



NEMIS

Dec. 2010

Quarterly update on

- *Legislation and*
 - *Jurisprudence*
- on*
- *EU immigration and*
 - *Borders Law*

Coordinated by the

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Editorial

Welcome to the first issue of NEMIS: a newsletter designed for judges who need to keep up to date on EU developments in immigration and borders law. NEMIS covers: (a) relevant legislation proposed and adopted at the EU level and (b) relevant judgements of the CJEU, the ECHR and decisions at the national level of Member States.

NEMIS does not cover asylum, refugee or international protection issues: it solely concentrates on immigration and borders law. The newsletter is divided in six chapters covering: (1) Legal Migration, (2) Borders and visas, (3) Irregular Migration, (4) External Treaties (5) Institutional measures and Miscellaneous. This newsletter is available only to judges and not knowingly circulated among advocates or state officials.

An important aspect of NEMIS is the intention to inform judges in Member States what problems and proposed solutions other judges are contending with. We therefore would like to invite you to submit relevant decisions. In fact, for national court decisions this newsletter relies heavily on judges at the national level. We do not intend to produce a complete translation of national non-English decisions. However, we would very much appreciate a summary in English of these national decisions outlining (a) what the case decided and (b) its EU relevance. (If you wish, we can provide assistance in tidying up the English.)

We intend to publish on a quarterly basis and do invite you to join us in providing your colleagues with relevant material on immigration and borders law. You may do so by registering for this Newsletter sending an email to Tineke Strik at the Centre for Migration Law: t.strik@jur.ru.nl.

We hope that NEMIS will keep you up to date. Likewise, we hope that you will utilize us to keep you colleagues informed and updated.

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1. Legal Migration

1.1. Legal Migration: Adopted measures

{Unless stated otherwise, UK, DK & IRL opted out}

- 1) **Regulation 1030/2002**
Residence Permit Format
 - OJ 2002 L 157/1 UK opt in
 - amended by Reg. 330/2008 (OJ 2008 L 115/1)
- 2) **Regulation 859/2003**
Third-Country Nationals' Social Security
 - OJ 2003 L 124/1 UK, IRL opt in
 - ☞ CJEU Case C-247/09 *Xhymshiti* [2010]
- 3) **Directive 2003/86**
Family Reunion
 - OJ 2003 L 251/12
 - implementation date Oct. 2005
 - ☞ CJEU C-540/03 *EP v Council* [2006]
 - ☞ CJEU C-578/08 *Chakroun* [2010]
 - ☞ **Germany**: BVerwG 1 C 8.09 [2010]
- 4) **Directive 2003/109**
Long-Term Residents
 - OJ 2004 L 16/44
 - implementation date Jan. 2006
 - ☞ CJEU (pending) Case C-502/10 *Singh*
- 5) **Directive 2004/114**
Migration of Third-Country students, pupils, trainees & volunteers
 - OJ 2004 L 375/12
 - implementation date 12 Jan. 2007
- 6) **Directive 2005/71**
Admission of Researchers
 - OJ 2005 L 289/15
 - implementation date 12 Oct. 2007
 - ☞ CJEU Case C-523/08 *Commission v Spain* [2010]
- 7) **Recommendation**
Admission of Researchers
 - OJ 2005 L 289/26
- 8) **Decision**
Asylum and Immigration Information Exchange
 - OJ 2006 L 283/40 UK, IRL opt in
- 9) **Decision**
Establishing European Integration Fund
 - OJ 2007 L 168/18 UK, IRL opt in
- 10) **Directive 2009/50**
'Blue Card' directive:
on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
 - OJ 2009 L 155/17

11) Regulation Extending Regulation 883/2004

Social Security for EU Citizens to Third-Country Nationals who move within the EC

- Adopted October 2010, not yet published

1.2. Legal Migration: Proposed measures

{Unless stated otherwise, UK, DK & IRL opted out}

1) Directive

Single Application Procedure:

for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

- COM (2007) 638, 23 Oct. 2007
- discussions restarted

2) Directive

Admission of Intra-Corporate Transferees

- COM (2010) 378, 13 July 2010
- Council working party began discussions, Sept 2010

3) Directive

Admission of Seasonal Workers

- COM (2010) 379, 13 July 2010
- Council working party began discussions, Sept 2010

