LEGISLATIVE TRAIN 10.2016

7 AREA OF JUSTICE AND FUNDAMENTAL RIGHTS / UP TO €7BN

DEPARTURE DEMANDS

- Prevention of Violence Against Women
- Revision of the European Arrest Warrant
- Common Standards on Detention of Minors, Pre-trial and Administrative Detention
- Common Standards in the Field of Civil Procedure
- Adoption of a European Code on Private International Law
- Media Freedom and Pluralism

DEPARTURES

- Matrimonial Matters & Matters of Parental Responsibility – Brussels Ia Revision
- Action Plan to Fight Terrorism Financing - Legislative Proposals
- Review of Legislation on Firearms
- Criminal Sanctions Against Environmental Crime - Approximation
- Combating Fraud and Counterfeiting of Non-Cash Means of Payments
- Removing Legal Obstacles to Criminal Investigations on Cybercrime
- JD - Revision of the Anti-Money Laundering Directive (AML)
- Preventing Radicalisation
- JD - Improvement of ECRIS

EXPECTED ARRIVALS

- Legal Aid - Procedural Rights of Accused Persons in Criminal Proceedings
- Conclusion of the EU-US Data Protection Umbrella Agreement
- Review of the Framework Decision on Terrorism
LEGEND

EUROPEAN AGENDA ON SECURITY
TERRORISM AND RADICALISATION
ORGANISED CRIME
CYBERCRIME

DEPARTED
EUROPARL
EUROPEAN COURT OF JUSTICE
COUNCIL
COMMISSION
JOINT DECLARATION ON THE EU'S LEGISLATIVE PRIORITIES FOR 2018-19
MULTIANNUAL FINANCIAL FRAMEWORK 2021-2027

GLOSSARY

DEPARTURE DEMANDS
European Parliament legislative initiative reports in the fields covered by the Ten-Point Juncker Agenda

DEPARTURES
Initiatives announced by the European Commission in its annual Work Programme; legislative proposals submitted by the Commission to the Parliament and the Council; the files are considered departed when the Co-Legislators have started legislative work

EXPECTED ARRIVALS
Legislative proposals close to be finalised

ON HOLD
Initiative blocked by one institution or under negotiations for more than 2 years; announced legislative initiatives or legislative proposals by the European Commission with no follow-up for more than 9 months

ARRIVED
Legislative proposals finalised and adopted by the two Co-Legislators: the European Parliament and the Council of the European Union
DERAILLED

Proposals withdrawn by the European Commission

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The past 15 years have brought major developments in the Area of Freedom, Security and Justice. Following the 1999 Tampere Programme and 2004 Hague Programme, the Stockholm Programme adopted in 2009 had set the roadmap for EU work until the end 2014. It has enabled a substantive increase in EU co-operation in the field of civil and criminal justice, as well as concerning police cooperation.

Today, whilst the European Union is facing growing internal security challenges, and in particular following the deadly terrorist attacks on its own soil in 2015 and again in 2016, the area of justice and home affairs is at a turning point. This at three levels, politically, legally as well as in relation to the EU’s security strategy.

Firstly, from a political point of view, with the end of the Stockholm Programme, long-term guidance for the future justice and home affairs policies is required. Large debates have been held on the direction to be taken and the general view was that the post-2014 Programme should be aiming at improving existing legal instruments, allowing the legal practice time to adjust to the new legal situation, rather than creating a detailed programme of new measures.

Along this line, at its meeting on 26-27 June 2014, the European Council defined “Strategic Guidelines” for legislative and operational planning in the area of freedom, security and justice, which have set the overall framework for a future post-Stockholm programme. Whilst focussing on the full implementation of existing measures throughout the Union, the European Council also pointed to new threats that would need to be addressed in the coming months and years. And indeed, the issue of foreign fighters and the fight against terrorism have become a central point on the agenda.

Secondly, from a legal point of view, the transitional period foreseen by the Lisbon Treaty in the area of police and judicial co-operation in criminal matters came to an end on 1 December 2014. The area of justice and home affairs is now fully subject to the community method: the Commission has infringement powers to ensure that Member States meet their transposition obligations, and the limitations to the jurisdiction of the Court of Justice in areas of former third pillar legislation have been lifted.

The Lisbon Treaty, when it entered into force in December 2009, had already abolished the pillar structure of the Union, endowed the Parliament with the right to co-decide in many areas of criminal law, and strengthened the legal basis for the development of an Area of Freedom, Security and Justice. Yet, to give this area its full dimension, further efforts are required, in particular as regards the practical implementation of justice and home affairs policies at national level. On the one hand, the degree of transposition and enforcement varies from one member state to the other. On the other hand, justice and home affairs is a relatively new field of EU-policy, and time will be needed for the various legal systems to adapt. Moreover, for the system to function efficiently, a greater
culture of trust between the national legal systems is crucial and urgently needs to be developed.

Thirdly, as regards security, in the aftermath of the terrorist attacks in France and Denmark beginning 2015, and again in Paris on 13 November 2015 and in Brussels on 22 March 2016, priorities have shifted towards action for the protection of European citizens. The informal meeting of Heads of State and Government of 12 February 2015 was dedicated to developing a common European response to terrorism and to the threats to internal security posed by European foreign fighters coming back to the EU. The Statement on Counter-terrorism adopted on that occasion called for the "urgent" adoption by the European Parliament and the Council of the Directive on the European Passenger Name Record (PNR) Data, as well as for the strengthening of the EU-Framework on fighting terrorism. The PNR directive was subsequently adopted.

Against this background, and considering the numerous challenges facing the EU, as for instance the evolving features of terrorism, European cooperation in the field of Justice and internal security policy needs to be deepened. As highlighted in the EP study on Mapping the Cost of Non-Europe, if the area of justice and fundamental rights would be strengthened in the analysed areas, the total increase of the EU GDP could reach €7 billion yearly.

The new European Agenda on Security 2015-2020, proposed by the Commission on 28 April 2015, is the first step towards an up-dated strategic vision in the field of justice, home affairs and security policy. Working towards an agreement on the legislative proposals contained in the EU Agenda, as well as the implementation of the initiatives contained therein to increase internal security, will be at the centre of the Union's activity in the field of home affairs in the up-coming years.

In this respect, the Parliament recalled in its resolution of 4 April 2014 on the mid-term review of the Stockholm Programme, that it was a now fully-fledged institutional actor in the field of security policies, and therefore considers that it is entitled to participate actively in determining priorities of the future European Security Agenda for the next years.

* * *

**Base for the financial potential evaluation:** The economic potential of the ten-point Juncker Plan for growth without debt, European Parliament, DG EPRS study (PE543.844), Brussels 2014
Despite undeniable progress, the current legal EU framework for combatting violence against women presents important weaknesses: national legislations of the 28 EU Member States offer unequal protection of women against all forms of violence, whilst the measures adopted at EU level present important lacunae, notably in terms of prevention.

In its Legislative Initiative Resolution of 25 February 2014, the Parliament requested the Commission to submit, by the end of 2014, a proposal for a legal act based on Article 84 TFEU establishing measures to promote and support the action of Member States in the field of prevention of violence against women and girls. The Parliament also asked the Commission to launch the procedure for the EU-accession to the Council of Europe Convention on preventing and combating violence against women, the “Istanbul Convention”, notably by defining negotiating guidelines. In addition, the Parliament proposed a combination of other measures, including:

- the establishment of a coherent system for collecting statistics on gender-based violence in Member States;
- adding gender-based violence to the crimes listed in Article 83(1) TFEU; and
- the adoption of an EU-wide Strategy and Action Plan to combat violence against women.

In its 2010-2015 Strategy for gender equality, the Commission stressed that gender-based violence was one of the key problems to be addressed in order to achieve genuine gender equality and listed the adoption of an EU-wide strategy to combat violence against women as a priority action.

The Council also supported this proposal in its conclusions of 8 March 2010 and 6 December 2012. However, this goal was not achieved, and the Barroso Commission failed to follow up on any of the EP requests.

The 2016 Work programme of the Juncker-Commission does not include any reference to fighting violence against women.

Consequently, in an Initiative report on a new post 2015 EU-Strategy on gender equality adopted on 9 June 2015, the European Parliament reiterated its request to the Commission to propose new laws containing binding measures to protect women from violence. In that context, it asked the Commission to also pay special attention to new forms of violence, such as cyber-harassment and intimidation on the internet.

According to the Parliament Study on ”Mapping the Cost of Non-Europe”, the annual cost to the EU of gender-based violence against
women is estimated at €228 billion in 2011 (i.e. 1.8% of EU-GDP), of which €45 billion a year in public and state services and €24 billion of lost economic output. It is considered that a Directive on combatting violence against women could reduce violence by up to 10%, thus reducing its direct economic costs by €7 billion per year.

Combating gender-based violence and protecting and supporting victims are listed as priorities in the European Commission's Strategic Engagement for Gender Equality 2016-2019. Planned measures include two proposals for Council Decisions, one on the signing and the other on the conclusion, on behalf of the European Union, of the Istanbul Convention, thus launching the accession to the Convention. EU accession to the Convention would require the consent of the European Parliament.

The European Parliament is currently considering the legislative proposals on the accession to the Istanbul Convention.

References:


Further Reading:

• European Parliament, EPRS, *Violence against women in the EU: State of play*, Briefing, June 2016
• European Parliament, EPRS, *Combating violence against women: European Added Value Assessment*, November 2013

For further information: Rosamund Shreeves, eava-secretariat@europarl.europa.eu; Ülla Jurviste, eava-secretariat@europarl.europa.eu

**HYPERLINK REFERENCES**

CONTENT

The European Arrest Warrant is generally recognised as a successful criminal justice instrument, which is based on mutual recognition, and is now operational in 28 Member States. Compared to the traditional extradition system, it has proved efficient in enabling speedy surrender procedures of people suspected of offences throughout the EU. Yet, alleged overuse of the EAW, the lack of explicit fundamental rights safeguard and proportionality check have undermined the credibility of the system.

In a Legislative Initiative Resolution of 27 February 2014, the European Parliament requested the Commission to submit, within a year following the adoption of this resolution, legislative proposals to remedy and clarify some aspects of the EAW framework. A revision of the EAW Framework was deemed necessary to prevent miscarriages of justice, long waits in pre-trial detention and other breaches of suspects’ human rights.

The Commission clearly indicated that it did not intend to submit any proposal at this stage. In its follow-up to the Parliament’s Legislative Resolution, the Commission expressed the view that the improvement of the EAW system did not require a re-opening of the 2002 Framework Decision, and that the issues identified by the Parliament could be addressed by adopting legislation on minimum procedural rights’ standards and by ensuring the full implementation of the complementary judicial co-operation instruments (e.g. supervision order, European Investigation Order). It added that, since the transitional period in the area of police and judicial co-operation in criminal matters foreseen in the Lisbon Treaty had ended on 1 December 2014, the Commission would be able to use its enforcement powers to ensure Member States meet their transposition obligations, making judicial co-operation more effective.

Yet, further reasons are likely to have influenced the Commission’s approach:

i) Lisbonisation: if the Framework Decision were to be revised, Denmark would opt-out, as would probably the UK and Ireland, and ii) Ordinary legislative procedure: the new legislation would be based on article 82 and take the form of a directive under co-decision.

According to the Parliament Study on "Mapping the Cost of Non-Europe", the annual gain of improved co-operation on the EAW is estimated at €43 million, linked for instance to the reduction of pre-trial detention costs (around €3 000 per person and per month), which could be achieved if the recommendations of the EP legislative resolution were correctly implemented.
In its resolutions from September 2015 on the situation of fundamental rights in the EU and on the Commission Work Program 2016, the European Parliament reiterated its recommendations to the Commission and called once again to put forward a proposal for a reform of the European Arrest Warrant.

On 5 April 2016, the European Court of Justice delivered a judgement in joint cases C-404/15 and C-659/15. The Court stated that if there is evidence of deficiencies in detention conditions in the requesting Member State, the executing judicial authority must postpone its decision on the surrender until it obtains the supplementary information that allows it to discount the existence of a risk of inhuman or degrading treatment. If such risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end. The ruling may not only affect the implementation of EAW decisions, but also require modifying the current legislation. Since then, two other Court judgments (in Case C-241/15, 1 June 2016 and in Case C-182/15, 6 September 2016) have dealt with EAW aspects.

References:

- Court of Justice, [Judgment of the Court of 1 June 2016 - Case C-241/15](http://curia.europa.eu/juris/curia.jsf?language=en&mode=html&text=248028)
- Court of Justice, [Judgment of the Court of 6 September 2016 - Case C-182/15](http://curia.europa.eu/juris/curia.jsf?language=en&mode=html&text=248028)

Further reading:

COMMON STANDARDS ON DETENTION OF MINORS, PRE-TRIAL AND ADMINISTRATIVE DETENTION

CONTENT

In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament underlined that mutual trust between Member States judicial system needed to be strengthened by harmonising fundamental rights compliance in relation to criminal procedures. Thus, it called for legislation establishing minimum and enforceable standards in relation to pre-trial detention, administrative detention and detention of minors.
To date, the Commission has not given any follow-up to the Parliament's request. A Directive on procedural safeguards for minors suspected or accused of crime, and defining minimum standards on fair trial rights was adopted in May 2016.

**References:**


**Further reading:**


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**COMMON STANDARDS FOR PRISONS AND FOR DETENTION CONDITIONS**

**CONTENT**

In some EU Member States, detention standards reportedly fall short of international laws and standards including those concerning human rights.

This situation is at the root of the lack of trust between Member States and seriously hampers mutual recognition in the Area of Freedom, Security and Justice. The Parliament is therefore of the view that procedural safeguards should be complemented by standards for detention.

In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament called on the Commission to
reconsider establishing common measures to improve detention standards and ensure proper administration of prisons. Thereby, it recalled that Article 3 of the European Convention on Human Rights and the case law of the European Court of Human Right impose on the Member States not only negative obligations (by banning inhuman and degrading treatment), but also positive ones by requiring them to ensure that prison conditions are consistent with human dignity. It called on Member States to take particular account of the rights of vulnerable persons.

There has been no follow-up on this request from the side of the Commission.

In that context, a European Parliament Initiative Report on prisons' systems and conditions (2015/2062(INI)) is currently being prepared in the EP Committee on Civil Liberties. The draft report is due to be presented in the autumn 2016.

References:

- EP Legislative Observatory, Procedure file of own-initiative report on Prisons' systems and conditions, 2015/2062(INI)

For further information: Sofija Voronova, eava-secretariat@europarl.europa.eu

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COMMON STANDARDS IN THE FIELD OF CIVIL PROCEDURE

CONTENT

In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament reiterated its request for legislative proposals on common standards in the field of civil procedure.

The concept of so-called “free movement of judgments” in civil cases in the European Area of Justice means that judgments issued in one Member State are accepted in all other Member States as if they were issued by a domestic court (e.g. an Italian court must treat a Croatian judgment as if it was an Italian judgment, and not as a foreign judgment). In legal terms, the free movement of judgments is a result of the abolition of the so-called “exequatur procedure”, i.e. a procedure whereby a foreign judgment must first be examined by the national courts which then decide whether it fulfils the conditions for recognition and enforcement (which had been the rule until now). After the abolition of exequatur, a judgment from a different EU Member State is simply treated, in principle, as a
domestic judgment.

Obviously, such free movement of judgments across the EU means that there is a full opening to the judiciaries of other Member States, and therefore it presupposes a high level of mutual trust between courts of different EU countries. The concept of mutual trust means that courts of Member State A believe that the quality of civil proceedings in Member State B is comparable (e.g. French judges consider that Bulgarian civil proceedings are comparable to French ones, and vice versa).

Mutual trust is an issue from the perspective of judiciaries. Looking from the citizen's perspective, the key issue is the balancing of the fundamental rights of claimants (i.e. persons who bring a claim to the court) and defendants (i.e. persons who are sued before a court). The two rights which need to find a delicate balance are the right of access to justice (i.e. the creditor's right to pursue his claim before a court) and the rights of the defence (i.e. the defendant's right to defend himself adequately in civil proceedings).

