



Malta-EU Steering & Action Committee

JUSTICE AND HOME AFFAIRS



30.11.09

Changes introduced by the Lisbon Treaty in relation to the jurisdiction of the Court of Justice of the European Union in the area of freedom, security and justice

Now that the pillar structure introduced by the Maastricht Treaty will disappear, the jurisdiction of the Court of Justice of the European Union will extend to the law of the European Union (unless the Treaties provide otherwise). This means that the Court of Justice will acquire general jurisdiction to give preliminary rulings in the area of freedom, security and justice.

With regards to police and judicial cooperation in criminal matters, the jurisdiction of the Court of Justice to give preliminary rulings will become binding and will no longer be subject to a declaration by each Member State recognising that jurisdiction and specifying the national courts that may request a preliminary ruling. Under the Treaty of Lisbon, the field of police and criminal justice will become part of the general law, and any court or tribunal will be able to request a preliminary ruling from the Court of Justice. Nevertheless full jurisdiction will not apply until five years after the entry into force of the Treaty of Lisbon.

As regards visas, asylum, immigration and other policies related to free movement of persons (in particular, judicial cooperation in civil matters, recognition and enforcement of judgments), any national court or tribunal – no longer just the higher courts – will now be able to request preliminary rulings, and the Court will have jurisdiction to rule on measures taken on grounds of public policy in connection with cross-border controls. Consequently, the Court of Justice will have general jurisdiction in this area from the date of entry into force of the Treaty of Lisbon.

In addition, since the Charter of Fundamental Rights of the European Union will have the same legal value as the Treaties, it will form part of the body of constitutional rules and principles by reference to which the Court of Justice can adjudicate. However, the Charter cannot be invoked against the United Kingdom or Poland, which are covered by a derogation, the effect of which is that the Charter will not extend the ability of the Court of Justice or of any court or tribunal of those two Member States to find that laws, regulations or administrative provisions, practices



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or action are inconsistent with the fundamental rights or principles that it reaffirms. This derogation will also be extended to the Czech Republic.

The Treaty of Lisbon introduces a provision requiring the Court of Justice to act with the minimum of delay if a question referred for a preliminary ruling is raised in a case pending before any court or tribunal of a Member State with regard to a person in custody.

After five years, the Commission will be able to bring actions for failure to fulfil obligations in relation to measures concerning police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon.

Conference on Challenges in Adoption Procedures in Europe: Ensuring the Best Interests of the Child

This joint conference (together with the Council of Europe) is currently (30th November – 1st December) is being held in Strasbourg. Both the European Commission and the Council of Europe will urge European countries to take steps to ensure the best interests of the child in adoption procedures in order to ensure that children's voices are heard and their rights respected during adoptions.

The first day of the conference will focus on national adoption and the second day on international adoption. In this respect, participants will consider the operation of the 1993 Hague Convention on Inter-country Adoption, the specific problems encountered by European Union Member States and the findings of comparative studies on the matter carried out by the European Commission and the European Parliament.

The discussions will also cover:

- the Council of Europe revised Convention on adoption of 2007 and the best interests of the child;
- the children and the adults in the adoption process;
- the role and responsibility of the State authorities;
- access to one's origins: striking a balance between the different parties involved;
- from national adoption to international adoption:
- the operation of the 1993 Hague Convention on Adoption;
- the right to a family in the international legal framework and in practical experience;
- the added value of a European adoption policy.

Representatives of European Union and Council of Europe Member States, legal practitioners and institutions and associations involved in adoption will take part in the discussions.

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European Commission reserves phone numbers for victims of crime and non-emergency medical hotlines in Europe

The European Commission has today taken a decision to reserve new helplines (116 006 and 116 117) for victims of crime and for EU citizens in need of non-urgent medical help or advice.

The 116 006 will help victims of crime by informing them of their rights and how to use them, offering emotional support, while also referring victims to relevant organisations. As a single access point, it will provide information about local police and criminal justice proceedings, possibilities for compensation and insurance matters, and other sources of help for victims of crime. The non-emergency medical call service (116 117) will direct callers to medical assistance when the need is urgent but not life-threatening, especially outside normal office hours, during the weekend or public holidays. The aim is to connect the caller to a skilled call-handler or a qualified medical practitioner who could provide on-call medical assistance or advice, particularly when the caller's usual source of medical assistance is not available.