1.3. Legal Migration: Jurisprudence

CJEU Judgments

- ☞ Case C-523/08 *Commission v Spain*
 - ⊗ non-transposition of Directive 2005/71 on *Researchers*
 - ⊗ judgment 11 Feb. 2010
- ☞ Case C-540/03 *EP v Council*
 - ⊗ interpretation of Directive 2003/86 on *Family Reunion*
 - ⊗ challenge to validity of parts of Directive
 - ⊗ decided in favour of the Council
 - ⊗ judgment 27 June 2006, ECR I-5769
- ☞ Case C-578/08 *Chakroun*
 - ⊗ interpretation of Directive 2003/86 on *Family Reunion*
 - ⊗ Article 7(1)(c) and Article 2(d)
 - ⊗ reference from 'Dutch Raad van State'
 - ⊗ judgment 4 March 2010
- ☞ Case C-247/09 *Xhymshiti*
 - ⊗ interpretation of Reg. 859/2003 on *Third-Country Nationals' Social Security*
 - ⊗ judgment 18 Nov. 2010

CJEU pending cases

- ☞ Case C-502/10 *Singh*
 - ⊗ interpretation of Directive 2003/109 on *Long-Term Residents*
 - ⊗ Article 3(2)(e)
 - ⊗ *Is the concept of formally limited residence permit within the meaning of [the LTR dir.] to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the Directive?*
 - ⊗ reference from ‘Dutch Raad van State’ (20 Oct. 2010)

National Judgments

- ☞ **Germany:** BVerwG 1 C 8.09
 - ⊗ consideration of:
 - interpretation of Directive 2003/86 on *Family Reunion*
 - Article 7(2)
 - Article 8 ECHR
 - ⊗ judgment of the First Division, 30 March 2010
 - appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
 - ⊗ full text available at:
 - <http://www.bverwg.bund.de/files/b579866b3c67dbf50760f03b2561ba4e/8271/1c8.09-u-englisch.pdf>
 - or go to: <http://www.bverwg.bund.de/> and select “Volltextsuche” and search for: BVerwG 1 C 8.09
 - ⊗ *This decision is about the validity of integration measures of family members before arrival in the host Member State. (This case involved an illiterate applicant.)*

ECHR Judgments

- ☞ Appl. No. 34848/07 *O’Donoghue and others v UK*
 - ⊗ The ECHR found a violation of Articles 9, 12 and 14 ECHR
 - ⊗ Judgement of Fourth Section, 14 Dec. 2010
 - ⊗ *This decision is about whether third country nationals can be required to obtain permission to marry before marrying to control their immigration status.*

2. Borders and Visas

2.1. Borders and Visas: Adopted measures

{Unless stated otherwise, UK, DK & IRL opted out}

- 1) **Regulation 1683/95**
Common visa format
 - OJ 1995 L 164/1 UK opt in
 - amended by Reg. 334/2002 (OJ 2002 L 53/7)
 - amended by Reg. 856/2008 (OJ 2008 L 235/1)
- 2) **Regulation 539/2001**
Establishing visa list
 - OJ 2001 L 81/1
 - amended by Reg. 2414/2001 (OJ 2001 L 327/1)
Moving Romania to 'white list'
 - amended by Reg. 453/2003 (OJ 2003 L 69/10)
Moving Ecuador to 'black list'
 - amended by Reg. 851/2005 (OJ 2005 L 141/3)
On reciprocity for visas
 - amended by Reg. 1932/2006 (OJ 2006 L 405/23)
 - amended by Reg. 1244/2009 (OJ 2009 L 336/1)
Lifting visa requirement for some Western Balkan countries
 - amended by Reg. 1091/2010 (OJ 2010 L 329/1)
*Lifting visa requirements for Albania and Bosnia
in force 5 April 2010*
- 3) **Regulation 333/2002**
Visa stickers for persons coming from unrecognised entities
 - OJ 2002 L 53/4 UK opt in
- 4) **Regulation 693/2003**
FTD and FRTD
 - OJ 2003 L 99/8
- 5) **Regulation 694/2003**
Format for FTD and FRTD
 - OJ 2003 L 99/15
- 6) **Decision**
Establishing Visa Information System (VIS)
 - OJ 2004 L 213/5
- 7) **Regulation 2007/2004**
Establishing External Borders Agency
 - OJ 2004 L 349/1
 - amended by Reg. 863/2007 (OJ 2007 L 199/30)
Border guard teams
- 8) **Regulation 2252/2004**
Biometric Passports
 - OJ 2004 L 385/1
 - amended by Reg. 444/2009 (OJ 2009 L 142/1)
Biometric passports