Mutual trust in judiciaries can be built in various ways. One of them could be the enactment of set of common minimum standards to be respected by all civil procedures in the Member States, i.e. a set of common requirements which would set a minimum level of quality of civil proceedings across the EU. Such common requirements need to find a balance between the fundamental rights of claimants and defendants which is a politically and culturally sensitive issue.

At present, there are three EU legal acts which provide for partial harmonisation of such minimum standards. These are the Legal Aid Directive, the Mediation Directive, as well as the Collective Redress Recommendation. However, a recommendation is not legally binding, and the Member States are not legally obliged to follow its content.

The European Parliament Committee on Legal Affairs has obtained authorisation to draw up a Legislative Initiative report on the establishment of common minimum standards of civil procedure, for which Emil RADEV (EPP) has been appointed rapporteur.

In December 2015 the rapporteur, Emil RADEV presented a “Working document on establishing common minimum standards for civil procedure in the European Union – the legal basis” in which he made the following conclusions:

- harmonising national civil procedure is of crucial importance to increase mutual trust between Member States’ judiciary systems,
- in contrast to optional instruments, which create a set of civil procedural rules working in parallel with national legal regimes, harmonising instruments touch upon national civil procedure and oblige Member States to approximate their respective national rules in order to conform to the EU model
- the process of harmonisation of EU civil procedure can take place in two ways: (1) the EU legislature can adopt sector-specific instruments based on Article 114 TFEU, thus addressing civil-procedural aspects of certain types of claims under EU law; (2) the EU legislature can adopt horizontal instruments, harmonising national civil procedural laws with cross-border implications regardless of subject matter
- the creation of a well-functioning mechanism of minimum standards in civil proceedings does not happen through one action but through a process.
The rapporteur indicated that the “working document (...) starts the process towards creating a draft report.”

At the same time, the European Law Institute launched a joint project with Unidroit with view to developing a set of “Transnational Principles of Civil Procedure for Europe”. The Parliament’s Legal Affairs Committee is closely following this non-governmental initiative by sending observers to the meetings of the project group. In April 2015, the ELI/Unidroit project was officially presented at a hearing of the Legal Affairs Committee.

On 15 June 2016, the Committee on Legal Affairs held a workshop on common minimum standards of civil procedure in the EU. This workshop relates to the legislative initiative report (rapporteur: Emil Radev) on the same topic (2015/2084 (INL)).

References:


Further reading:

- European Civil Justice, *Interview with Mr Emil Radev (rapporteur on common minimum standards of civil procedure)*, 26 February 2016

For further information: Rafal Manko, eava-secretariat@europarl.europa.eu

Hyperlink references:

ADOPTION OF A EUROPEAN CODE ON PRIVATE INTERNATIONAL LAW

CONTENT

In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament reiterated its call for the adoption of European Code of private international law.

In 2013, the European Parliament’s Research Service - European Added Value Unit (EAVA), published a cost of non-Europe report regarding a European Code of Private International Law. The report concluded that the codification of Private International Law could bring a significant economic benefits, mostly for European citizens and SMEs, which were estimated at EUR 140 million per year. According to the report, codification would make it easier and less expensive for individuals, families and businesses considering decisions that could be affected by the absence of European Private International Law.

Nonetheless, to date, the Commission has not followed up on the issue.

It should be underlined that this is a request that is to be taken as referring to the long term, as it implies a complete re-working of all instruments in the field. However, according to Commission officials, an initiative on the matter is not excluded.

References:

Further reading:

• European Parliament, IPOL, Current gaps and future perspectives in European private international law: towards a code on private international law?, 2012

For further information: Rafal Manko, eava-secretariat@europarl.europa.eu

HYPERLINK REFERENCES

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MEDIA FREEDOM AND PLURALISM

CONTENT

Media freedom and pluralism are part of the rights and principles enshrined in the European Charter on Fundamental Rights and in the European Convention of Human Rights. Moreover, the Copenhagen criteria for membership in the EU include the existence of guarantees for democracy and human rights.

In its resolution of 21 May 2013 on the EU Charter: Standard settings for media freedom across the EU, the Parliament considers that the EU has the competences to take legislative measures to guarantee, protect and promote freedom of expression and information, media freedom and pluralism. It called on the Commission to propose concrete legally binding procedures and mechanisms to safeguard media pluralism, including to ensure that Member States guarantee proper implementation of the Charter on Fundamental Rights, concrete measures to prevent excessive media concentration, and a legislative framework on media ownership rules introducing minimum standards for Member States.

In the same document, the Parliament also underlines the importance of carrying annual monitoring of media freedom and pluralism.
in all Member States and the resulting report should be presented to Parliament and the Council as basis for action proposals. As part of the EU support for media freedom and pluralism, the European Parliament has provided funding for a Media Pluralism Monitor, conducted by the Centre for Media Pluralism and Media Freedom at the European University Institute until 2016.

After its pilot tests in 2014 and 2015, the monitor is currently being applied for the first time to all EU Member States. At the end of 2016, it will provide a report on the risks to media freedom and pluralism across the Union, analysing the basic legal protection, market plurality and economic viability, political independence and social inclusiveness. It provides rich information on the risks to media freedom in each Member State, which is collected in a scientific and transparent way. The report includes a quantitative part allowing to follow the trends over time and see the effects of policy decision, and a qualitative part including further details.

In addition, the EP LIBE Committee commissioned a comparative analysis of media freedom and pluralism in the EU Member States, published in September 2016. It is a qualitative report covering media freedom and pluralism situation in seven Member States, which are pointed out as facing concerns in this area.

Another programme funded by the EP as a preparatory action is the European Centre for Press and Media Freedom. The Centre is a membership-organisation and serves as contact point for individual journalists in danger. It researches and registers violations of media freedom and informs the public, via its website and the Media Freedom Resource Centre, an online-platform that collects and systematizes content related to press freedom. Endangered journalists can be supported with legal or financial help as well as the Journalists-in-Residence-programme, which provides them with a safe shelter. It is expected to benefit from the work of the High Level Group on Media Freedom and Pluralism and the recommendations of their final report from January 2013.

DG Justice is conducting a public consultation - 2016 Annual Colloquium on Fundamental Rights on ‘Media Pluralism and Democracy’ to feed into the second Annual Colloquium on Fundamental Rights, taking place on 17-18 November 2016. It is open to all stakeholders, including international organisations, Member States and their different Ministries, agencies and departments, civil society, business and media representatives, including publishers, journalists and reporters, judges, prosecutors, ombudspersons, academics, EU institutions and agencies.

Furthermore, the Parliament called on the Commission to review the 2010 Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive) so as to ensure full independence of national regulatory authorities, including provisions on transparency of media ownership, media concentration, and conflict of interest rules, that are relevant also in terms of media freedom and pluralism.

As part of the digital Single Market Package presented on 6 May 2015 and based on the results of a public consultation on the Audiovisual Media Services Directive (AVMSD) 2010/13/EU the Commission proposed a review of this Directive, focussing on issues such as the roles and responsibilities of all market players, measures for the promotion of European works, advertising and protection of minors. The new legislative Proposal has been published the 25 May 2016. It aims to adapt existing rules to new business models for content distribution (e.g. online platforms), in particular by creating a fair environment for all players, promoting European films,
protecting children and better tackling hate speech (see our file REVIEW of the AUDIO-VISUAL MEDIA FRAMEWORK – Train 2 on the Digital Single Market).

References:

- European Commission, Results of the public consultation on Directive 2010/13/EU, 2015

Further reading:

- European Parliament, EPRS, Press freedom in the EU: Legal Framework and challenges, Briefing, April 2015
- High Level Group on Media Freedom and Pluralism, A free and pluralistic media to sustain European democracy, Final Report, January 2013

For further information: Alina Dobreva, eava-secretariat@europarl.europa.eu; Shara Monteone, eava-secretariat@europarl.europa.eu
In its Work Programme for 2016, the Commission confirmed, as part of the REFIT initiatives, that it would carry out an assessment of the application of the Regulation (EC) No 2201/2003 on jurisdiction, recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility (commonly known as the Brussels IIa Regulation).

In June 2016 the Commission announced its proposal to for a recast Brussels II regulation.


The purpose of the Regulation is to bring together in a single legal instrument the provisions on cross-border recognition of decisions regarding divorce and parental responsibility. It does not deal with substantive family law matters. These are the responsibility of individual EU countries.

This Regulation is also concerned with child abductions and complements the Hague Convention of 25 October 1980 on the civil aspects of international child abduction. It applies since 1 March 2005 to all Member States, except Denmark.

Following a number of petitions received by the European Parliament in relation to the extremely problematic issue of child abduction, the Legal Affairs Committee organized a workshop on 26 February 2015 dealing with the Brussels IIa Regulation. It highlighted shortcomings in the implementation and questioned the need for a review. EP Vice-President Mairead McGuinness, the EP Mediator for Parental Child Abduction, has also expressed concerns about the way which the Regulation worked.

In a letter dated 20 May 2015, the Chair of the Legal Affairs Committee, Pavel Svboda, wrote to the Chair of the Conference of Committee Chairs, Mr. Jerzy Buzek, asking him to add the revision of Brussels IIa Regulation to the list of items the EP would wish to see included in the Commission’s Work Programme for 2016.

The proposal for the revision is now to follow a Special Legislative Procedure in accordance with Article 81 (3) TFEU and require unanimity in Council with the EP being only consulted.

The main aspects of the new proposal are as follows:

- clarification of the time limit for issuing an enforceable return order of a child
- new obligation for Member States to concentrate jurisdiction for child abduction cases in a limited number of courts
- only one appeal possible against decision to return child
- Member State where the child was habitually resident immediately before the wrongful removal or retention must conduct a thorough examination of the best interests of the child before taking a final custody decision
- abolition of exequatur procedure for all decisions covered by the Regulation's scope, meaning that they will be automatically enforceable

The changes to the existing legislative framework relate in particular to the efficiency of procedures in the event of cross-border abductions of children by one of the parents. The time limits applied to the various stages of the procedure for returning a child are limited to a maximum period of 18 weeks, of which no more than six weeks may be dedicated to the processing of the request by the central authority, six weeks for the court of first instance and six weeks for the appeal court.

As regards the decision on return, there is only one possibility for appeal and the judge must examine whether a decision ordering the child's return should be provisionally enforceable. Cases of parental abduction should also be examined by a limited number of courts, so that judges acquire the necessary experience.

The Commission's proposal also emphasises that care should be taken that the child is heard and can express its opinion in all proceedings concerning the child. The child should have the opportunity to express its opinion regarding custody and visiting rights, and in the context of return proceedings when there has been an abduction by one of the parents.

On 28 April 2016 the EP adopted a resolution on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament (2016/2575(RSP)). In this resolution – adopted upon initiative of the PETI committee – the European Parliament pointed to the major problems with the implementation of the Brussels IIa Regulation and underlined the need for:

- all child protection systems should have transnational and cross-border mechanisms in place which take into account the specificities of cross-borders conflicts
- a clear definition of 'habitual residence' in the revised Brussels IIa Regulation
- the creation by the Commission and the Member States of a platform providing assistance to non-national EU citizens in family proceedings;
- a single European helpline for cases of child abduction or abuse;
- specialised chambers within family courts or cross-border mediation bodies to deal with cross-border child-related cases to be designated by the Member States;
• regular visitation rights to parents, except where this could be detrimental to the best interests of the child, to be should guaranteed by the Member States, and to allow parents to use their mother tongue with their children during the visits;
• minimum standards for the hearing of a child in national civil proceedings, in accordance with Article 24 of the Charter of Fundamental Rights, to be established;
• parents suffering from alcohol or drug addiction ought to be given by the Member States reasonable time to have a real opportunity to recover before the court takes a final decision on adoption of their child;
• regulate on recognition of domestic adoption, taking into account the best interests of the child and with due respect for the principle of non-discrimination, ought to be enacted by the Member States and the Commission;
• children in any kind of fostering or adoption arrangement ought to be placed so as to have the best opportunities to maintain links with the child’s cultural background and to learn and use their mother tongue; asks the Member State authorities involved in childcare proceedings to make all possible efforts to avoid separating siblings.

Within the European Parliament, the Commission proposal has been referred to the Legal Affairs Committee, and Tadeusz ZWIEFKA (EPP, Poland) was appointed rapporteur (on 11 July 2016).

References:

• European Commission, Report on the application of the Brussels Ia Regulation, COM(2014) 225
• European Parliament, Resolution of 28 April 2016 on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament, 2016/2575(RSP)
• EP Legislative Observatory, Procedure file of Regulation on Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility: international child abduction. Recast, 2016/0190(CNS)

Further reading:

• European Parliament, Library, "Habitual residence" as connecting factor in EU civil justice measures, 2013

For further information: Rafal Manko, eava-secretariat@europarl.europa.eu
The terrorist attacks in France and Denmark in 2015, and again in 2016 in Belgium, Germany and France, have highlighted the need for a strong Europe response to terrorism and for measures to address the issue of its financing further. Thus, counter-terrorism is given high priority in the European Agenda on Security 2015-2020 proposed by the Commission on 28 April 2015.

Among the actions envisaged, the Commission intends to explore the possibility of additional measures in the area of terrorist financing. It has proposed to consider:

- Measures relating to the freezing of terrorist assets under article 75 TFEU;
- Measures relating to illicit trade in cultural goods;
- Strengthening the 2005 cash controls Regulation;
• Measures relating to the control of forms of payment such as internet transfers and pre-paid cards.

Following the terrorist attacks in Paris, the Justice and Home Affairs Council in its Conclusions of 20 November 2015 called on the Commission to present proposals to:

1. Strengthen the cooperation between Financial Intelligence Units (FIU’s), notably through the proper embedment of the FIU.net network for information exchange in Europol, and ensure their fast access to necessary information, in order to enhance the effectiveness and efficiency of the fight against money laundering and terrorist financing, and

2. Strengthen controls of non-banking payment methods such as electronic/anonymous payments, money remittances, cash-carriers, virtual currencies, transfers of gold or precious metals and pre-paid cards in line with the risk they present and to curb more effectively the illicit trade in cultural goods.

The European Parliament expressed strong support for further measures to fight terrorism financing.

In its resolution of 9 July 2015 on the European Agenda on Security, the European Parliament welcomed measures set out in the agenda to tackle terrorist financing. It recalled the importance of tracking and disrupting financial flows to effectively combat terrorist networks and organised crime groups.

Then, in its resolution from 25 November 2015 on the prevention of radicalisation, the Parliament also insisted on the necessity to explore ways of dismantling terrorist networks and identifying how they are funded, calling namely for better cooperation between the Financial Intelligence Units of the Member States and for the speedy transposition and implementation of the Anti-Money Laundering Package.

On 2 February 2016, the Commission put forward an Action Plan to strengthen the fight against the financing of terrorism. The Action Plan lists a number of concrete measures that the Commission intents to put into practice immediately. It also lists a series of legislative initiatives to be presented and actions to be carried out by the end of 2017.

The Action Plan focuses on two main strands of action:

1. Tracing terrorists through financial movements and preventing them from moving funds or other assets. This will include: (i) Targeted amendments to the 4th Money Laundering Directive (proposal issued in July 2016 - see specific note in Train 7), (ii) Criminalising money laundering, and (iii) Limiting risks linked to cash payments.

2. Disrupting the sources of revenue used by terrorist organisations, by targeting their capacity to raise funds: In this vein, in 2017 the Commission will submit:

   • A legislative proposal to reinforce the powers of customs authorities to address terrorism financing through trade in goods;
• Legislative proposal to address the illicit trade in cultural goods to extend the scope of the current legislation to a wider number of countries.

