  
 Cases Lutz, Englert, Nölkenbockhoff v. Germany, 25 August 1987  
 Case Sekina v. Austria, 25 August 1993  
 Case Brozicek v. Italy, 19 December 1989  
 Case Goddi v. Italy, 9 April 1984  
 Case Salabiaku, 7 October 1988

6. *Prevention of punishment without legal provisions (article 7)*

Case Streletz, Kessler & Krenz v. Germany, 22 March 2001  
 Case S.W., 22 November 1995  
 Case Cantoni, 15 November 1996

7. *Respect for private and family life (article 8)*

Case Funke v. France, 25 February 1993  
 Case Niemietz v. Germany, 16 December 1992  
 Case Société Colas Est and others v. France, 16 April 2002  
 Case Silver and others v. UK, 25 March 1983  
 Case Campbell v. UK, 25 March 1992  
 Case Klass and others v. Germany, 6 September 1978  
 Case Malone v. UK, 2 August 1984  
 Cases Kruslin and Huvig v. France, 24 April 1990

8. *Freedom of thought, conscience and religion (article 9)*

Case Kalaç v. Turkey, 1 July 1997

9. *Freedom of expression (article 10)*

Case Handyside v. UK, 7 December 1976  
 Case Lingens v. Austria, 8 July 1986  
 Case Lehideux and Isorni v. France, 23 September 1998  
 Case Goodwin v. UK, 27 March 1996  
 Case Jersild v. Denmark, 23 September 1994  
 Case Müller and others v. Switzerland, 24 May 1988  
 Case of von Hannover v. Germany, 24 June 2004  
 Case Verein gegen Tierfabriken v. Switzerland (no. 2), 30 June 2009

10. *Freedom of assembly and association (article 11)*

Case Ezelin v. France, 26 April 1991

11. *Right to marry (article 12)*

12. *Prohibition of discrimination (article 14)*

B. *(First) Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952 (ETS No. 9)*

1. *Protection of property (article 1)*
2. *Case Hirst v. UK (no. 2), 6 October 2005*

C. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16 September 1963 (ETS No. 046)

- *Prohibition of imprisonment for debts (article 1)*
- *Freedom of movement within the territory of a contracting party (article 2)*  
*Case Raimondo v. Italy, 22 February 1994*
- *Prohibition of expulsion of a country's own nationals (article 3 para.)*
- *Freedom of entry for a country's nationals (article 3 para. 2)*
- *Prohibition of collective expulsion of foreigners (article 4)*

D. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, 28 April 1983 (ETS No.: 114)

- *Abolition of the death penalty other than in times of war (articles 1 and 2)*

E. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984 (ETS No.: 117)

- *Procedural guarantees in cases of expulsion of a foreigner (article 1)*
- *Right to a judicial review for first instance judicial decisions in criminal cases (article 2)*  
*Case Hubner, 31 August 1999*
- *Right to damages in case of erroneous judicial decisions in criminal cases (article 3)*
- *Ne bis in idem (article 4)*  
*Case Grading v. Austria, 23 October 1995*
- *Equality between man and women concerning marriage, during marriage and in the moment of its dissolution (article 5)*

F. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 2000 (ETS No.: 177)

- *Prohibition of discrimination of any kind (article 1)*

G. Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ETS No.: 187)

### 3. Trainers

Trainers could be international experts, national experts, and scholars.

### 4. Trainees

Awareness and basic knowledge of the importance of the ECHR and the jurisprudence of the ECtHR are essential for every lawyer. Senior judges and prosecutors should have specialised knowledge of the case law of the ECtHR relevant for their area.

## 5. Methodology

### *A) Training method*

Basic seminars are recommended for all trainees; as an alternative distance learning courses, such as those developed under the Council of Europe's HELP programme (<http://moodle.stoas.nl/help>)

Specialised seminars focussing on more specific questions of individual rights and studying in more detail the jurisprudence and study visits to the ECtHR for senior judges and senior prosecutors are appropriate.

### *B) E-learning:*

Basic seminars: B1

Deepening: B2-3

An e-learning platform already exists under: <http://moodle.stoas.nl/help>

### *C) Priority:*

Basic seminars should have top priority. Specialised seminars and workshops should have priority. Study visits are recommended.

Participating trainers of the joint Workshop 'A joint frame for European criminal justice training in the EU' agreed that human rights and their implementation by ECJ and ECHR form such a necessary content of every judicial training programme that they should not as such be considered included in the number of hours especially dedicated to training in European Criminal Law.

### *D) Format:*

Basic seminars could take place at local, regional and national level, specialised seminars at trans-national and EU-wide level.