- 9) **Recommendation**
Visa Issuing for Researchers
- OJ 2005 L 289/23
- 10) **Regulation 562/2006,**
Borders Code
- OJ 2006 L 105/1
 - amended by Reg. 296/2008 (OJ 2008 L 97/60)
 - amended by Reg. 81/2009 (OJ 2009 L 35/56)
- Regarding use of the VIS*
- ☞ CJEU Case C-261/08 **Zurita Garcia** [2009]
 - ☞ CJEU Case C-348/08 **Choque Cabrera** [2009]
 - ☞ CJEU Case C-188/10 **Melki** [2010]
 - ☞ CJEU Case C-189/10 **Abdeli** [2010]
- 11) **Two decisions**
Transit through new Member States, Switzerland
- OJ 2006 L 167
 - see implementation information (OJ 2006 C 251/20)
- 12) **Regulation 1931/2006**
Local border traffic within enlarged EU at external borders of EU
- OJ 2006 L 405/1
- 13) **Decision**
Establishing European Borders Fund
- OJ 2007 L 144
- 14) **Decisions**
Transit through Romania, Bulgaria, Switzerland
- OJ 2008 L 161
- 15) **Regulation 767/2008**
Establishing Visa Information System
- OJ 2008 L 218/60
 - Third-pillar VIS Decision (OJ 2008 L 218/129)
- 16) **Regulation 810/2009**
Visa code
- OJ 2009 L 243/1
 - applied 5 April 2010
- 17) **Regulation 265/2010**
Long-stay visas code
- OJ 2010 L 85/1
 - applied 5 April 2010

2.2. *Borders and Visas: Proposed Measures*

{Unless stated otherwise, UK, DK & IRL opted out}

- 1) **Regulation**
Codifying Regulations establishing EC visa list
 - COM (2008) 761, 28 Nov. 2008
 - discussion terminated in Council working group
- 2) **Regulation**
Establishing agency to manage VIS, SIS and Eurodac
 - COM (2009) 293, 24 June 2009 UK opt in
 - discussions underway in Council and EP
- 3) **Amendment**
Frontex Regulation
 - COM (2010) 61, 24 Feb. 2010
 - discussions underway in Council, EP
- 4) **Amendment**
Visa list re Taiwan
 - COM (2010) 358, 5 July 2010
 - agreed between Council, EP
 - not yet formally adopted
- 5) **Regulation**
Schengen evaluation
 - COM (2010) 624, 16 Nov. 2010 UK opt in
 - new version proposed
- 6) **Decision**
Travel documents
 - COM (2010) 662, 12 Nov. 2010

2.3. *Borders and Visas: Forthcoming Topics*

- 1) **Borders code**
Entry-exit programme and registered traveller programme (2011)

2.4. *Borders and Visas: Jurisprudence*

CJEU Judgments – annulment actions

- ☞ Case C-257/01 *Commission v Council*
 - ⊗ challenge to Regs. 789/2001 and 790/2001
 - ⊗ judgment of 18 Jan. 2005, upholding validity of Regs.
- ☞ Cases C-77/05 and C-137/05 *UK v Council*
 - ⊗ validity of Border Agency Regulation and passport Regulation
 - ⊗ judgment against UK, 18 Dec 2007
- ☞ Case C-482/08 *UK v Council*
 - ⊗ annulment of decision on police access to VIS, due to UK non-participation
 - ⊗ judgment against UK, 26 Oct. 2010

CJEU Judgments – national court references

- ☞ Case C-241/05 *Bot*
 - ⊗ on interpretation of *Schengen*
 - ⊗ Article 20(1)
 - ⊗ on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of ‘first entry’ and successive stays
 - ⊗ reference from (French) Conseil d’État
 - ⊗ judgment 4 Oct. 2006
- ☞ Case C-139/08 *Kjiku*
 - ⊗ on interpretation of *Decision 896/2006*
 - ⊗ Articles 1 and 2
 - ⊗ on transit visa legislation for third-country nationals subject to a visa requirement
 - ⊗ reference from (German) Oberlandesgericht Karlsruhe
 - ⊗ judgment 2 April 2009
- ☞ Case C-261/08 *Zurita Garcia* and
- ☞ Case C-348/08 *Choque Cabrera*
 - ⊗ on interpretation of Regulation 562/2006 on *Borders Code*
 - ⊗ Articles 5, 11 and 13
 - ⊗ Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled
 - ⊗ reference from (Spanish) Tribunal Superior de Justicia de Murcia
 - ⊗ judgment 22 Oct 2009
- ☞ Case C-188/10 *Melki* and
- ☞ Case C-189/10 *Abdeli*
 - ⊗ on interpretation of Regulation 562/2006 on *Borders Code* re internal border controls
 - ⊗ Articles 20 and 21
 - ⊗ consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
 - ⊗ reference from (French) Cour de Cassation
 - ⊗ judgment 22 June 2010