References:

• European Commission, Communication on An Action Plan for strengthening the fight against terrorist financing, COM(2016) 50 final

• European Commission, Communication on European Agenda on Security, COM(2015) 185 final

• Council, Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism, Press release, 20 November 2015

• European Parliament, Resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, 2015/2063(INI)


• European Commission, Commission presents Action Plan to strengthen the fight against terrorist financing, Press Release, 2 February 2016

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Recent terrorist attacks have focussed attention to the capacity of organised criminal networks to access and trade firearms in Europe, even military-grade firearms, in large numbers. Legislation on the possibility to own and use firearms is a national competence of the Member States. However, differences in national legislation are an obstacle to controls and police cooperation.

In the framework of the European Agenda on Security presented on 28 April 2015, the Commission underlined the need for a common approach on the neutralisation and de-activation of firearms to prevent reactivation and use by criminals.

Following the terror attacks in Paris on 13 November 2015, the Commission significantly advanced the presentation of its proposals to review the legal framework on firearms.

The package of measures presented on 18 November 2015, aims at making it more difficult to acquire firearms in the EU, to better track legally held firearms, to strengthen cooperation between Member States, and to ensure that deactivated firearms are rendered inoperable.

The package of measures on firearms includes the following elements:

1. A revision of the EU-Firearms Directive: In order to tighten controls on the acquisition and possession of firearms, the revised directive would define the rules under which private persons can acquire and possess weapons, as well as the transfer of firearms to another EU country. It notably sets: i) stricter rules to ban certain semi-automatic firearms, ii) tighter rules on the online acquisition of firearms, iii) EU common rules on marking of firearms to improve the traceability of weapons, iv) stricter conditions for the circulation of deactivated firearms, v) stricter conditions for collectors to limit the risk of sale to criminals. The proposed amendments need to be approved in accordance with the Ordinary Legislative Procedure.

2. An Implementing Regulation establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable: The Implementing Regulation sets out common and strict criteria on the way Member States must deactivate weapons so that they are rendered inoperable. The possession of the most dangerous firearms – even if they are deactivated – will no longer be allowed. Following a positive vote on the draft Regulation by Member States in a comitology committee on 18 November 2015, the College of Commissioners formally adopted the text the same day. Commission Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable was published in the Official Journal on 19 December 2015. It is applicable from 8 April 2016.

3. An action plan against the illegal trafficking of weapons and explosives: Issues to be tackled in this future action plan will include: i) the illegal purchase of weapons on the black market, ii) the control of illegal weapons and explosives in the internal market (especially from the Balkan countries or ex-war zones), iii) the fight against organised crime. While arms' trafficking is mainly a national competence, given the clear cross-border dimension there is a need for stronger police and intelligence service coordination and stronger import checks.

The proposed measures are based on an evaluation of the implementation of the Firearms Directive, which the Commission carried
out in the framework of the Regulatory Fitness programme (REFIT) in 2015.

The review of the legislation on firearms complements ongoing work to tackle the illegal trafficking of firearms, including notably the operational action plan between the EU and the Western Balkans and joint investigations and police cooperation which have been in place since 2013.

The Council had its first discussion on the review of the EU-Firearms Directive the week following the presentation of the proposed revision by the Commission. It discussed it again in March and in June 2016.

On 10 June 2016, the Council agreed on its general approach on the proposal to be able to start negotiations.

1. Commission Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable was published in the Official Journal on 19 December 2015. It is applicable from 8 April 2016.

2. An action plan against the illegal trafficking of weapons and explosives: Issues to be tackled in this future action plan will include: i) the illegal purchase of weapons on the black market, ii) the control of illegal weapons and explosives in the internal market (especially from the Balkan countries or ex-war zones), iii) the fight against organised crime. While arms' trafficking is mainly a national competence, given the clear cross-border dimension there is a need for stronger police and intelligence service coordination and stronger import checks.

The proposed measures are based on an evaluation of the implementation of the Firearms Directive, which the Commission carried out in the framework of the Regulatory Fitness programme (REFIT) in 2015.

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On 13 July 2016, the European Parliament's Internal Market and Consumer Protection (IMCO) Committee approved its report on the file by 27 votes to 10, with one abstention. In it, it stated that the definition of the term ‘firearm’ needed to be clarified and the control of essential components enhanced by including in that definition any portable object which shares an essential component with a firearm. It also noted that replicas and signal weapons should not be treated as firearms unless they can be converted into firearms or share an essential component.

It further clarified specifications for categories A6 and A7, with additional technical characteristics including on the basis of the number of rounds fired without reloading. It also stated that it should be possible for Member States to choose to grant authorisations to recognised museums and collectors for the acquisition and possession of prohibited firearms and ammunition when necessary for historical, cultural, scientific, technical, educational, aesthetic or heritage purposes – under strict conditions.
It also added a provision on storage of firearms and ammunition, clarifying that the criteria for their storage and safe transport should be defined by national law. It further included more detailed conditions regarding online sales of firearms, essential components and ammunition. Amended definitions of ‘alarm and signal weapons’, ‘salute and acoustic weapons’, as well as a new definition of a ‘museum’ and a ‘collector’ were also added.

A mandate for the IMCO Committee delegation to open negotiations with the EU Council of Ministers was then voted on 5 September, opening the way to launching trilogue discussions with the Council under the Slovak Presidency.

The European Parliament previously adopted several resolutions related to firearms.

In its resolution on anti-terrorism measures of 11 February 2015, it stressed the need for further strengthening of cooperation as regards information exchange mechanisms and the traceability and destruction of prohibited weapons.

In its resolution on the European Agenda on Security of 9 July 2015, it recalled the urgent need to better assess the threat against EU security and to focus on immediate priority areas for the fight against terrorism: reinforcing EU border security, enhancing internet referral capabilities, and fighting against illicit trafficking in firearms, as well as stepping up information-sharing and operational cooperation between national law enforcement and intelligence services.

The Parliament also adopted a resolution on arms export on 17 December 2015.

References:

- European Commission, European Commission strengthens control of firearms across the EU, Press release, 18 November 2015
  - Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable
2015/2114(INI)

- EP Legislative Observatory, Procedure file of Directive on Control of the acquisition and possession of weapons, 2015/0269(COD)

Further reading:

- European Parliament, EPRS, Control of the acquisition and possession of weapons, Legislative briefing, September 2016

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Despite their significant impact on the environment and human health, environmental violations have long been perceived as victimless and thus considered as a low priority. In recent years, however, the pressing need to address them has gained ground amongst policy makers and law enforcement agencies.

In its 2013 Serious and Organised Crime Threat Assessment (SOCTA), Europol identified environmental crime as an emerging threat. In the same year, it published another threat assessment dedicated specifically to this form of crime. Trafficking of illicit waste and endangered species have been singled out as the most prominent phenomena in the EU, featuring the involvement of organised criminal groups.

The recognition of these threats has been translated into the criminalisation of a growing number of harmful activities at Member States’ level. There are however differences between national laws in this respect.

At the EU level, criminal liability for environmental violations has been regulated mainly by the Directive 2008/99/EC on the protection of the environment through criminal law. The Directive requires that Member States adopt “effective, proportionate and dissuasive” penalties, without defining however their type or minimum level. Following the entry into force of the Lisbon Treaty, Article 82(2) TFEU makes it possible to establish minimum rules with regard to the definition of criminal offences and sanctions if the approximation of criminal laws and regulations is essential to ensure the effective implementation of a given EU policy. In the framework of the European Agenda on Security presented on 28 April 2015, the Commission announced that it would consider the need to further approximate criminal sanctions in the area of environmental crime.

In its 2013 resolution summarising the findings of the Special committee on organised crime, corruption and money laundering, the European Parliament emphasised that Mafia-type organised crime having an impact on the environment had an international dimension; addressing such crimes would require common efforts by all European countries.

The EP also called on the Commission and the Council to develop a European action plan against wildlife trafficking. This call was reiterated in the resolution of 15 January 2014 devoted specifically to wildlife crime. The Parliament stressed the specific positioning of the EU as both a significant market and a transit route for wildlife trade, and consequently, the EU’s privileged possibility to control this...
The European Parliament made a series of recommendations for action at the EU and international levels including calls on the Member States to:

- introduce moratoria on all commercial transactions involving tusks and ivory products until wild elephant populations are no longer threatened by poaching;
- strengthen the judiciary in the EU so as to ensure that prosecutions for wildlife trafficking are conducted effectively and that the perpetrators receive penalties commensurate with the seriousness of the crime.

Moreover, the European Parliament called on the Commission to monitor and supervise thoroughly the implementation of Directive 2008/99/EC, given that, in some Member States, provision had not been made for effective, proportional and dissuasive criminal penalties as required in the Directive. The EP also highlighted the differences between national laws as regards penalties against wildlife traffickers.

On 26 February 2016, the Commission adopted a Communication on the EU Action Plan against Wildlife Trafficking. The Action Plan set as priority for 2016 the review the EU policy and legislative framework on environmental crime in line with the European Agenda on Security. This would involve the review of the effectiveness of Directive 2008/99 e.g. as regards the criminal sanctions applicable to wildlife trafficking throughout the EU. On 20 June 2016, the Council adopted Council conclusions on the Action Plan. The Parliament’s Committee on the Environment, Public Health and Food Safety (ENVI) is currently working on an initiative report concerning the Action Plan (Rapporteur: Catherine Bearder, ALDE, UK).

The EU Action Plan on strengthening the fight against terrorist financing, also adopted on 26 February 2016, pointed to the role of wildlife trafficking as a source of funding of terrorist activities.

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- Europol, Threat Assessment 2013 Environmental Crime in the EU, November 2013
- European Parliament, Committee on the Environment, Public Health and Food Safety draft own initiative report on EU action plan against wildlife trafficking, 2016/2076(INI)
- European Parliament, Resolution of 11 June 2013 on organised crime, corruption, and money laundering, 2012/2117(INI)
- European Commission, Communication on an Action Plan for strengthening the fight against terrorist financing, COM(2016) 50
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EXTENSION OF RULES ON COMBATING FRAUD & COUNTERFEITING OF NON-CASH MEANS OF PAYMENTS / 2016

CONTENT

Non-cash payments, which constitute an ever-increasing share of payments, are subject to various forms of fraud. Seeking to address
this problem, the Commission announced in the framework of the European Agenda on Security of April 2015 its intention to review and possibly extend legislation on combating fraud and counterfeiting of non-cash means of payment. President Juncker’s letter of intent also mentioned improved rules on non-cash means of payment (under priority 7) among priorities to be addressed.

The Commission believes that the 2001 Council Framework Decision on combating fraud and counterfeiting of non-cash means of payments no longer reflects today’s reality, such as virtual currencies and mobile payments. Whereas until now preventative efforts at EU level have focused on card fraud, the development of new technologies has brought along new forms of crime, such as skimming or pharming. The evaluations of the Council Framework Decision suggest that the instrument – which focuses on physical credit cards and cheques – may be inadequate to properly tackle them.

In the Action plan to strengthen the fight against terrorist financing, the Commission scheduled the adoption of the proposal for the fourth quarter of 2016. A dedicated Inception Impact Assessment is available on the Commission’s website.

In its resolution of 2013 on organised crime, corruption, and money laundering, the European Parliament called for common definitions and harmonisation of regulations concerning electronic and mobile money products as regards their potential use for money laundering and terrorist financing purposes.

When Commission will have presented its proposal, the European Parliament will be involved as co-legislator (proposal to be adopted under the ordinary legislative procedure).

References:

- European Commission, Factsheet: Action plan to strengthen the fight against terrorist financing, February 2016
- European Commission, Communication on delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union, COM(2016) 230 final
- European Commission, Inception Impact Assessment on Combatting Fraud and Counterfeiting of Non-Cash Means of Payment, 4 May 2016

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Hyperlink references:

CONTENT

In the European Agenda on Security of 28 April 2015, the Commission stressed the need for eliminating obstacles to criminal investigations on cybercrime, notably on issues of competent jurisdiction and rules on access to evidence and information.

In its conclusions of 9 June 2016 on improving criminal justice in cyberspace, the Council called on the Commission “to explore possibilities for a common EU approach on enforcement jurisdiction in cyberspace in situations where existing frameworks are not sufficient”. It also requested the Commission to report on the process of development of this approach by December 2016 and present the outcomes of the assessment by June 2017. The assessment should “include specific elements for a common EU approach and proposals for its realisation, including the possibility to pursue a legislative initiative in this respect”.

The European Parliament has not yet issued a position on the file.

References:

- Council, Conclusions of Justice and Home Affairs Council on improving criminal justice in cyberspace, 9 June 2016

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In order to prevent the use of the financial system for money laundering or terrorist financing, the Anti-Money Laundering Directive (AML) seeks to protect credit and financial institutions against these risks.

The EU participates in elaborating the Financial Action task force (FATF) standards and has incorporated them in European law through four successive AML Directives. The last of these, Directive 2015/849/EU, has been in force since May 2015 and took into account the FATF recommendations of 2012. It applies to all financial institutions, as well as an array of other actors including auditors, notaries, real estate agents, and casinos. It has further developed a preventive system whereby these entities and professionals are under an obligation (known as ‘customer due diligence’) to check the identity of their customers, ongoing monitoring, beneficial ownership, politically exposed persons (PEPs), and third party equivalence.

A fifth revision of the current Directive arrived on 5 July 2016. The revised Directive addresses five tasks: (i) ensuring a high level of safeguards for financial flows from high risk third countries; (ii) enhancing the powers of EU Financial Intelligence Units and facilitating their cooperation; (iii) centralised national bank and payment account registers or central data retrieval systems in all Member States; (iv) tackling terrorist financing risks linked to virtual currencies; (v) tackling risks linked to anonymous pre-paid instruments (e.g. pre-paid cards). The rapporteur has been appointed on 31 August 2016.

References:

- EP Legislative Observatory, Procedure file on Prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 2016/0208(COD)

Further reading:

- European Parliament, Policy Department C, Evaluation of EU measures to combat terrorism financing, Study for the LIBE Committee, April 2014
- Financial Action task force (FATF), dedicated website

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PREVENTING RADICALISATION

> EUROPEN AGENDA ON SECURITY
> TERRORISM AND RADICALISATION

CONTENT

Terrorism in Europe feeds on extremist ideologies. EU action against terrorism needs to address the root causes of extremism through preventive measures. Throughout the EU, the link between radicalisation and extremist violence is becoming ever clearer. Extremist propaganda has been shown to lead foreign terrorist fighters from Europe to travel abroad to train, fight and commit atrocities in combat zones; and then, to threaten the internal security of the EU on their return. Strengthening the EU’s own strategic communication with common narratives and factual representation of conflicts is an important aspect of the EU’s response.

Legislation to fight and monitor hate speech and similar actions already exist. Yet, in its European Agenda on Security 2015-2020 proposed on 28 April 2015, the Commission indicated that it was crucial to cut the support base to terrorism with a strong and determined counter-narrative.

In that context, the Commission intends not only to ensure enforcement of relevant legislation, but also assess any gaps in legislation relating to online hate speech. On 31 May 2016, the European Commission and key IT companies (Facebook, Twitter, YouTube and Microsoft) presented a Code of Conduct that includes a set of commitments to combat the spread of illegal online hate speech in Europe.
In 2014, the Commission set out ten areas to structure efforts addressing the root causes of extremism. The Radicalisation Awareness Network (RAN), an EU-wide umbrella network launched in 2011, connects organisations and networks across the Union, linking up more than 1000 practitioners directly engaged in preventing radicalisation and violent extremism. The network enables the exchange of experience and practices, facilitating early detection of radicalisation and the design of preventive and disengagement strategies at local level.

The RAN Centre of Excellence will act as an EU knowledge hub to consolidate expertise and foster the dissemination and exchange of experiences and cooperation on anti-radicalisation. It will add a new practical dimension to the cooperation between stakeholders on anti-radicalisation.

On 20 November 2015, following the terror attacks in Paris, the Justice and Home Affairs Council adopted conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism; it invited the Commission to allocate the necessary financial resources to the implementation of the Council conclusions. The Commission was asked to support the development of rehabilitation programmes, as well as risk assessment tools in order to determine the most appropriate criminal justice response.