## ***II. The relationship between the ECHR and EU law***

### **1. Introduction**

Formally the EU is not a contracting party to the ECHR and could not become one as the treaties did not provide competence to becoming party to it. The European Court of Justice, however, has recognized the ECHR as a source of inspiration when identifying the fundamental rights that European citizens enjoy under the general principles of Community law.

On the other hand, the ECtHR had to give a judicial response to the question as to what kind of fundamental rights standards apply when EU member states transfer part of their competences to the EU and if this could lead to a situation in which the transfer of competences results in a loss of fundamental rights protection just because the EU is not party to the ECHR.

This situation will change in a not so distant future. The Lisbon Treaty gives the EU the conferred power to accede the ECHR. On the side of the ECHR, the Protocol No. 14 makes the necessary amendments. It enters into force on 1 June 2010. In view of these changes, the EU is preparing for negotiations with the Council of Europe. A number of details need to be clarified, such as the question whether there should be an 'EU' judge and how this person would be selected, the question how Member States can be sued alongside the EU and how the enforcement of judgements against the EU will be ensured.

## 2. Case law

The recognition of the ECHR in the EU treaties and the jurisprudence of the ECJ and the possible accession of the EU to the ECHR and the future relationship between the court in Strasbourg and in Luxembourg

Case law of the ECtHR on the obligations of EU member states under the ECHR:

- Case of Matthews v. United Kingdom, application no. 24833/94, judgment of 18 February 1999
- Case of Bosphorus AS v. Ireland, application no. 45036/98, judgment of 30 June 2005
- Case of Cooperative Producentenorganisatie van de Nederlandse Kokkelvisserij v. the Netherlands, application no. 13645/05, decision as to the admissibility of 20 January 2009.

## 3. Trainers

Recommended trainers are international experts and scholars.

## 4. Trainees

Training is recommended for senior judges.

## 5. Methodology

### *A) Training method:*

Training should be offered in specialised seminars.

### *B) Complementary e-learning:*

Complementary e-learning is not recommended.

### *C) Priority:*

Training is recommended.

### *D) Format:*

Training should take place at local, regional and national level.

## ***III. European Union documents***

### **1. Introduction**

The recognition of fundamental rights as part of Community law was first developed in the jurisprudence of the Court of Justice of the European Communities (ECJ). While the ECJ found that fundamental rights were part of the general principles of EC law, no codifying instrument was created until 2000. The treaties included a reference to the European Convention on Human Rights and the national constitutional provisions instead.

In the late 1990s a Convention composed of members of the European Parliament and of national parliaments and representatives from Member States' governments and the European Commission elaborated the EU Charter of Fundamental Rights. It was solemnly proclaimed at an Intergovernmental Conference in Nice in 2000. It did not become part of the EU law at that time. The EU institutions, however, did declare that they felt to be bound by it.

Today, the Charter of Fundamental Rights read together with the European Convention and the jurisprudence of the European Court of Human Rights can be considered as the EU fundamental rights acquis.

With the entry into force of the Lisbon Treaty on 1 December 2009, the Charter of Fundamental Rights became a document that is enforceable in Court. The new article 6 § 1 of the Treaty on European Union affirms that this will not lead to an extension of the competences of the EU. The protocol on the application of the Charter of Fundamental Rights to Poland and the UK reaffirms this, stressing that the Charter cannot be used to declare national legislation invalid under European law by the ECJ and specifically ensures that the 'social rights' included in Title IV of the Charter cannot be enforced in courts of the two countries unless provided so for by national law. The explanations relating to the text of the Charter, as adopted by the Convention drafting this, are represent one of the guidelines for interpreting the Charter itself, as provided for by article 6 of the Treaty on European Union.

## **2. Instruments and case-law**

### *a. Basic instruments*

1. Charter of Fundamental Rights of the European Union (OJ C 83 of 30.03.2010, p. 389)
2. Protocol (No. 30) on the application of the Charter of Fundamental Rights to Poland and the United Kingdom (OJ C 83 of 30.03.2010, p. 313);
3. Declaration (No. 53) by the Czech Republic on the Charter of Fundamental Rights of the European Union (OJ C 83 of 30.03.2010, p. 355);
4. Declaration (No. 61) by the Republic of Poland on the Charter of Fundamental Rights of the European Union (OJ C 83 of 30.03.2010, p. 358);
5. Declaration (No. 62) by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights to Poland and the United Kingdom (OJ C 83 of 30.03.2010, p. 358);

6. European Union – Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union ( OJ C 83 of 30.03.2010, p. 13 and 47)

*b. Case law*

- *Case 29/69 Erich Stauder v. Stadt Ulm – Sozialamt*
- *Case 11/70 Internationale Handelsgesellschaft*
- *Case 4/73 Nold*
- *Case 44/79 Hauer*
- *Case 98/79 Pecastaing*
- *Case C-265/95 Commission v. France*
- *Case C-36/02 Omega*
- *Case C-112/00 Schmidberger*

### **3. Trainers**

Trainers should be EU experts and scholars.