The Commission's Decision adopted today builds on the EU's 2007 Decision on 116 numbers which reserves three other numbers EU wide for services of social value: 116 000 for the Missing Child Hotline , 116 111 for Child Helplines and 116 123 for emotional support helplines.

This Decision requires EU countries to make sure that the two new numbers can be assigned by national telecoms regulators from 15 April 2010. It will be up to the relevant national organisations to apply for the numbers and put them into operation.

The Decision is available at:

http://ec.europa.eu/information_society/policy/ecommlibrary/legislation/index_en.htm#decisions

For further information on 116 go to:

http://ec.europa.eu/information_society/policy/ecommlibrary/current/pan_european/index_en.htm



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Council decides on the European Community becoming a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD)

Last week the Council paved the way for the conclusion, by the European Community of the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Convention is the first international legally binding instrument establishing minimum standards for the protection and safeguarding of a full range of civil, political, social, economic and cultural rights of persons with disabilities around the world. It is also the first comprehensive human rights convention to which the EC is becoming a party.

The Council Decision will later be followed by the deposit with the UN of the instrument of formal confirmation when all Member States have completed the ratification of the UNCRPD. 12 Member States have already ratified the Convention. The conclusion by the EC will take effect once the instrument has been deposited.

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Visa free travel for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia

The EU Member States today adopted a decision allowing citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia to travel to all countries of the Schengen area without visa. They will be able to do so as of 19 December 2009.

The new visa free regime will apply to all holders of biometric passports, who can now travel to the Schengen area for up to 90 days per six-month period. Persons who do not hold a biometric passport and the residents of Kosovo holding a Serbian passport issued by the Coordination Directorate in Belgrade will still need a visa. The same goes for the persons who intend to work during a short stay or who want to come for more than 90 days; they need visas and work permits.

Albania and Bosnia and Herzegovina are not included in today's decision, as the latest assessment of the Commission showed that they did not yet meet all the requirements. The Commission has intensified its assistance to both countries in implementing the necessary reforms. A new evaluation will be made during the period of December 2009 to February 2010. As soon as the two countries achieve the necessary progress in implementing the roadmaps, the Commission will be ready to propose visa free travel for their citizens.

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Agreement on judicial cooperation in criminal matters between the European Union and Japan

The EU is about to settle its first Mutual Legal Assistance Agreement on judicial cooperation in criminal matters with Japan. This is the first "self-standing" EU – third country MLA Agreement. This agreement will contribute to combating crime, while respecting justice, principles of the rule of law and democracy, as well as judicial independence. Cooperation tools will be more effective and delays and costs should be significantly reduced.

At the moment, no State Member of the European Union has an agreement with Japan on judicial cooperation in criminal matters; the MLA Agreements represents a common framework for judicial authorities of the EU Member States: they are entitled to cooperate with Japanese authorities on the basis of some common and modern provisions.

New modern cooperation tools in the EU-Japan Mutual Legal Assistance Agreement include for example rules on providing testimony via videoconference, which would significantly simplify the procedure of hearing a witness or an expert. This new possibility would eliminate long and expensive travels. In practice this means that an EU citizen, who was a witness to a crime committed in Japan, could be able to speak via videoconference from his hometown.

Another important tool regards the exchange of bank information. Police authorities and prosecutors would be able to receive promptly the necessary information. It would not be possible to refuse this assistance on the grounds of bank secrecy.

In general, a common legal basis for the exchange of data, information, documents and the temporary transfer of persons is grounded in solid principles, including the declared refusal of death penalty.

The negotiations were particularly complex, also because of the strict deadline. Japan and the EU showed a high degree of flexibility on various key issues and major concessions were made by both sides. In particular, the Japanese system of criminal law and criminal procedure was adapted to the European standards and modern MLA instruments.

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