The European Parliament, in an Initiative Resolution on preventing radicalisation and recruitment of European citizens by terrorist organisations adopted on 25 November 2015, in the immediate aftermath of the Paris terrorist attacks, sets out concrete proposals for a comprehensive strategy to tackle extremism. This strategy would be applied in particular in prisons, online and through education and social inclusion (Rapporteur: MEP R. DATI).

The following proposals are included in the report:

- Adopting a common definition of foreign fighters in order to permit criminal proceedings to be carried out against them when they return to the EU. It calls on Member States to ensure that foreign fighters are put under judicial control and, if necessary, in administrative detention upon their return to Europe, until due judicial prosecution takes place;
- Setting up an EU blacklist of jihadists and jihadist terrorist suspects;
- Stepping up the exchange of information between national law enforcement authorities and Europol;
- Developing a comprehensive strategy on counter-terrorism;
- Agreeing on EU Passenger Name Records (PNR) by the end of 2015.
- Carrying out passport confiscations and freezing financial assets to prevent potential foreign fighters from leaving the EU. Such preventive measures should be accompanied by support systems such as hotlines where families and friends can get help quickly if they fear that someone is being radicalised or may be about to join a terrorist organisation;
- Strengthening intercultural dialogue through educational systems and in disadvantaged neighbourhoods to prevent marginalisation and foster inclusion.
Delivering on its European Agenda on Security, the European Commission presented on 14 June 2016 further steps to support Member States in preventing and countering violent radicalisation leading to terrorism. The Commission outlined actions in seven specific areas where the EU can bring added value, from promoting inclusive education and common values, to tackling extremist propaganda online and radicalisation in prisons. The initiatives put forward are a follow-up to the ‘Paris Declaration’ of 17 March 2015 promoting citizenship and common values through education.

References:

- European Commission, Communication on supporting the prevention of radicalisation leading to violent extremism, COM(2016)379
- Council, Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism, 9956/14
- European Commission and the IT Companies (Facebook, Microsoft*, Twitter and YouTube), Code of conduct on countering illegal hate speech online, December 2015
- European Commission, Radicalisation Awareness Network (RAN), website
- Council, Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, Press release, 20 November 2015

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- European Parliament, EPRS, Preventing radicalisation in the EU, At a Glance, November 2015
- European Parliament, EPRS, Education and Intercultural Dialogue as tools against radicalisation, At a Glance, November 2015
- European Parliament, EPRS, Foreign fighters – Member State responses and EU action, Briefing, March 2016

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With convicted individuals moving freely in the EU and numerous criminal organisations being active in more than one EU Member State, information exchange and cooperation between judicial authorities has become indispensable. It has been reported that national courts have frequently passed sentences on the sole basis of past convictions featuring in their national registers and not taking into account convictions in other Member States. To address this problem the computerised European Criminal Records Information System (ECRIS) has been established.
Information System (ECRIS) was set up by the Council Framework Decision 2009/315/JHA and the Council Decision 2009/316/JHA, which allows for information exchange on previous convictions for EU nationals.

The ECRIS provides judges and prosecutors with easy access to comprehensive information on the criminal history of persons concerned, no matter in which Member States the individual has been convicted in the past. It is a decentralised system as criminal records are stored solely in national databases and exchanged electronically between the central authorities of the Member States upon request. Each Member State keeps a record of all convictions against its nationals, including those given in other Member States.

Currently Member States send through ECRIS around 288,000 requests per year on previous criminal convictions. Making it impossible for offenders to escape their criminal past simply by moving from one EU country to another, the system arguably has the added value of being a crime prevention tool.

However, the system does not work effectively for non-EU nationals convicted in the EU. In its conclusions of 20 November 2015, the Council welcomed the initiative of the Commission to submit proposal for the extension of ECRIS.

The European Parliament has also repeatedly called for a better use of ECRIS, namely in its resolutions of 11 February 2015 on antiterrorism measures, of 9 July 2015 on the European Agenda on Security, and of 25 November 2015 on the prevention of radicalisation.


The proposal is a key action of the European Agenda on Security, which aims to improve cooperation between national authorities in the fight against terrorism and other forms of serious cross-border crime.

The Council discussed the ECRIS proposal at its meeting on 9-10 June 2016, but did not adopt a general approach. It supported the proposed shift from a decentralised system to a centralised automated one for the exchange and storage of both fingerprints and alphanumeric data of convicted third country nationals. The Council invited experts to discuss the technical details of such a system, in particular as regards data protection and the possibility of complementing the automated features with manual checks at national level.

The EP Committee on Civil Liberties (LIBE) adopted its report on 30 May 2016 as well as a mandate to start inter-institutional negotiations. On 27 June 2016, the Committee report was tabled for plenary. The report proposes the following amendments:

- Each designated central authority should distribute to the other Member States an index-filter containing, in a pseudonymised form, the identification data of the third country nationals convicted in the Member State of this authority;
• The data stored at the national level concerning convicted third-country nationals should be categorised in the same way as for convicted EU nationals, with "obligatory information" and "optional information" so as to avoid any unnecessary discrimination;
• Where, in the context of criminal proceedings, a Member State receives, on the basis of bilateral agreements, information on a conviction relating to terrorist offences or serious criminal offences handed down by a judicial authority in a third country to a third country national residing on the territory of the EU, that Member State should be able to create and transmit to other Member States an index-filter with this information;
• Citizens having two nationalities (an EU one and a third-country one) should be considered as EU citizens;
• Third-country nationals requesting a criminal records extract should receive, if they have committed no offence, a certificate that there was no hit on ECRIS, proving that they have no criminal records in the 28 Member States;
• The scope for background checks should be extended to include not only individuals working with children, but also with vulnerable persons (including those with disabilities) and persons working more generally in the healthcare and education sectors.

In addition, the LIBE Committee report introduced provisions on access to the ECRIS by Europol and Frontex, as well as references to the need for data protection provisions, and the principles of presumption of innocence and a fair trial to be respected.

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• Council, Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States
• Council, Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS)
• Council, Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism, Press Release, 20 November 2015
• European Commission, Proposes to strengthen the exchange of criminal records on non-EU citizens, Press Release, 19 January 2016
• Council, Outcome of the JHA Council meeting of 9 and 10 June 2016
• European Parliament, Resolution of 11 February 2015 on anti-terrorism measures, 2015/2530(RSP)
• European Parliament, Resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, 2015/2063(INI)

Further reading:

As a follow-up on the roadmap for procedural rights foreseen in the Stockholm Programme, in November 2013, the Commission presented a package of proposals on strengthening the procedural safeguards for persons accused in criminal proceedings. In the view of the Parliament – as expressed e.g. in the 2014 resolution on the mid-term review of the Stockholm Programme – the improvement of procedural rights in criminal proceedings should constitute a core priority of the post-Stockholm programme.
One element of the package is the draft directive on provisional legal aid for suspects or accused persons and legal aid in European Warrant proceedings.

The European Parliament voted on the report and adopted the mandate for negotiations with Council on 6 May 2015 (Rapporteur: D. DE JONG). The EP approach on the draft directive aims at a more ambitious legal aid system. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) introduced substantial amendments to the proposal. It broadened the scope of the draft directive beyond the framework proposed by the Commission to include the right to ordinary legal aid for suspects or accused persons facing criminal justice - instead of limiting it to provisional legal aid. The introduction of such measures would entitle those who cannot afford a lawyer to member state funding and assistance to meet part or all of the costs of their defence and of court proceedings. Legal aid should be provided at all stages of the criminal justice process. It also proposed to foresee legal aid for people not deprived of freedom.

The Latvian Presidency managed to secure an agreement on a General Approach at the 12-13 March 2015 Justice and Home Affairs Council. The Council's line is more minimalist regarding the scope of legal aid than the one taken by the EP. It notably pointed to the additional costs that would need to be incurred should an enlarged legal aid system be introduced.

Trilogue negotiations started on 14 July 2015. A core issue was clearly the scope of the Directive, the EP wanting to extend the scope to legal aid in general - beyond the provisional legal aid included in the proposal. According to critics of the broader approach adopted by the Parliament's LIBE Committee, an enhanced scope would make the new rules inapplicable in a number of Member States.

To evaluate the costs and the impact of the proposed changes, the LIBE Committee requested an Ex-Ante Impact assessment of substantial amendments, which was published in June 2016. The study concluded that the amendments proposed by the Parliament would have a positive impact on the fundamental rights of suspects or accused persons, even though they would imply certain additional administrative costs for Member States.

On 30 June 2016, a political agreement was reached between the Parliament and the Council on the proposal. The two institutions agreed on several modifications, in particular as regards:

- the scope of application of the directive, which was broadened to include a right to ordinary legal aid - and not only to provisional legal aid;
- the inclusion of clear guidance on criteria to apply when conducting a means' test and/or a merits' test, which may be used to determine whether a person is eligible for legal aid;
- new provisions on right to information and effective remedy, as well as on legal aid quality and professional training of staff involved in the decision-making on it and of lawyers providing legal aid services.

The compromise was endorsed by the LIBE Committee on 7 July and is due to be confirmed by the whole Parliament in October 2016.

Once the directive will have been formally adopted by the Parliament and the Council, and following its publication in the Official
Journal, Member States will have 30 months to transpose it to their national legislation.

References:

• European Commission, Proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, COM(2013)0824 final
• EP Legislative Observatory, Procedure file of Directive on Provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, 2013/0409(COD)

Further reading:

• European Parliament, EPRS, Initial appraisal of a European Commission Impact Assessment: Legal Aid for Suspects or Accused Persons in criminal proceedings, March 2014

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CONCLUSION OF THE EU-US DATA PROTECTION UMBRELLA AGREEMENT

CONTENT

The EU-US data protection "Umbrella Agreement" puts in place a comprehensive high-level data protection framework for EU-US law enforcement cooperation. The Agreement covers all personal data (for example names, addresses, criminal records) exchanged between the EU and the U.S. for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism.

The Umbrella Agreement will provide safeguards and guarantees of lawfulness for data transfers, thereby strengthening fundamental rights, facilitating EU-U.S. law enforcement cooperation and restoring trust. However, it must be underlined that the Agreement itself will not constitute the legal basis for any transfer of personal information to the U.S., but will supplement, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

The EU-US negotiations on the data protection "Umbrella Agreement" were finalised on 8 September 2015. The Commission made the signature of the Umbrella Agreement conditional on the US Congress' passing of the Judicial Redress Act, which will eliminate a visible discrimination by giving EU citizens not resident in the US the right to challenge in US courts on how their data is used under the agreement. This right is already enjoyed by US nationals in the EU.

The U.S. Judicial Redress Act was signed into law by President Obama on 24 February 2016, thus paving the way for the signature of the Umbrella Agreement.

The Agreement was signed on 2 June 2016.

The Council will need to adopt the decision concluding the Agreement, after obtaining the consent of the European Parliament in accordance with Article 218 TFEU.

The European Parliament has expressed its views on several occasions. In its resolution of 12 March 2014 on the US NSA surveillance programme, the Parliament underlined the importance of the agreement to restore mutual trust; it stressed that it should provide effective and enforceable administrative and judicial remedies for all EU citizens in the US without any discrimination.

In the follow-up resolution of 29 October 2015, the Parliament welcomed the efforts made by the US administration, and in particular, the fact that the Judicial Redress Act of 2015 was successfully passed. At the same time, it urged the Commission to assess the legal impact and implications of the Court of Justice ruling in the Schrems case vis-à-vis any agreements with third countries allowing for the transfer of personal data, and namely the EU-US umbrella agreement.

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The recent terrorist attacks in France, Belgium, Denmark and Germany have highlighted the need for a strong Europe response to terrorism and for measures to address the phenomenon of the returning of foreign fighters.


The Commission put forward its new proposal for a Directive on combating terrorism on 2 December 2015. ‘Given the urgent need to improve the EU framework to increase security in the light of recent terrorist attacks’, the draft legislation was finally presented without an impact assessment. According to the Commission, the new Directive will close criminal enforcement gaps and provide for common definitions of terrorist offences ensuring a common response to the phenomenon of foreign fighters.

The proposal aims at better preventing terrorist attacks by criminalising new preparatory acts, including receiving training and traveling abroad for terrorist purposes. It also strengthens provisions criminalising recruitment, providing training for terrorist purposes and the spread of terrorist propaganda, including on the internet. Thus, the goal is to enhance the deterrent effect across the EU and ensure that perpetrators are effectively sanctioned.

The revision of the Framework Decision was also required to implement international obligations into EU law, such as the provisions of the UN Security Council Resolution 2178(2014) on Foreign Terrorist Fighters, the Additional Protocol to the Council of Europe Convention on the Prevention of terrorism adopted in May 2015, as well as the standards of the Financial Action Task Force on terrorist financing. The UNSCR 2178(2014) requires states to criminalise international travel to and from conflict zones for terrorist purposes, helping to build a common understanding of the foreign fighters related offences.

The European Parliament expressed its views on the foreign fighters’ phenomenon and the criminal justice response on several occasions, notably the resolution of 11 February 2015 on anti-terrorism measures, the resolution of 9 July 2015 on the European Agenda on Security, and the resolution of 25 November 2015 on the prevention of radicalisation. The Parliament requested the review of the Framework Decision on combating terrorism so as to harmonise the criminalisation of foreign-fighter related offences across the EU. It stressed the need to ensure adequate legal prosecution and advocated effective and dissuasive criminal justice measures in all Member States.


The European Parliament Civil Liberties Committee (LIBE) adopted its report on the proposal on 4 July 2016, together with a mandate for opening inter-institutional negotiations.
The main proposed amendments to the draft legislation concern:

- new provisions on fundamental rights safeguards, as well as on proportionality, non-discrimination, procedural rights and effective remedies;
- a new article on ‘measures against illicit terrorist content on the internet’, requiring to remove terrorism-related content or to block access to it when removal is not feasible, while respecting a transparent procedure and adequate safeguards;
- a provision on the freezing of terrorist assets, together with recommendations on financial information sharing and setting up of specialised national units;
- an obligation to share information on terrorist offences, including alerts in the Schengen Information System (SIS II) on suspected or convicted offenders, as well as relevant Passenger Name Record (PNR) data;
- provisions aiming at reinforced protection and support for victims of terrorism;
- measures to address radicalisation and prevent the recruitment to terrorism, with a focus on education, awareness-raising and counter-narratives.

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In the context of the publication of the Commission’s annual report on gender equality on 5 March 2015, the Commissioner in charge of gender equality, Vera Jourova, reported that her services were currently working on a new gender equality strategy, to be put

- It pointed out that inequalities between men and women remained very widespread in the Member States, and that, in order to achieve real progress, it was essential to fight against discrimination on the job market, in education and in access to decision-making positions.
- It also considered that specific action was required to support women with disabilities, migrants and those belonging to ethnic minorities. It underlined that the "feminisation of poverty" could lead to an increase in female trafficking.
- Furthermore, the European Parliament called for a better balance between family and professional life through the introduction of childcare facilities, more flexible working hours and arrangements, as well as measures that would have a positive impact on employment rates of women.

However, there was no specific reference to the post-2015 EU-Strategy in the 2016 Commission Work programme. Instead of a full Strategy, on 3 December 2015, the Commission published a “Strategic engagement for gender equality 2016-2019”, with the status of a staff working document. In the European Commission’s 2015 annual report on gender equality, the Commissioner, Vera Jourova, stated that the evidence gathered in this report will constitute the baseline against which progress towards the priorities of the Strategic Engagement will be measured.

On 3 February 2016, the European Parliament adopted a Resolution on a new strategy for gender equality and women’s rights post 2015. In this resolution, the Parliament:

- Calls on the Commission to reconsider its decision and to adopt a Communication on a new post 2015 EU-Strategy on gender equality, based on the approach set out in the staff working document;
- At the same time however, it criticises the lack of concrete benchmarks and of a dedicated budget, without which the progress on targets and indicators is neither measurable nor achievable.

On 7 December 2015, the Council, adopted conclusions on equality between women and men in the field of decision-making, in which it also invited the Commission to adopt a Communication on a new Strategy for gender equality after 2015, closely linked to the Europe 2020 Strategy and to the UN Agenda 2030 for sustainable development.