CJEU pending cases

- ☞ Case C-355/10 *EP v Council*
 - ⊗ Annulment of measure implementing *Borders Code*

3. Irregular Migration**3.1. Irregular Migration: Adopted measures***{Unless stated otherwise, UK, DK & IRL opted out}*

- 1) **Directive 2001/40**
Mutual recognition of expulsion decisions
 - OJ 2001 L 149/34 UK opt in
 - implementation date 2 Dec. 2002
- 2) **Directive 2001/51**
Carrier sanctions
 - OJ 2001 L 187/45 UK opt in
 - implementation date 11 Feb. 2003
- 3) **Regulation 2424/2001**
Funding SIS II
 - OJ 2001 L 328/4 UK opt in
- 4) **Decision 2001/886/JHA**
Funding SIS II
 - OJ 2001 L 328/1 UK opt in
- 5) **Framework Decision**
Trafficking in persons
 - OJ 2002 L 203/1 UK opt in
- 6) **Directive & Framework Decision**
Facilitation of illegal entry and residence
 - OJ 2002 L 328 UK opt in
- 7) **Directive 2003/110**
Assistance with transit for expulsion by air
 - OJ 2003 L 321/26
- 8) **Conclusions**
Transit via land for expulsion
 - adopted 22 Dec. 2003 by Council UK opt in
- 9) **Regulation 378/2004**
Procedure for amendments to Sirene manual
 - OJ 2004 L 64 UK opt in
- 10) **Regulation 377/2004**
ILO network
 - OJ 2004 L 64/1 UK opt in
- 11) **Decision**
Costs of expulsion
 - OJ 2004 L 60/55 UK opt in
- 12) **Directive 2004/81**
Res. permits for trafficking victims
 - OJ 2004 L 261/19
 - ☞ CJEU Case C-266/08 *Commission v Spain* [2009]
- 13) **Reg. 871/2004**
New functionalities for SIS
 - OJ 2004 L 162/29
- 14) **Directive 2004/82**
Transmission of passenger data
 - OJ 2004 L 261/64 UK opt in

- 15) **Decision**
Joint flights for expulsion
▪ OJ 2004 L 261/28 UK opt in
- 16) **Decision**
Early warning system
▪ OJ 2005 L 83/48 UK opt in
- 17) **Regulation 1987/2006**
Establishing SIS II
▪ OJ 2006 L 381/4
- 18) **Regulation 1988/2006**
SIS II, amending Reg. 2424/2001
▪ OJ 2006 L 411/1 UK opt in
- 19) **Decision**
European return programme
▪ OJ 2007 L 144 UK opt in
- 20) **Directive 2008/115**
Returns Directive
▪ OJ 2008 L 348/98
▪ implementation date 24 Dec. 2010
☞ CJEU Case C-357/09 *Kadzoev* [2009]
- 21) **Directive 2009/52**
Sanctions for employers of irregular migrants
▪ OJ 2009 L 168/24

3.2. Irregular Migration: proposed measures

{Unless stated otherwise, UK, DK & IRL opted out}

- 1) **Regulation amending Regulation**
Immigration liaison officers
▪ COM (2009) 322, 8 July 2009 UK opt in
- 2) **Directive replacing Framework Decision**
Trafficking in persons
▪ COM (2010) 95, Mar. 2010 IRL opt in
▪ Agreement in Council, June 2010
▪ Negotiations between EP and Council

3.3. Irregular Migration: jurisprudence

CJEU Judgments

- ☞ Case C-266/08 *Commission v Spain*
 - ⊗ non-transposition of Directive 2004/81 *Permits for trafficking victims*
 - ⊗ on the status of victims of trafficking and smuggling
 - ⊗ judgment 14 May 2009
- ☞ Case C-357/09 *Kadzoev*
 - ⊗ interpretation of Directive 2008/115 *Returns Directive*
 - ⊗ Articles 15(4), (5) and (6)
 - ⊗ the maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable
 - ⊗ only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods
 - ⊗ judgment 30 Nov 2009

4. External Treaties

4.1. External Treaties: Readmission

{Unless stated otherwise, UK, DK & IRL opted out}

- 1) **Hong Kong**
 - OJ 2004 L 17/23 UK opt in
 - in force 1 Mar. 2004 (OJ 2004 L 64/38)
- 2) **Macao**
 - OJ 2004 L 143/97 UK opt in
 - in force 1 June 2004
- 3) **Sri Lanka**
 - OJ 2005 L 124/43 UK opt in
 - in force 1 May 2005
- 4) **Albania**
 - OJ 2005 L 124 UK opt in
 - in force 1 May 2006 (for TCN: May 2008)
- 5) **Russia**
 - OJ 2007 L 129 UK opt in
 - in force 1 June 2007 (for TCN: June 2010)
- 6) **Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova**
 - OJ 2007 L 332 and 334 UK opt in
 - in force 1 Jan. 2008 (for TCN: Jan. 2010)
- 7) **Pakistan**
 - concluded, Sep. 2010 (OJ 2010 L 287/50)