### **4. Trainees**

Training should in particular be provided for junior and senior judges .

### **5. Methodology**

*A) Training method:*

Training should preferably take the shape of basic seminars, specialised seminars, and distance e-learning.

*B) Complementary e-learning:*

Complementary e-learning can be recommended.

*C) Priority:*

Training should have priority

*D) Format:*

Training should preferably take place at regional, national, trans-national and EU-wide level.

## ***IV. European Union Agency for Fundamental Rights (FRA)***

### **1. Introduction**

The European Union Agency for Fundamental Rights is a Vienna-based agency of the European Union inaugurated on March 1, 2007. It was established by Council Regulation (EC) No 168/2007 of 15 February 2007 as the successor to the European Monitoring Centre on Racism and Xenophobia (EUMC). The objective of the Agency is to provide the relevant institutions and authorities of the Community and its member states when implementing Community law with assistance and expertise relating to fundamental rights to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights. The tasks of the

Agency include information and data collection, research and analysis, advice to EU institutions and member states, co-operation with civil society and awareness-raising.

### *Training content*

1. Role and tasks of FRA
2. Co-operation between FRA and national authorities: how to work together?
3. Using FRA
4. Relationships between FRA and other EU Institutions

## **2. Instruments and case law**

Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53/1; 22.2.2007)

## **3. Trainers**

Trainers recommended for this topic should be EU experts, and national practitioners.

## **4. Trainees**

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors.

## **5. Methodology**

### *A) Training method*

Training methods are basic seminars as well as study visits.

The seminar should give a comprehensive overview of the role and tasks of the Agency.

### *B) Complementary e-learning*

Training can be completed by e-learning.

### *C) Priority*

Training is recommended.

### *D) Format*

The training format recommended includes local, regional, and national training.

## Conclusions



**Réseau Européen de Formation Judiciaire  
European Judicial Training Network**

***Workshop on 'A joint frame for European criminal justice training in the EU' The Hague, 8-9 December 2009***

### Conclusions

#### 1.

From an expert's point of view, participating trainers agreed that the following topics proposed by the Penal Sub-group should form part of a common national training curriculum in European criminal justice:

#### *A. General EU Law*

1. Eu judicial system
2. EU Law effects on national legal systems
3. EU competence in relation to police and judicial cooperation

#### *B. Judicial Cooperation in Criminal Matters*

1. Surrender of persons-Extradition and EAW
2. MLA-Evidence
3. MLA-Seizure of Criminal assets
4. European Judicial Network
5. Protection of the EU financial Interests
6. EUROJUST

#### *C. Procedural Rights*

1. Victims and restorative justice

#### *D. European Criminal Law*

1. Money Laundering
2. Corruption
3. Illicit Drug Trafficking
4. Trafficking of Human Beings
5. Terrorism
6. Cybercrime

#### *E. Police Cooperation*

1. Schengen
2. Joint Investigation Teams

**2.**

Human Rights and their implementation by ECJ and ECHR, a necessary content of every judicial training programme, should not as such be considered included in the number of hours especially dedicated to training in European Criminal Law.

**3.**

The diversity of training institutions, legal and organisational systems and training needs in participating countries must be borne in mind at all times. In this sense, the implementation of the common curriculum will necessarily be subject to national adjustments.

**4.**

Therefore, the choice of common subjects in which training should be provided does not prejudice the training audience (i.e. judges/prosecutors, initial/on-going training), the methodologies to be used, the importance that should be given to different topics or the way they should be developed by training institutions.

**5.**

Participants considered EJTN's "European Criminal Justice Training Guidelines", which spell out the content of the abovementioned and other subjects, as a very useful instrument. Institutions that want to can use the Guidelines to design their training programmes on the selected topics.

**6.**

A draft proposal for a common European training curriculum in criminal matters, accompanied by an explanatory document, will be drafted in accordance with the works of the Sub-group Penal and the results of the Workshop. It will be presented to the WG Programmes for consideration, prior to its submission to EJTN's Plenary in Madrid with a view to its approval.



***With the support of the European Union***

## Chapter G

### Bibliography

*Reproduced from (except for Portugal): European Criminal Law, Andre Klip, Antwerp, Intersentia, 2009, ISBN 978-90-5095-772-4 as well as from the replies of following members of the sub-group 'penal': Centro de Estudos Judiciários, Consiglio Superiore della Magistratura, National Training Centre, NIM, SSR and amended for the 2011 update by ERA.*

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- IX. L'inquinamento nucleare: la tutela penale in Italia e nella prospettiva comunitaria.
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- XII. La problematica di un sistema processuale penale europeo.
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Short description:

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