As regards the substance, Member States generally supported the five priorities identified in the “strategic engagement” staff working document: (i) equal economic independence for women and men; (ii) equal pay for work of equal value; (iii) equality in decision-making; (iv) dignity, integrity and ending gender-based violence; and (v) promoting gender equality beyond the EU.

In the Council Conclusions on gender equality of 16 June 2016, the representatives of governments asked the European Commission
for a stronger equality strategy, with better links to other strategies, notably Europe 2020, the European Semester, the Multi-Annual Financial Framework and the United Nations 2030 Agenda for Sustainable Development, whose goal on empowering all women and girls applies to the EU.

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ANTI-DISCRIMINATION DIRECTIVE

CONTENT

ANTI-DISCRIMINATION DIRECTIVE [ON HOLD]

CONTENT

LEGISLATIVE TRAIN 10.2016

7 AREA OF JUSTICE AND FUNDAMENTAL RIGHTS / UP TO €7BN 47/99
In 2008, the Commission presented a proposal for a Council Directive on implementing the principle of equal treatment outside the labour market, irrespective of age, disability, sexual orientation or religious belief, which aims to extend the protection against discrimination through a horizontal approach. The draft has been blocked in the Council, where unanimity is required, ever since then.

The European Parliament adopted its Opinion under the Consultation Procedure in a resolution adopted on 2 April 2009. In this Resolution, the European Parliament made a number of specific proposals, including:

- A specific provision outlawing "multiple discrimination" (Amendment 37);
- Prohibiting discrimination based on assumptions about a person's religion, beliefs, disability, age or sexual orientation or because of association with persons of a particular religion or belief, disability, age or sexual orientation (Amendments 38 and 41);
- Extending the prohibition of discrimination to the area of transport (Amendment 47).

Following the entry into force of the Lisbon Treaty, the proposal now falls under Article 19 TFEU: unanimity in Council, following the consent of the European Parliament.

In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament reiterated its call on Council to adopt the directive.

Commission President Juncker specifically mentioned in his Political Guidelines presented in July 2014 that he intended to maintain the proposal for a Directive and seek to convince national governments to give up their current resistance in Council. Indeed, in the framework of discussions in Council in June 2015, the Commission reiterated its support for the original proposal and maintained scrutiny reservations on any changes.

In Council, while emphasising the importance of the fight against discrimination, certain Member States have in the past questioned the need for the Commission’s proposal, which was seen as infringing on national competence for certain issues, and as conflicting with the principles of subsidiarity and proportionality.

The orientation debate in the EPSCO Council in December 2014 gave new impetus to the discussions. The discussions in the Council working party confirmed that there was continued broad support for the objective of the directive - and a lack of support for the idea of having enhanced co-operation instead.

Clear progress was made under the Latvian Presidency, particularly on the clarification of the scope of the proposal as well as the division of competences between the EU and its Member States. One Member State maintained a general reservation. Certain others continued to question the inclusion of social protection and education within the scope.

At its meeting on 7 March 2016, the EPSCO Council discussed issues of gender and LGBTI equality. The Council pointed out the relevance of Directive 2000/78/EC framework on equal treatment in employment and occupation, as well as the proposed anti-
discrimination directive, to lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. It mentioned the fact that the Council had been examining the anti-discrimination directive since 2008, but did not indicate any progress in the negotiation process.

At its meeting of 16-17 June 2016, the Council adopted a progress report on the anti-discrimination directive, which updates the information on Member States’ positions and reservations. It concludes that clear progress was made under the Dutch presidency, but that there is still a need for further work before the required unanimity can be reached. The outstanding issues include the disability provisions, the interplay between the Directive and the proposed European Accessibility Act, the overall scope (certain delegations being opposed to the inclusion of social protection and education), remaining aspects of the division of competences and subsidiarity and legal certainty regarding the obligations that would be established by the Directive.

In its Work Programme for 2016, the Commission listed the Anti-Discrimination Directive among the priority pending proposals in this area.

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- Council, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, 15705/14
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GENDER BALANCE ON BOARDS

CONTENT

In order to address the imbalance between women and men in economic decision-making at the highest level, the Commission, in November 2012, submitted a proposal for a Directive on gender balance among non-executive directors of companies listed on stock exchange.

Aiming to address the serious problem of women’s under-representation in economic decision-making at the highest level, the proposed directive would set a quantitative objective for the proportion of each gender on the boards of listed companies of 40% by 2020 (by 2018 in the case of public undertakings). This objective would not be a rigid quantitative quota obligation, which would result in sanctions if it is not reached. The companies would mainly be obliged to work towards this target, inter alia by introducing a fair and transparent board selection procedure for non-executive board members.

Companies which have not reached the 40% target would be required to continue to apply the procedural rules, as well as to explain what measures they intended to take in order to reach it. For Member States that choose to apply the objective to both executive and non-executive directors, a lower target (33%) would apply.
The current Commission is strongly committed to the proposed Directive. It underlines in its Work Programme for 2016 that the Directive should be adopted as a priority in 2016.

The European Parliament adopted its position, by a substantial majority, at first reading on 20 November 2013 (Rapporteurs: FEMM, MEP R. KRASTSA-TSAGARPOULO – JURI, MEP E. REGNER). In accordance with its previous support for the issue (resolutions from 2011 and 2012 calling for legislation to improve gender equality in business leadership), Parliament strongly supported legislative action in this area.

The European Parliament notably:

- backed the key objective that listed companies in the EU should aim to reach the target of having at least 40% of non-executive directors of the under-represented sex by 1 January 2020 at the latest (and by 2018 for public companies);
- went beyond the Commission’s proposal by calling for additional measures. These included: stronger penalties, such as exclusion from public tenders, for companies which failed to introduce transparent appointment procedures; the removal of exemptions for companies employing less than 10% of the under-represented sex; the extension of reporting to the EU’s own institutions and agencies; and an examination of whether the scope of the Directive should be extended to cover non-listed public companies;
- pointed out that, although the Directive would not apply to SMEs or micro-enterprises, Member States should support these companies and give them incentives to improve gender balance at all levels of management and on their boards;
- stressed that, in order to achieve gender equality in the workplace, companies should develop a gender-balanced model of decision-making at all levels, whilst taking steps to eliminate the gender pay gap and introducing flexible working conditions for all employees.

In an Initiative Report on a new post 2015 EU-Strategy on gender equality adopted on 9 June 2015, the European Parliament called on the Council to develop a common position on the draft directive as soon as possible. It asked for an update on progress in December 2015 in an oral question to the Council and subsequent debate.

Although there is a broad consensus across the EU in favour of taking measures to improve the gender balance on company boards, some Member States consider that binding measures at the EU level are not the best way of pursuing the objective and would prefer either national measures or non-binding measures at EU level. They take the view that the proposal does not comply with the principle of subsidiarity. Indeed, the national parliaments of DK, NL, PL, SE, UK, and one of the two chambers of CZ Parliament (Chamber of Deputies) submitted reasoned opinions within eight weeks from the submission of the Commission’s proposal, alleging that it did not comply with the principle of subsidiarity.

Under the Latvian Presidency of the Council of the EU (January-June 2015), the target date was revised so that Member States would have an additional twelve months to reach the quantitative objectives, i.e. until the end of 2020. The Council discussed the women on company boards draft directive at the Employment and Social Policy Council meeting on 18 June 2015, but was not able to reach a general approach. Discussions in the relevant working party of the Council confirmed Member States’ broad consensus on the need to
improve the gender balance on company boards. However, DK, DE, EE, HR, HU, SK, NL and UK formed a blocking minority, maintaining reservations on the Commission’s proposal.

The Luxembourg Presidency (July-December 2015) put a lot of effort into breaking the deadlock on the directive. It drafted a compromise text proposing a flexibility clause (Article 4b) that would allow Member States to pursue the aims of the directive by means of their own choice and to opt out of the provisions, on condition that they had already taken equally effective measures or come close to attaining the quantitative objectives set out in the directive. The proposal also further extended the target date to 31 December 2022. Despite these concessions, it was not able to achieve a general approach, considering notably Germany’s strong opposition to the text (even though a German domestic law, which has come into effect in 2016, foresees a quota of 30% of posts on supervisory boards of publicly listed companies to be held by women). The Council discussed the draft directive at the last meeting of the Employment, Social Policy and Health Council under the Luxembourg Presidency on 7 December 2015, but was not able to agree.

The draft directive is listed amongst the trio priorities of the Netherlands, Slovak and Maltese presidencies. At a meeting with members of the European Parliament’s Committee on Women’s Rights and Gender Equality on 28 January 2016, the Dutch education Minister stated that, given the blocking minority in the Council on the directive, the Presidency thought that it would not be wise to push the draft law further at that time. There is currently no qualified majority in the Council on this dossier.

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COMPLETION OF EU ACCESSION TO THE ECHR

CONTENT

Discussed since the late 1970s, the accession to the European Convention on Human Rights (ECHR) became a legal obligation under Article 6(2) of the Treaty of Lisbon. The purpose of the EU's accession to the ECHR is to contribute to the creation of a single European legal space, achieving a coherent framework of human rights protection throughout Europe.

The draft Accession Agreement of the EU to the ECHR between the 47 Member States of the Council of Europe and the EU was finalised on 5 April 2013. Asked by the Commission to deliver an opinion, pursuant to article 218(11) TFEU, on the compatibility of the draft Agreement with EU-law, the European Court of Justice in its opinion of 18 December 2014 identified problems and gave a negative opinion.

Referring to Protocol No. 8 relating to Article 6(2) of the TEU, the Court recalled that the accession agreement had to fulfil certain conditions so as, in particular, to make provision for preserving the specific characteristics of the EU and of EU-law as well as to ensure that accession does not affect the competences or the powers of the EU institutions. In that context, the Court concluded that the
accession was liable to upset the underlying balance of the EU and undermine the autonomy of EU-law.

It added that the advisory opinion mechanism foreseen by Protocol 16 to the ECHR would affect the autonomy and effectiveness of the preliminary ruling procedure provided for in the TFEU. Notably, the draft agreement excludes the possibility of bringing a matter before the Court of Justice in order for it to rule on a question of interpretation of secondary law, which adversely affects the competences of the EU and the powers of the Court.

Currently, solutions are being considered, which could imply a renegotiation of the agreement. Moreover, once a new draft agreement will have been negotiated, the EU-accession will also depend on the ratification, not only of the Member States, but also of the states party to the Convention. Furthermore, the consent of the European Parliament to the accession agreement (article 218(6)) is required.

In its 2016 Work Programme, the Commission announced that it will continue pursuing its work on the accession, taking ‘full account’ of the Opinion of the Court.

For the European Parliament, the principal benefit from the accession of the EU to the ECHR lies in the possibility of recourse by individuals against the action of the Union similar to that which they already enjoy against an action of the Member States. Moreover, in the Parliament’s view, accession to ECHR will constitute a step further in the process of European integration and will send a strong signal concerning the coherence between the Union and the Council of Europe's human rights system.

On 20 April 2016, the Parliament's Committee on Constitutional Affairs (AFCO) organised a hearing on "Accession to the European Convention on Human Rights (ECHR): stocktaking after the ECJ’s opinion and way forward" with the aim of exploring ways of relaunching the process of accession.

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Further reading:


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EU AGENCY FOR CRIMINAL JUSTICE COOPERATION (EUROJUST)

CONTENT

The role of the EU's Agency for Criminal Justice Co-operation (Eurojust) is to facilitate coordination and cooperation between national investigative and prosecutorial authorities in dealing with cross-border cases.

In July 2013, the European Commission put forward a proposal for a regulation on Eurojust based on Articles 85 TFEU. This proposal aims at creating a new governance model for the agency, as well as streamlining its functioning and structure; the new rules will also contribute to improving its operational effectiveness. The main changes proposed relate to:

- the distinction between the operational and management functions of the Eurojust's College,
- the setting up of an Executive Board, and
- new provisions on annual and multi-annual programming.

The Regulation would also increase the democratic legitimacy of Eurojust as the European Parliament and national parliaments would be more involved in the evaluation of agency's activities, as provided for in Article 85(1) TFEU.

At the same time as the Eurojust proposal, in July 2013, the Commission also issued a proposal for a Regulation on the establishment of a European Public Prosecutor's Office (EPPO) based on Article 86 TFEU, which is to have close links with Eurojust.

On 13 March 2015, the Council reached a General Approach on the Eurojust Regulation. However, the provisions on the Agency's relationship with the EPPO have been excluded from the General Approach, as there has not been sufficient advancement on the EPPO Regulation in the Council to date.

The issue is currently blocked in the European Parliament: the Committee on Civil Liberties has decided to withhold its position to await progress on the issue of the relationship with the EPPO. The reason behind this approach is because of the close link between the establishment of an EPPO Regulation and the functions of Eurojust. Thus, the Rapporteur considers that more clarity is needed as
to the respective roles of the two bodies. Along this line, in its April 2015 resolution on the EPPO proposal, the Parliament called for clarifications on the relations between Eurojust, the EPPO and OLAF to better differentiate their respective roles in the protection of the EU’s financial interests.

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DRUG PACKAGE – NEW PSYCHOACTIVE SUBSTANCES

CONTENT

The EU Drugs Strategy for 2013-2020 identifies the emergence and rapid spread of new psychoactive substances as an important development to be addressed, including through the strengthening of the existing EU legislation.
Therefore, in September 2013, the Commission proposed a "Drug Package", which includes two pieces of legislation, a directive and a regulation. These are intended to strengthen the EU's ability to respond to ‘legal highs’ – new psychoactive substances used as alternatives to illicit drugs such as cocaine and ecstasy:

- Directive on minimal provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking which amends the definition of "drug" included in a 2004 Council Framework Decision in order to take account of new psychoactive substances (Rapporteur: MEP T. JIMÉNEZ-BECERRIL BARRIO, EPP).

- Regulation on new psychoactive substances which aims at creating a more efficient system whereby the new psychoactive substances could be withdrawn immediately from the market and the risk they represent would be taken into account (Rapporteur: MEP J. PROTASIEWICZ, EPP).

In April 2014, the Parliament supported the two proposals. In a resolution on the proposed directive on minimal provisions in the field of illicit drug trafficking, it spoke for an inclusive strategy to prevent and reduce drug-related harm. The dissemination of evidence-based, public health information and early warnings to consumers would be integral parts of such strategy. Moreover, it provided for a possibility to criminalise new substances through delegated acts of the Commission.

In a resolution on the proposed regulation on new psychoactive substances, the European Parliament stated that the so-called “Early Warning System” for emerging substances should be maintained and further developed. This entails building up a ‘European Database on New Drugs’ containing data on the detection and identification of new psychoactive substances, adverse events associated with their use, and the involvement of criminal groups in the market. The Parliament further enhanced and clarified the respective roles of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. In the view of the Members of the EP, the relevant activities of these agencies should be adequately funded.

On 5 February 2015, the European Parliament adopted a mandate for entering into early second reading negotiations with the Council on both files.

The Council has not yet adopted a general approach.

Progress on the file has been slow and uncertain. The main issue, which has created delays in the start of the Trilogue negotiations, is the question of the legal basis for the proposal on new psychoactive substances. Whilst the Commission tabled the proposed draft rules on the basis of article 114 TFEU (internal market) – an approach also shared by the European Parliament – the Council considered article 168 TFEU (public health) to be more appropriate. Then more recently, Council favoured the use Article 83 TFEU (judicial cooperation in criminal matters) as legal base for the new rules.

Following a ruling by the European Court of Justice of April 2015 giving right to Parliament on the choice of the legal basis, Council has been considering the possibility of accepting to open negotiations on the basis of article 114.
In 2013, the Commission submitted a proposal establishing a European Public Prosecutor’s Office (EPPO). The legal basis and the rules for setting up the EPPO are laid down in Article 86 TFEU.