- 8) **Georgia**
 - Proposal to sign and conclude agreement: signed, (COM (2010) 199 and 200), 5 May 2010
- 9) **Morocco, Algeria, Turkey and China**
 - negotiations approved
- 10) **Cape Verde**
 - agreement proposed Nov. 2008
 - negotiation mandate approved by Council June 2009

4.2. *External Treaties: Other*

- 1) **EC-Turkey Association Agreement**
 - in force 23 Dec. 1963
 - Additional Protocol in force 01 Jan. 1972
 - Decision No 1/80 of the Association Council of 19 Sept. 1980 on the Development of the Association
- 2) **EC/Norway/Iceland, re: Dublin Convention**
 - in force 1 March 2001
 - Protocol in force 1 May 2006
- 3) **EC/Swiss: Free Movement of Persons**
 - concluded 28 Feb. 2002 (OJ 2002 L 114); into force 1.6.02
- 4) **EC & Switzerland, re: Schengen, Dublin:**
 - applied from Dec. 2008
- 5) **Approved Destination Status treaty with China**
 - OJ 2004 L 83/12
 - in force 1 May 2004
- 6) **Dublin II treaty with Denmark**
 - OJ 2006 L 66/38
 - in force, 1 April 2006
- 7) **Visa facilitation agreement with Russia**
 - OJ 2007 L 129
 - in force 1 June 2007
- 8) **Visa facilitation agreements with Ukraine, Serbia, Montenegro, Bosnia, Macedonia, Albania and Moldova**
 - OJ 2007 L 332 and 334
 - in force 1 Jan. 2008
- 9) **Visa facilitation agreement with Georgia**
 - proposal to sign and conclude, (COM (2010) 197 and 198), 5 May 2010
 - signed June 2010
- 10) **Visa facilitation agreement negotiations with Cape Verde**
 - proposed Nov. 2008,
 - negotiation mandate approved by Council June 2009
- 11) **Visa abolition treaties agreed with six micro-states: Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas**
 - proposals to sign and conclude treaties, (COM (2009) 48, 49, 50, 52, 53 and 55), 12 Feb. 2009
 - treaties signed and provisionally in force, May 2009,
 - concluded Nov. 2009

12) Two visa waiver treaties with Brazil

- agreed, (COM (2010) 409, 410, 419 and 420), 6 Aug 2010
- signed Nov. 2010

4.3. External Treaties: Jurisprudence

CJEU Judgments on EEC-Turkey Association Agreement

- ☞ Case C-462/08 *Bekleyen*
 - ⊗ interpretation of *Decision No 1/80*
 - ⊗ Article 7, 2nd paragraph
 - ⊗ the child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany
 - ⊗ judgment 21 Jan. 2010
- ☞ Case C-14/09 *Genc*
 - ⊗ interpretation of *Decision No 1/80*
 - ⊗ Article 6(1)
 - ⊗ on the determining criteria of the concept *worker* and the applicability of these criteria on both EU and Turkish workers
 - ⊗ judgment 4 Feb. 2010
- ☞ Case C-92/07 *European Commission v The Netherlands*
 - ⊗ interpretation of *Decision No 1/80*
 - ⊗ Article 10(1) and 13 (standstill clause)
 - ⊗ the obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association
 - ⊗ judgment 29 April 2010
- ☞ Case C-300/09 *Toprak* and
- ☞ Case C-301/09 *Oguz*
 - ⊗ interpretation of *Decision No 1/80*
 - ⊗ Article 13 (standstill clause)
 - ⊗ on the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members
 - ⊗ reference from Dutch 'Raad van State'
 - ⊗ judgment 9 December 2010

5. Institutional Measures

1) Amendments to Court of Justice Statute and rules of procedure

Fast-track system for urgent JHA cases

- OJ 2008 L 24
- in effect 1 March 2008

6. Miscellaneous

- On 9 Nov. 2010, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, published a report on **Rule 39**:
Preventing Harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights.
- The [full text](http://assembly.coe.int/) of this report can be found on the site of COE :
<http://assembly.coe.int/>
and select 'Working Documents' under 'Documents' and then look for the date: 09/11/2010 (Doc.12345).