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from: Mr. Thom de Bruijn, Permanent Representative of the Kingdom of the Netherlands to the European Union

date of receipt: 17 February 2010

to: Mr. Ivan BIZJAK, Director-General, DG H, General Secretariat of the Council of the European Union

Subject: Amended application by the Kingdom of the Netherlands and the Kingdom of Belgium of the Framework Decision on the European arrest warrant and the surrender procedures between Member States of the European Union and the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 between the Member States of the European Union and the accompanying Protocol of 16 October 2001

Dear Sir,

On 31 October 2009 the Kingdom of Belgium and the Kingdom of the Netherlands concluded an agreement on making available a penitentiary institution in the Netherlands for the purpose of enforcing Belgian sentences of imprisonment. This agreement has consequences for the implementation, in practice, of the European arrest warrant and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (and its accompanying Protocol) of 16 October 2001.

In this connection I enclose a letter from the justice ministers of the Netherlands and the Kingdom of Belgium.

I will also send this letter to the Commissioner for Justice, Fundamental Rights and Citizenship.

Permanent Representative of the Kingdom of the Netherlands to the European Union,

(complimentary close)

(s.) Thom de Bruijn

Amended application by the Kingdom of the Netherlands and the Kingdom of Belgium of the Framework Decision on the European arrest warrant and the surrender procedures between Member States of the European Union and the Convention in Criminal Matters of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union and the accompanying Protocol of 16 October 2001

1 February 2010 saw the entry into force of an agreement between the Kingdom of the Netherlands and the Kingdom of Belgium, under which the Netherlands puts at the disposal of Belgium a prison situated on Dutch territory (in Tilburg) for the purpose of enforcing Belgian sentences according to the rules of Belgian law. We attach hereto the text of that agreement in French and Dutch. In principle, the agreement will expire on 31 December 2012, an expiry date which may be brought forward to 31 December 2011, or extended to 31 December 2013 at the latest.

The agreement contains a special provision on criminal cooperation with third countries. Article 18 of the agreement relates to criminal law proceedings at the request of third countries with regard to detainees from Belgium who are accommodated in the prison on Dutch territory. The first paragraph of this provision lays down that the Netherlands will not handle European arrest warrants and/or requests for judicial assistance from third states, but will forward them to Belgium. That arrangement is the logical consequence of the remaining provisions of the agreement according to which, in principle, the judicial and other authorities of the Netherlands have no involvement with the detainees being held in the penitentiary institution in Tilburg.

Against that background, we wish to inform you and the other members of the Council and the Commission of the following:

European arrest warrants

We would advise the issuing judicial authorities of the other Member States of the European Union to send European arrest warrants in respect of persons who are being detained in the penitentiary institution in Tilburg, pursuant to the Agreement reached in Tilburg on 31 October 2009 between the Kingdom of the Netherlands and the Kingdom of Belgium, on making available a penitentiary institution in the Netherlands for the purpose of enforcing Belgian sentences of imprisonment, solely to the Belgian executing judicial authorities in Turnhout. Where the executing judicial authorities of the Netherlands receive European arrest warrants in respect of such persons, they should not process them but should instead forward them to the Belgian executing judicial authorities.

Alerts in the Schengen Information System for the extradition of persons who are being detained in the penitentiary institution in Tilburg will not be enforced in the Netherlands.

Requests for judicial assistance

We would advise the issuing judicial authorities of the other Member States of the European Union to send requests for judicial assistance in respect of persons who are being detained in the penitentiary institution in Tilburg, pursuant to the Agreement reached in Tilburg on 31 October 2009 between the Kingdom of the Netherlands and the Kingdom of Belgium on making available a penitentiary institution in the Netherlands for the purpose of enforcing Belgian sentences of imprisonment, solely to the Belgian executing judicial authorities in Turnhout. Where, nevertheless, requests for judicial assistance in respect of those persons are received in the Netherlands, they should be transmitted to the competent judicial authorities of the Kingdom of Belgium.

We would be most grateful if you could bring this letter to the attention of the other members of the Council.

The Minister for Justice of the Netherlands

The Minister for Justice of Belgium.