Under this provision, the proposed regulation is to be adopted in accordance with a Special Legislative Procedure: the Council is to decide unanimously after obtaining the consent of the European Parliament. If unanimity cannot be reached in the Council, the treaties provide that a group of at least nine Member States may undertake enhanced co-operation.
The EPPO would be responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences against the Union’s financial interests. It is supposed to exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences. Under Article 86 TFEU, the European Council may adopt a decision extending the powers of the EPPO to include serious crime having a cross-border dimension.

The proposed Regulation on the EPPO was accompanied by a proposal for a Regulation aimed at reforming Eurojust, with which the EPPO is to have close links.

On 25 February 2014, the European Parliament adopted an interim report on the proposed regulation. Yet, the newly elected Parliament decided to present a second interim report, which was voted in the Committee on Civil Liberties on 9 March 2015, just ahead of the 12-13 March Justice and Home Affairs Council meeting. The 2nd Interim report was adopted by the Parliament Plenary on 29 April 2015.

In its resolution, the European Parliament expressed itself in favour of the establishment of a strong and fully independent EPPO, recommending among other things:

- The appointment of European Prosecutors by common accord of Council and Parliament on the basis of a shortlist drawn up by the Commission, following an evaluation by an independent panel of experts;
- A clear division of jurisdiction between the EPPO and national authorities:
  - The extension of the powers of the EPPO to offences other than those affecting the EU’s financial interests
  - A hierarchical structure (as proposed by the Commission), rather than a collegiate one being considered by the Council;
  - The leading role of the Chambers, to which cases would be allocated on the basis of predetermined and objective criteria;

In Council, there is no overall agreement at this stage.

Under Latvian Presidency, a broad conceptual support could be reached on the first 16 articles of the proposal. These chapters cover the most important provision relating to the functioning of the Office, including rules on the status, structure and organisation of the Office, on the procedure for investigations, prosecutions and trial proceedings and on judicial review. The Council has notably agreed on the principle of a collegially structured EPPO with prosecutors originating from the Member States.

Further progress has been achieved under Luxembourg Presidency. On 8-9 October 2015, the JHA Council provisionally agreed on articles 24-37 of the draft EPPO regulation. They establish rules notably for the conduct of cross-border investigations for criminal prosecution before national courts and the procedural rights of suspected and accused persons. Yet, articles 34 and 36 on transactions and judicial control are exempted from the agreement.

Then, at its meeting on 3-4 December 2015, the Council provisionally agreed on articles 17-23 and part of article 28a of the draft
regulation. Articles 17, 19, 20, 22a and 28a (2a, 2b and 2c) cover issues related to the competence and exercise of the competence of EPPO. Article 18, 22 and 23 include important provisions on the territorial and personal competence of the office, as well as on the initiation and conduct of investigations.

The Dutch Presidency has continued working on the proposal, with some progress achieved at technical level, mainly on the articles concerning external relations, financial staff and general provisions.

In its Work Programme for 2016, the Commission listed the EPPO Council Regulation among the priority pending proposals in this area.

References:

• European Commission, Proposal for Council Regulation on the establishment of the European Public Prosecutor’s Office, COM(2013) 534
• European Parliament, Resolution of 29 April 2015 on the proposal for a Council regulation on the establishment of the European Public Prosecutor’s Office, 2013/0255(APP)
• EP Legislative Observatory, Procedure file of Regulation on European Public Prosecutor’s Office, 2013/0255(APP)

Further reading:

• European Parliament, EPRS, Setting up the European Public Prosecutor’s Office, At a glance, September 2015

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PROTECTION OF THE UNION’S FINANCIAL INTERESTS (PIF DIRECTIVE)

CONTENT

The proposal submitted by the Commission in July 2012 on fight against fraud to the Union’s financial interests by means of criminal law aims at strengthening administrative and criminal law procedures to fight against fraud to the Union’s financial interests.

The objective of the so-called PIF directive is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds, thereby increasing the protection of EU taxpayers’ money.

The proposed directive provides common definitions of a number of offences against the EU budget, such as fraud, and other fraud related crimes such as active and passive corruption, the misappropriation of funds, money laundering and minimum rules on prescription periods, within which the case must be investigated and prosecuted, as well as minimum rules on sanctions, including imprisonment for the most serious cases to strengthen the deterrent effect. These common rules should help to ensure a level playing field and improved investigation and prosecution across the EU.

The Council adopted a general approach at first reading on 6 June 2013. But, following the discussions on the possible inclusion of fraud with Value Added Tax (VAT) in the draft PIF-Directive, the Dutch Presidency invited the Council at its June 2016 meeting to elaborate a new proposal (see below).

The European Parliament adopted its position on 16 April 2014. The EP has repeatedly called for an integrated approach towards fraud, tax avoidance and corruption, as well as for strengthening the multidimensional cooperation and coordination between the Member States and the EU institutions.

In the report issued on 25 March 2014, the European Parliament’s Committees on Budget and Civil Liberties, Justice and Home Affairs expressed concern about the existing differences in the sanctioning of fraud between the Member States’. National criminal proceedings seem neither effective nor equivalent, and the degree of successful prosecution varies from Member State to Member State. Thus, the rapporteurs pointed to the necessity of providing a strong and coordinated response to fraud and any other illegal
activities affecting the financial interests of the Union.

In this respect, the rapporteurs supported the establishment of a level of minimum maximum criminal sanctions to ensure a degree of consistency across the EU on sanctions concerning financial fraud. Such a step, would in the view of the Committee, also discourage forum shopping on the part of money-launderers and fraudsters.

The Committee report also strongly supported the Commission on the inclusion of VAT fraud into the scope of the directive. This point is closely linked to the negotiations on the establishment of the EPPO’s Office, as the scope of the PIF directive will determine the scope of the EPPO’s mandate.

Six political Trilogues have been held to date (the latest one on 2 June 2015). A few substantive issues remain open: i) on whether to include VAT-fraud into the scope of the Directive, an issue strongly supported by the Commission and the Parliament, but which most of the Member States oppose. The aim is to enhance the fight against large scale VAT fraud, in particular the so-called VAT-carousel fraud.; ii) the definition of fraud (Article 3); iii) the inclusion or not of a specific provision on public procurement fraud, iv) the level of sanctions provided and the definition of serious offences: the EP wants punishments for fraud offenses to be higher, including imprisonment, and similar throughout the EU, whilst Member States are reluctant to change their criminal codes, and v) define the link between the possible VAT provision in the Directive and the establishment of a European Public Prosecutor’s Office.

The key issue at the latest Trilogue was indeed the question of the inclusion of some aspects of fraud with VAT within the scope of the directive. The Council has come back to the issue of the possible inclusion of VAT into the scope of the directive at the June 2016 Council meeting. During the meeting Ministers reflected in particular on the issue of the possible inclusion of some aspects of fraud with VAT within the scope of the directive. After the debate, the Presidency took note of the positions expressed by Member States, and concluded that, as things stood there was neither consensus on the issue of the inclusion of VAT in the scope of the directive, nor on the modalities of a possible inclusion. For this reason, efforts to find a solution, with probably the need for a revised textual basis for work, would continue under the incoming Slovak Presidency.

References:

- European Parliament, Legislative resolution of 16 April 2014 on the proposal for a directive on the fight against fraud to the Union’s financial interests by means of criminal law, first reading, 2012/0193(COD)
- EP Legislative Observatory, Procedure file of Directive on Fight against fraud to the Union’s financial interests by means of criminal law, 2012/0193(COD)

Further reading:

In 2014, a Directive (2014/42/EU) on the freezing and confiscation of instrumentalities and proceeds of crime in the EU was adopted. According to this directive, Member States should enable the confiscation of such instrumentalities and proceeds (or property of the same value), subject to a final conviction for a criminal offence.

However, it is often very difficult to establish a direct link between specific proceeds and specific crimes. Moreover, in some cases, there is also a risk of criminal assets being dissipated. Therefore, some Member States allow for the confiscation of property without a
prior criminal conviction, by decision of a criminal or a civil court. There are no common EU rules and substantial differences exist in this respect between EU Member States.

In a resolution on organised crime, corruption, and money laundering from June 2013, the Parliament invited Member States to consider to implement models of civil law asset forfeiture. Such possibility was to be restricted to cases where, on the balance of probabilities and subject to the permission of a court, it could be established that assets result from or are used for criminal activities. The EP expressed the view that preventive models of confiscation could be foreseen following a court decision, in compliance with constitutional national guarantees and without prejudice to the right of property and the right of defence.

Following up on a request by the co-legislators, the Commission announced in the framework of the European Agenda on Security presented on 28 April 2015 that it would issue a feasibility study on common rules for non-conviction based confiscation of property derived from criminal activities.

References:

- European Parliament, Resolution of June 2013 on organised crime, corruption, and money laundering, 2012/2117(INI)

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GENERAL DATA PROTECTION REGULATION. MOST OF MEMBER STATES HAVE UPDATED THEIR LEGISLATION

CONTENT

Almost five years after the European Commission’s proposal, the long-awaited reform of the data protection framework was adopted in April 2016.
The reform package on data protection (DP), presented by the European Commission in January 2012, aimed at strengthening citizens’ rights uniformly while reducing burdens for companies and public authorities as well as adapting rules to the challenges of the digital era. The package includes a general regulation (GDPR) and a Directive applying data protection principles to the processing of personal data for police and judicial cooperation in criminal matters (see also file ‘Protection of data processed for criminal justice purposes’): hence, it takes a comprehensive approach in order to ensure harmonised conditions for a high level of data protection, as strongly urged by the European Parliament.

The central component of the data protection package is the Regulation setting out ‘a general EU framework for personal data protection: processing and free movement of data (General Data Protection Regulation)’. The goal is a stronger and more coherent data protection framework at EU-level, backed by strong enforcement procedures. Intended as a wide-ranging and far-sighted reform to improve and harmonise data protection in the digital age, the regulation updates most of the existing rules and introduces new ones.

According to Opinion 3/2015 of the European Data Protection Supervisor (EDPS), established principles of data protection should be maintained and applied in more dynamic, innovative, and therefore more effective, ways. The GDPR promises to improve both the internal market dimension and protection of citizens and consumers, by fostering individuals’ trust in the Digital Single Market and by establishing legal certainty and consistency to make industrial investment in the EU more attractive.

The European Parliament adopted its first reading position on 12 March 2014, after the Civil Liberties, Justice and Home Affairs (LIBE) Committee agreed in 2013 on a heavily amended text. The EP stressed, in particular, the nature of data protection as fundamental right, so that “the principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms”. The numerous amendments introduced to the original text of the proposal aimed at effectively allowing the data subject to exercise his or her rights and at increasing accountability of those who process data, while reducing unnecessary burdens for companies and adapting rules and procedures to the technological development.

The Council adopted a general approach on 15 June 2015.

On 15 December 2015, a political agreement was found in Trilogue negotiations.

The Council adopted the data protection package on 8 April 2016.

The European Parliament approved it in Plenary on 14 April 2016.

Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC was published in the Official Journal on 4 May 2016, together with the Directive on protection of personal data processed for criminal purposes, as well as and the EU-PNR Directive. It entered into force
twenty days later.

Member States have two years to apply the Data Protection Regulation, which will enter into full application the 25 May 2018.

The timeframe should give Member States and companies sufficient time to adapt to the new rules.

The regulation would enhance the level of data protection for individuals, and increase business opportunities. The new rules include provisions on:

- The right to be forgotten", which has been clarified and strengthened; individuals have the right, under certain conditions, to ask that search engines remove links leading to personal information about them;
- "clear and affirmative consent" to the processing of private data by the person concerned;
- a right to transfer personal data to another service provider (data portability): for instance, it will be easier for people to transfer their personal data between service providers such as social networks;
- the right to know when your data has been hacked (and corresponding obligation for companies to notify data breaches);
- the right to object to profiling;
- increased transparency, ensuring, for instance, that privacy policies are explained in clear and understandable language;
- stronger enforcement and fines up to 4% of firms' total worldwide annual turnover, as a deterrent to breaking the rules;
- data protection by design and by default, i.e. embedding data protection values through innovative methods and technical solutions from the beginning, is also an essential principle of the new law.

Businesses are expected to benefit greatly from the new rules. The reform will boost legal certainty for businesses, with a single set of rules across the EU. Thanks to the one-stop-shop, companies will only have to deal with one single supervisory authority – rather than the 28. This, together with the simplifications brought by a single Regulation (directly applicable), is expected to save around €2.3 billion every year.

Non-EU companies, when offering their services to customers in the EU, will have to apply the same rules as EU companies, thus creating a level playing field. This means that personal data protection is guaranteed regardless of where data are stored, processed or sent – including outside the EU, as often happens on the internet.


References:


• Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

• EP Legislative Observatory, *Procedure file of Regulation on Personal data protection: processing and free movement of data (General Data Protection Regulation)*, 2012/0011(COD)

• European Parliament, Committee on Civil Liberties, Justice and Home Affairs *Report on the proposal for a Regulation on a general data protection*, 2012/0011(COD)

**Further reading:**

• European Parliament, IPOL, *Big data and smart devices and their impact on privacy*, 2015


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MATRIMONIAL PROPERTY REGIMES AND PROPERTY CONSEQUENCES OF REGISTERED PARTNERSHIPS - ENHANCED COOPERATION

CONTENT

In March 2011, the Commission submitted two proposals for Council Regulations aimed at determining jurisdiction and applicable law for matrimonial property regimes and the property consequences of registered partnerships. The Commission estimates that there are about 16 million couples in the EU who live in a cross-border situation.

These proposals were intended to complement the framework of EU instruments for judicial cooperation in the area of family law. The free circulation of judgments in this area is to be ensured in a similar way as for judgments recognised and enforced under the succession regulation. The regulations would leave untouched the underlying institutions of marriage and partnership, which remain matters that are defined by the national laws of the member states. There is no obligation for a member state whose law does not know the institution of registered partnership to provide for it.

The legal basis for the proposed Council Regulations was Article 81(3) TFEU. The proposals concern judicial cooperation in civil matters covering 'aspects relating to family law'. This legal basis stipulates that measures are adopted by the Council acting unanimously after consulting the European Parliament.

The Parliament adopted its legislative resolutions on both issues on 10 September 2013 (Special Legislative Procedure - Consultation).

In Council, despite progress at technical level, progress was slow. For most Member States, it was key to adopt both proposals as a package so as to ensure equal treatment of couples throughout the Union. However, some Member States had difficulties given the politically sensitive nature of the proposals. These difficulties were mainly linked to the fact that the institutions of same-sex marriages and/or registered partnerships were not known in a number of Member States.

Consequently, a reflection period had been opened at the end of the Italian Presidency, with a commitment to a re-examination of the matter at the latest by the end of 2015.
On 3 December 2015, the Council concluded that it would not be possible, within a reasonable period of time, to reach a unanimous agreement on the original Commission proposal.

Between December 2015 and February 2016, 17 Member States indicated to the Commission that they would like to establish enhanced cooperation in this area. In March 2016, the Commission tabled two proposals: one for matrimonial property and another for property of registered partnerships. The texts are not identical to the original 2011 proposals, but take on board many amendments suggested by the European Parliament in 2013, as well as the political agreement reached in Council in November 2015.

More specifically, whilst they provide for automatic recognition of judgments, enforcement is not automatic (as under the Brussels Ia Regulation), but requires a declaration of enforceability in the Member State of enforcement. This can be refused, inter alia, if the decision violates the public policy of the latter state.

Another important modification is the introduction of the principle of unity of legal regime applicable to property aspects of registered partnerships, regardless of where the property is located. Both proposals allow the couple to choose the applicable legal regime: married couples may opt for the law of their nationality or habitual residence, whilst registered partners may also choose the law of the country where they registered their partnership.

Following Parliament’s consent, the decision to authorise enhanced cooperation was adopted unanimously on 9 June 2016, with 18 Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden) subsequently reaching a general approach within Council. Estonia announced its intention to accede to the enhanced cooperation at a later date.

Within the European Parliament, the proposals were referred to the Committee on Legal Affairs, with Jean-Marie Cavada (ALDE, France) as rapporteur for both.

The JURI reports on both proposals were adopted on 16 June 2016. They put forward one single amendment (which is identical in both regulations), namely the introduction of a new definition of ‘Member State’ so as to cover only Member States participating in the Matrimonial Property Regulation; the definition is in line with the one included in Article 3(1) of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III).

Furthermore, the reports noted that:

- these proposals were clearly in the interest of the EU and of its international couples;
- they would make it possible to put an end to many cases of confusion and legal uncertainty;
- there was no need for any substantive amendments.
On 23 June 2016 the Parliament approved the Commission proposal.

The final text was adopted on 24 June 2016 by the Council, after consulting the Parliament. It is now awaiting publication in the Official Journal.

References:

- EP Legislative Observatory, *Procedure file of Regulation on Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes*, 2016/0059(CNS)
- Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters *(Brussels Ia Regulation)*
- EP Legislative Observatory, *Procedure file of Regulation on Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of property consequences of registered partnership*, 2016/0060(CNS)

Further reading:


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After almost five years, the co-legislators adopted the Directive on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime on 27 April 2016.

The aim of the Directive, proposed by the Commission in 2011, was to enhance the EU's internal security and to harmonise national laws by setting-up an EU-system to collect flight passenger data. Consequently, all air carriers flying on routes covered by the Directive have to provide PNR data to Member States' law enforcement authorities.

The draft Directive was first rejected by the Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) in April 2013 over privacy concerns. Members of the EP questioned the necessity and proportionality of the proposed EU scheme, and the length of the data retention period. Furthermore, following the annulment of the data retention Directive by the ECJ, the EPP stressed the need to assess the Court of Justice’s ruling before taking any new steps. Also for reasons of privacy concerns, the Parliament referred the EU-Canada PNR Agreement to the European Court of Justice.

However, the proposal has gained momentum following the terror attacks on European soil, as well as concerns over threats to the EU's internal security posed by Europeans returning home after fighting in conflict zones for terrorist purposes. Convinced of the EU-PNR's potential added value for EU counter-terrorism policy, the European Council called several times on Parliament to swiftly adopt its position on the issue and to finalize work with the Council.

In a Resolution on anti-terrorism measures adopted on 11 February 2015, the Parliament committed itself to work towards the finalisation of an EU PNR Directive by the end of 2015. At the same time, it encouraged the Council to make progress on the Data Protection package, in order for the trilogues on both the EU PNR Directive and Data Protection Package to take place in parallel. In further resolutions on the European Agenda on Security (9 July 2015) and on the prevention of radicalisation (25 November 2015), the Parliament reiterated its commitment but also stressed that the PNR Directive should comply with fundamental rights and data protection standards and be free from any discriminatory practices. Emphasis was also put on the necessity to include mechanisms for the exchange of information and cooperation between Member States in any new security tools, such as the PNR.

A revised European Parliament report was presented in the LIBE Committee in February 2015. More than 800 amendments were introduced and views on the proposal remained quite divergent as regards in particular privacy, necessity and proportionality issues. After several debates, the LIBE Committee adopted the final report in July 2015.

In its report, the LIBE Committee adopted following recommendations:

- only non-EU flights should be covered by the directive;
• the use of PNR should only be justified for a narrow list of serious crimes, such as trafficking in human beings, sexual exploitation of children, drug trafficking, trafficking in weapons, munitions and explosives, money laundering and cybercrime, as well as terrorist offences;

• the directive should include strong data protection safeguards, including obligation to appoint a data protection officer in each Passenger Information Unit (PIU), prohibition to use sensitive data, stricter conditions for transfer of data to third countries and obligation to inform passengers about collection of their data and their rights;

• The data retention period would be of 30 days and then up to five years in ‘masked out’ form;

• PNR data should be shared between Member States and with Europol, with a possibility to create a one-stop shop for information exchange.

During the Trilogue negotiations which followed, the EP negotiators sought to ensure that strict personal data protection safeguards are included and that the draft complies with the proportionality principle.

The Parliament and the Council agreed on a compromise text in December 2015. Most EP recommendations, namely on data protection safeguards, were taken into account. The issue of the data retention period was one of the most controversial aspects, with the Council wishing to keep ‘unmasked’ data for two years. The EP managed to strike a compromise on a retention period of six months. Member States will be also allowed (but not obliged) to include intra-EU flights. Moreover, the Parliament insisted on including a review clause into the agreed text: the Commission will have to carry out a review of the EU PNR directive two years after its transposition into national laws and could present a proposal to amend it. The Directive was finally adopted in early April 2016.

Directive (EU) 2016/681 of 27 April 2016 was published in the Official Journal on 4 May 2016. Member States have two years to transpose the directive.

References

• Directive (EU) 2016/681 of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

• European Parliament, Resolution of 11 February 2015 on anti-terrorism measures, 2015/2530(RSP)


• European Parliament, Resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, 2015/2063(INI)

• EP Legislative Observatory, Procedure file of Directive on Use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, 2011/0023(COD).

Further reading:

Whilst the Regulation may fall short of expectations as to the extent of a major post-Lisbon reform, it improves the Agency's
governance, including detailed rules on parliamentary scrutiny, and sets out a robust data protection regime for Europol, in particular to guarantee that the data protection supervisor of Europol has full independence. The new framework also enhances Europol's analytical capabilities, to trigger operational cooperation between the Member States. Finally, it aligns Europol's governance with the general guidelines applicable to agencies.

Originally, the Commission also proposed to merge Europol and the European Police College (CEPOL), but this proposal was rejected both by the Council and by the European Parliament.

The Parliament adopted a first reading position on 25 February 2014. It sought to enhance its own role as well as the role of national parliaments in the scrutiny of Europol. In this vein, it proposed setting up a “Joint Parliamentary Scrutiny Group.”

The Council adopted a General Approach on 5 June 2014, opening the way for Trilogue negotiations.

The EP Committee on Civil Liberties decided on 24 September 2014 to enter into early second reading negotiations (Rapporteur: MEP A. DÍAZ DE MERA GARCÍA CONSUEGRA).

On 26 November 2015, under Luxembourg Presidency, an informal agreement was reached in Trilogue.

During the Trilogues, the main issues under discussion were:

- The parliamentary scrutiny, notably regarding the Joint Parliamentary Scrutiny Group composed of the Members of the European Parliament and national parliaments;
- Data protection, including the issue of direct transfers of data from private parties;
- Data protection supervision, in particular the issue of cooperation between the European Data Protection Supervisor and national data protection authorities, and
- The governance of the Agency (Executive Board).

Throughout the negotiation process, the European Parliament and the Council were both against a significant increase in Europol’s powers. The Parliament argued in favour of stricter data protection rules (in line with the proposed Data Protection Package), new rules on governance, and improved oversight by the European and national parliaments. On 26 November 2015, under Luxembourg Presidency, an informal agreement was reached in Trilogue.

The EP LIBE Committee endorsed the deal on 30 November 2015.

The Council adopted its position at first reading on 10 March 2016.

The European Parliament adopted the text in second reading on 11 May 2016 approving, unamended, the Council position at first
Regulation (EU) 2016/794 was published in the Official Journal of 24 May 2016. It entered into force on 13 June 2016 and will take effect in all EU Member States as of 1 May 2017.

References:

- EP Legislative Observatory, Procedure file of Regulation on European Union Agency for Law Enforcement Cooperation (Europol), 2013/0091(COD)

Further reading:

- European Parliament, EPRS, Updated rules for Europol, At a glance, May 2016

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PRESUMPTION OF INNOCENCE - PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

CONTENT

As a follow-up on the roadmap for procedural rights foreseen in the Stockholm Programme, in November 2013, the Commission presented a package of proposals on strengthening the procedural safeguards for persons accused in criminal proceedings. In the
view of the Parliament – presented e.g. in the 2014 resolution on the mid-term review of the Stockholm Programme – the improvement of procedural rights in criminal proceedings was to constitute a core priority in the new legislature in the field of justice.

One element of the package is the draft directive strengthening certain aspects of the presumption of innocence. It aims to enhance the right to a fair trial in criminal proceedings by laying down minimum rules to make sure that the right to be presumed innocent until proven guilty is respected for throughout the EU. The new rules also supposed to contribute to the strengthening of the Member States' trust in each other's criminal justice systems.

The Council reached a General Approach on the draft directive on 5 December 2014.

The European Parliament Committee on Civil Liberties voted a report and a mandate to start negotiations with Council on 31 March 2015. The report removed the clause allowing reversal of the burden of proof which, it stressed, must always rest with the prosecution. It strengthened the formulation of the rights not to incriminate oneself, not to cooperate and to remain silent, stating that any evidence obtained in violation of these rights should be declared inadmissible. Moreover, it expressly prohibited compelling or forcing individuals to make statements or answer questions. Members extended the scope of the directive, making it applicable not only to criminal proceedings, but also to similar proceedings of a criminal nature and not only to natural, but also to legal persons (when national systems allow such criminal charges). Disclosing to the media information about ongoing proceedings which could undermine the presumption of innocence would be prohibited. Furthermore, Member States should ensure appropriate presentation of the person so as not to create an impression of guilt. Additional restrictions were introduced for trials in absentia, and express reference was made to individuals becoming suspects or accused persons during questioning.

In October 2015, the Luxembourg Presidency and the European Parliament reached agreement "ad referendum" on the final compromise text of the draft Directive on the Presumption of innocence.

The European Parliament approved the proposed directive on 20 January 2016.

The Council adopted the directive on 12 February 2016.


Member States will have two years after the publication of the directive to bring into force the laws, regulations and administrative provisions necessary to comply with it.

The adoption of this Directive is an important step in the creation of a European judicial area. The directive will strengthen the rights of suspects and accused persons in the EU by setting common minimum standards, which will govern the basic rights of a fair trial. It will also strengthen mutual trust and confidence between the different judicial systems of the Member States and will facilitate the mutual recognition of decisions in criminal matters.
The UK and Ireland have opted out of the directive, whilst Denmark has a blanket opt-out for justice and home affairs legislation.

References:

- Directive (EU) 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
- EP Legislative Observatory, Procedure file of Directive on Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial, 2013/0407(COD)

Further reading:

- European Parliament, EPRS, Strengthening the presumption of innocence in the EU, At a Glance, January 2016
- European Parliament, EPRS, Strengthening aspects of the presumption of innocence and the right to be present at trial in criminal proceedings, Initial Appraisal of a European Commission Impact Assessment, March 2014

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As a follow-up on the roadmap for procedural rights foreseen in the Stockholm Programme, in November 2013, the Commission presented a package of proposals on strengthening the procedural safeguards for persons accused in criminal proceedings. The key aim of the draft directive on procedural safeguards for children suspected or accused in criminal proceedings was to make sure that they get a fair trial and are assisted by a lawyer at all stages of criminal proceedings in any EU country.

Each year, an estimated one million children come into formal contact with the police and judiciary in the EU (i.e. 12% of the total EU population facing criminal justice). However, their legal protection varies from country to country. Due to these disparities, in practice, many children do not have access to a lawyer in the EU. The directive seeks to provide additional safeguards to those that already apply to suspects and accused adults.

On 5 December 2014, the Council reached a General Approach on the proposed directive, which served as the basis for negotiations with the Parliament.

The Parliament Committee on Civil Liberties adopted a report (Rapporteur: Caterina Chinnici, S&D, Italy) and a mandate for negotiations on 5 February 2015. Amendments in the report mainly strengthened or expanded the rights of the children, including extending the scope to accused persons under 21 relating to crimes allegedly committed when they were children, further limitations to deprivation of liberty and effective remedies under national law in the event of a breach of the child’s rights. Moreover, the Members of Parliament inserted a provision on the mandatory assistance by a lawyer. Exceptions to this right may only be made if it is considered disproportionate in the light of the circumstances of the case, or in exceptional cases, at the pre-trial stage, given the child’s best interest.

In December 2015, the Parliament and the Council reached an informal agreement in Trilogues.

On 16 December 2015, the Coreper approved a compromise text.


The Council adopted it on 21 April 2016.

Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings was published in the Official Journal on 21 May 2016.

References:

- Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal
proceedings


**Further reading:**


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**PROTECTING PERSONAL DATA PROCESSED FOR THE PURPOSES OF POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS**

**CONTENT**

Alongside the General Data Protection Regulation (see file ‘General Data Protection Regulation’), the Commission presented in January 2012 a proposal for a Directive applying data protection principles to the processing of personal data for police and judicial cooperation in criminal matters, and the free movement of that data.

The aim of the new rules is to improve and facilitate the common work of police forces in exchanging information, and help fight crime more effectively. The Directive sets out standards for the processing of personal data of people who are under investigation or have
been convicted, when authorities exchange files, either nationally or transnationally, notably general principles on the purpose of processing data, the length of data retention and the rights of the people concerned.

The Directive replaces Framework Decision 2008/977/JHA, which was limited to the processing of data transmitted between authorities of different Member States, and thus not including domestic data. The directive would contribute to building an Area of Freedom, Security and Justice with a high level of data protection, in accordance with the EU Charter. In particular, processing of data for law enforcement must comply with the principles of necessity, proportionality and legality, with appropriate safeguards for individuals. Supervision should be ensured by independent national DP authorities, and effective judicial remedies must be provided.

The European Parliament has put emphasis on the Package approach, wanting both the General Data Protection Regulation and the Directive to be dealt with in parallel. It also insisted on the mandatory presence of a Data Protection Officer within the competent authority to monitor all data transfers, as well as on an impact assessment to be carried out in cases when data processing entails high risk for a person’s rights and freedoms. Obligations as regards data protection by Design and by Default (e.g. pseudonymisation and data minimisation) should also be imposed.

Notification of a data breach to the supervisory authority should also be foreseen.

In its Opinion 3/2015, the Article 29 Working Party (WP29) insisted on the importance of ensuring the necessary consistency between both texts of the data protection package (The GDP Regulation and this Directive), also in light of the recent CJEU judgments.

The Parliament adopted its first reading position on 12 March 2014. It adopted several amendments to the Commission proposal, pointing out, among other things:

- the importance of guaranteeing a consistent and high level of protection of the personal data of individuals and of facilitating the exchange of personal data between competent authorities of Members States in order to ensure effective judicial co-operation in criminal matters and police cooperation;
- the need for consistent and homogenous application of the rules for data protection throughout the Union, which requires strengthening the rights of data subjects and the obligations of those who process personal data; but it also also equivalent powers for monitoring and ensuring compliance with the rules in the Member States (i.e. powers of supervisory authorities);
- the applicability of core data protection principles also to the data processed in the police and judicial cooperation sector, i.e., lawfulness, fairness and transparency in relation to the individuals concerned. In particular, the specific purposes for which the data are processed should be explicit, legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to the minimum necessary for the purposes for which the personal data are processed. Time limits should be established by the controller (i.e. the competent public authority) for erasure or periodic review;
- the need to ensure that personal data are not processed for purposes incompatible with the purpose for which they were collected except in specific cases where such processing is necessary for compliance with a legal obligation, or in order to protect the vital interests of a person or for the prevention of an immediate and serious threat to public security. The fact that data are processed for a law
enforcement purpose does not necessarily imply that this purpose is compatible with the initial purpose. The concept of compatible use is to be interpreted restrictively;

- the lawfulness of processing, given only if and to the extent that processing is based on Union or Member State law;
- the need to limit the processing of genetic data only to establish a genetic link within the framework of adducing evidence, preventing a threat to public security or preventing the commission of a specific criminal offence;
- the limitation of measures based on profiling: the EP introduced a definition of profiling as any form of automated processing of personal data intended to evaluate certain aspects relating to a person or to analyse or predict in particular that person’s performance at work, economic situation, location, health, personal preferences, reliability or behaviour;
- the related right of every person not to be subject to a measure which is based on partially or fully profiling by means of automated processing. Automated processing of personal data intended to single out a data subject without an initial suspicion that the data subject might have committed or will be committing a criminal offence shall only be lawful if and to the extent that it is strictly necessary for the investigation of a serious criminal offence or the prevention of a clear and imminent danger, established on factual indications, to public security, the existence of the State, or the life of persons. Such processing should in no circumstances contain, generate, or discriminate based on special categories of data;
- the conditions for data transfer to a third country, that should only take place if this specific transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the controller in the third country or international organisation is a public authority competent within the meaning of this Directive. A transfer may take place in cases where the Commission has decided that the third country or international organisation in question ensures an adequate level of protection, or where appropriate safeguards have been adduced by way of a legally binding instrument. Data transferred to competent public authorities in third countries should not be further processed for purposes other than the one they were transferred for.
- the conditions for further onward transfers from competent authorities in third countries, to which personal data have been transferred, should only be allowed if the onward transfer is necessary for the same specific purpose as the original transfer and the second recipient is also a competent public authority. Further onward transfers should not be allowed for general law-enforcement purposes.
- this directive shall not preclude Member States from providing higher safeguards than those established in this Directive.

The Council agreed its negotiating position on the directive on 9 October 2015. This agreement enabled the Luxembourg presidency to start discussions with the European Parliament also on this part of the data protection package.

The draft directive, which had been blocked in Council for almost two years, was discussed at the Informal JHA Council in January 2015. The central issues were i) the subject matter and objectives in Article 1(1) and how to delimit these in relation to the General Data Protection Regulation; 2) the scope, and notably, the bodies for which the Directive should be applicable.

On 15 December 2015, a political agreement was found in Trilogue negotiations.

The Council formally adopted its position at first reading on 8 April 2016.

The agreement included the following points:

- Broader scope of application: In addition to covering activities aimed at preventing, investigating, detecting and prosecuting criminal offences the new directive has been extended to cover the safeguarding and prevention of threats to public security.
- Protection of rights: To protect the data subject’s rights, the new directive foresees that a data protection officer is appointed to help the competent authorities to ensure compliance with the data protection rules.
- Monitoring and compensation: The rules are aligned with the text of the Regulation in order to ensure that, in broad terms, the same general principles apply. In addition, the rules on the supervisory authority are to a large extent similar because the supervisory authority established in the general data protection regulation can also deal with matters falling under the directive. The new directive would also grant data subjects the right to receive compensation if they have suffered damage as a consequence of a processing that has not respected the rules.

It should be also underlined that the EP had linked progress in Council on the Data Protection Package with progress on the EU PNR Directive (see our file EU PNR Directive) - requiring airlines companies to collect and share passenger data for crime-prevention and investigation. In order to ensure a comprehensive and coherent approach on data protection, the EU PNR has been adopted on the same date as the DP reform package.

Directive (EU) 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, was published in the Official Journal of 4 May 2016, together with the General Data Protection Regulation.

Member States have two years to transpose and implement the directive.

References:

- European Parliament, Legislative resolution of 12 March 2014 on the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, first reading, 2012/0010(COD)
- Directive (EU) 2016/680 of 27 April 2016 on personal data protection in criminal justice of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data
- EP Legislative Observatory, Procedure File of Directive on Personal data protection: processing of data for the purposes of
In June 2016, the co-legislators adopted a Regulation aimed at promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union. It was published, as Regulation 2016/1191, in the Official Journal of the EU (L 200) on 26 July 2016. It entered into force on 15 August 2016 and will apply from 16 February 2019.

The new rules, proposed by the Commission in 23 April 2013, are designed to simplify the requirements for cross-border use and acceptance of certain public documents in the European Union. The aim is thereby to promote the free movement of citizens and a well-functioning Single Market for EU businesses.
Mutual recognition leaves the legal system of the Member States unchanged, but reduces the financial and bureaucratic burdens, as well as legal obstacles for citizens, families and businesses exercising their Treaty freedoms.

The Legal Affairs Committee adopted its report on 10 January 2014. The JURI Committee proposed amendments to the Commission proposal aimed at:

- extending the scope of the simplification of the acceptance of public documents to a larger number of categories, including: identity documents, certificates relating to educational attainment or disability, and tax and social insurance document;
- making authorities accept a certified or uncertified copy of a public document issued by the authorities of other Member States or by EU authorities, instead of only the original copy;
- foreseeing that, in cases when an uncertified copy of such a public document is submitted with a view to the entry of a legal fact or legal transaction in a public register, for the correctness of which public financial liability exists, the authority concerned may also require the original or a certified copy of that document to be submitted; in those cases, the choice would be at the discretion of the person submitting it, in cases where there is no reasonable doubt concerning the authenticity of the copy;
- foreseeing, as a general rule, the acceptance of uncertified translations;
- ensuring that authorities accept public documents submitted to them, when they have been issued by authorities of another Member State or by Union authorities without legalisation or an apostille.
- introducing multilingual standard forms of public documents.

On 4 February 2014, the Parliament adopted a legislative resolution on the proposal, which in general terms follows the JURI committee report.

The Legal Affairs Committee took a decision enabling Parliament to enter into early second reading negotiations on 20 January 2015 (Rapporteur: MEP M. DELVAUX)

The Council adopted a general approach on the draft regulation on 15 June 2015. In the course of its work on the proposal, the Council has reduced the scope of the proposal to cover only documents related to civil status.

The first Trilogue meeting took place on 15 July 2015.

An agreement was reached between the European Parliament and the Council on a compromise package on 13 October 2015.

The Council adopted its position at first reading on 10 March 2016.

The European Parliament adopted the text on second reading on 9 June 2016.
The Regulation will promote the free movement of citizens and businesses by simplifying the requirements and procedures for cross-border use of certain public documents in the EU, thereby contributing to the creation of a citizens' Europe. It will notably allow the documents covered by the new rules to circulate without requirement of legalisation or apostille. In order to overcome language barriers, the regulation also establishes multilingual standard forms to be used as a translation aid attached to some of the public documents the most frequently used in a cross-border context.

References:

- EP Legislative Observatory, Procedure file of Regulation on Simplifying the requirements for presenting certain public documents in the EU, 2013/0119(COD)

Further reading:


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CONTENT

In December 2012, the Commission submitted a proposal to modernise Europe’s rules on cross-border insolvency proceedings dating back to 2000. The new rules are aimed at making cross-border insolvency proceedings more efficient and effective, benefiting debtors and creditors, facilitating the survival of businesses and presenting a second chance for entrepreneurs. It broadens the scope by addressing not only bankruptcy, but also restructuring; it also aims at avoiding liquidation, whilst protecting creditors’ rights.

On 20 December 2013, the JURI committee adopted its report on the proposal, recommending numerous amendments aimed in particular: at

- making the Regulation applicable to collective judicial or administrative proceedings, including interim proceedings, which are based on a law relating to insolvency and in which, for the purpose of avoidance of liquidation, adjustment of debt, reorganisation or liquidation, the debtor is totally or partially divested of his assets and an insolvency representative is appointed, or the assets and affairs of the debtor are subject to control or supervision by a court;
- modifying the definition of COMI (centre of main interest) in order to take into account a broader range of factors, including the location of main assets
- modifying the procedure for determining COMI in order to provide for a minimum control by the court
- as regards secondary insolvency proceedings, enabling any decision to postpone or refuse the opening of secondary proceedings to be challenged by local creditors
- introducing an ‘independent coordinator’ who would coordinate group proceedings (insolvency proceedings affecting a group of companies)

The JURI report was endorsed by the Parliament and became the basis of the mandate for negotiations.

The European Parliament adopted its position in first reading on 5 February 2014.

The EP Committee on Legal Affairs decided to open inter-institutional negotiations on 25 September 2014.

An agreement on a compromise package was found in Trilogues in November 2014.

The Council adopted the Regulation on 12 March 2015.

The European Parliament adopted the text at second reading on 20 May 2015.

The Recast Regulation of 20 May 2015 entered into force on 26 June 2015, and will apply to relevant insolvency proceedings as of
June 2017.

In line with the ‘second-chance approach’, the Regulation now covers not only bankruptcy proceedings, but hybrid and pre-insolvency proceedings, as well as debt discharges and debt adjustments for natural persons (consumers and sole traders). Further modifications include greater legal certainty regarding the determination of the business’s ‘centre of main interests’ in order to prevent abusive forum-shopping practices. Courts must now be proactive in checking whether they really have jurisdiction to open insolvency proceedings for a given company, taking into account the actual perception of creditors as to where the business is administered from. In order to promote transparency, all Member States will be obliged to establish insolvency registers that will be interconnected via the e-Justice portal. There are also new rules on group insolvency and rules allowing for the coordination of proceedings regarding the companies within the group.

References:

- Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast)
- EP Legislative Observatory, Procedure file of Regulation on Insolvency proceedings, Recast, 2012/0360(COD)

Further reading:


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HYPERLINK REFERENCES

The European Small Claims Procedure (ESCP) became operational on 1 January 2009, as a special, EU-wide procedure available both to consumers and traders for pursuing cross-border claims within the Internal Market of a value not exceeding €2 000. During the first five years of its existence, however, the ESCP has been used only rarely. According to available statistical data, the average number of claims pursued yearly amounts to as little as 120 per Member State. In many Member States, the number of claims filed was even below 10 per year.

Having evaluated the functioning of the ESCP through a consultation and by an external study, the Commission has put forward a proposal which is aimed at making the ESCP more widely available and more efficient.

The Commission proposal put forward in November 2013 intended to enlarge the scope of application of the ESCP. First of all, the maximum value of the claim was to rise from €2 000 to €10 000. Furthermore, the EESCP was to be available in a broader range of cross-border cases. In the original Regulation, only two connecting factors are taken into account – (1) the place of domicile of a litigant; and (2) the seat of the court. These must be located in two different Member States. The Commission would add three additional factors to be taken into account (the place of performance of the contract; the place where the facts giving rise to the claim took place; the place where the judgment is to be enforced). It would then be sufficient for two of the five factors to point to different Member States for the procedure to be available. The Commission also intended to create a maximum cap on fees (which were often very high in proportion to the value of the claim), as well as to encourage greater use of electronic communications.

The Council reached a general approach on the proposal in December 2014.

The European Parliament's Legal Affairs Committee (JURI) adopted its report in April 2015. The main modifications put forward in that report aimed at:

- raising the ceiling to EUR 5,000 if the defendant is a natural person, and to EUR 10,000 if the defendant is a legal person,
- eliminating the rule broadening the definition of a ‘cross-border claim’ (i.e. to maintain the current, narrow definition),
- including disputes under employment law, privacy rights and defamation claims
- adding a rule according to which the court, if it dismisses a claim, should inform the claimant about possibilities of appeal against
its decision,

- adding a rule allowing for settlement without a court hearing
- postponing obligatory videoconferencing technology by 3 years from entry into force of the regulation
- allowing parties to address written questions to witnesses, who would also provide written answers within a deadline set by the court
- introducing a rule whereby experts are appointed by the court, rather than by the parties,
- making assistance to the parties (e.g. in filling out forms) free of charge
- lowering the ceiling for court fees to 5% (so that court fees cannot exceed 5% of the claim's value)

On 23 June 2015, following a series of trilogues, the Parliament and Council reached a compromise on the proposal. The agreement was endorsed by Coreper on 29 June 2015, and then by the JURI Committee on 14 July.


The adopted text provides that the ceiling for claims would be elevated from the current €2,000 to €5,000 (and not to €10,000 as the Commission proposed). The cross-border requirement, as it stands now, was not be modified. Five years after the date of application of the revised ESCP, the Commission will be obliged to look into the possibility of further increasing the ceiling for claims. Furthermore, the Commission will be obliged to look into the possibility of including certain employment law claims by carrying out a full impact assessment on that matter, which should take place by five years after the date of application of the reformed ESCP.

There will be no EU-wide cap on court fees (as the Commission proposed), yet the fees may not be disproportionate to the value of the claim and may not be higher than fees charged in a simplified domestic procedure in the Member State concerned. As regards methods of payment, every Member State will have accept at least one of the three electronic means of payment (bank transfer; credit or debit card payment; direct debit from the claimant's bank account).

The availability of oral hearings will be reduced. A court will be allowed to hold an oral hearing 'only if it considers that it is not possible to render the judgment on the basis of the written evidence or if a party so requests.' Furthermore, the decision to grant or refuse a request for an oral hearing will remain, in contrast to the Commission proposal, at the court's discretion and judges will never be formally obliged to hold a hearing.

The use of distance communication will be increased: if a person to be heard is domiciled or habitually resident abroad, the court will have to hear that person by distance communication technology (e.g. video- or teleconference), if available, unless the use of such technology would not be appropriate for the fair conduct of proceedings.

A new article has been added on the initiative of the Council, providing that a court settlement approved or concluded before a court in the course of the ESCP shall be recognisable and enforceable under the same conditions as an ESCP judgment.
References:

- EP Legislative Observatory, Procedure file on Regulation on European small claims procedure, 2013/0403(COD)

Further reading:


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CEPOL (EU AGENCY FOR LAW ENFORCEMENT TRAINING)

CONTENT

The EU-Agency for law enforcement training (CEPOL, also called European Police College) is a European Union Agency, established in 2005 (Council decision 2005/681/JHA).

CEPOL is charged with developing, implementing and coordinating training for law enforcement officials. It brings together a network of training institutes located in the EU Member States and supports them in providing training on issues related to EU priorities in the field of security.
In November 2015 a new Regulation establishing a European Union agency for law enforcement training, which repeals the 2005 Council Decision, was adopted, which extends the mandate of the agency and improves its governance. The aim was to guarantee that CEPOL could adapt its training to the ever-evolving security environment, for instance by making available training tools and initiatives in areas such as fighting cybercrime, trafficking in drugs and trafficking in human beings.

In 2013, when the Commission presented its proposal for a new Regulation on Europol, it proposed to merge CEPOL with Europol, but the idea of the merger was rejected by both the Council and the European Parliament. The EP notably stressed the need to preserve the independence of both agencies due to the different nature of their tasks and were not convinced by the cost savings argument behind the proposed merger. In the meantime, following the UK decision to no longer host CEPOL, the Agency had to relocate from Bramshill (United Kingdom) to Budapest (Hungary), which has been the case since 1 October 2014.

The European Parliament Committee on Civil Liberties adopted its report, as well as a negotiating mandate on 24 February 2015.

The report puts emphasis on the need to promote the respect of fundamental rights in law enforcement, such as privacy, data protection and victims’ rights. It also states that CEPOL activities should focus on areas with clear EU added value and cross-border dimension and that the agency should be allocated a sufficient and autonomous budget. Furthermore, MEPs ask the Commission to carry out a cost-benefit analysis of the new CEPOL seat in Budapest, within two years after the entry into force of the regulation.

The Trilogue negotiations started under Latvian Presidency. A political agreement in Trilogues was reached in June 2015.

The European Parliament adopted the Regulation on 29 October 2015, which was subsequently adopted by the Council on 16 November 2015.

The final Act was signed on 25 November 2015.


References:

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- European Parliament, Civil Liberties MEPs discuss CEPOL and Europol merger, Press release, 7 May 2013
- European Parliament, Cross-border police training should focus on security issues and have sufficient funds, MEPs say, Press release, 24 February 2015
- EP Legislative Observatory, Procedure file of Regulation on European Union Agency for Law Enforcement Training (CEPOL)
EU-US PRIVACY SHIELD FRAMEWORK FOR DATA TRANSFER - SECOND JOINT EU-US ANNUAL REVIEW FOLLOWED BY A JOINT STATEMENT

CONTENT

Following the invalidation of the 2000 Safe Harbour decision by the Court of Justice of the European Union in a ruling from 6 October 2015 (Schrems case), and as urged by the EP, the Commission intensified its work and negotiations with the U.S. authorities towards a new framework ensuring ‘adequate’ protection of personal data transferred and stored by companies in the United States. After the
announcement of a political agreement on a ‘EU-US Privacy Shield’ (2 February 2016), the Commission published a draft “Adequacy decision” on 29 February 2016, followed by a revised Adequacy decision on EU-US Privacy Shield (July 2016)

The Commission ‘Safe Harbour Decision’ 2000/520 stated that the US ‘Safe Harbour’ system for data protection was ‘adequate’ to protect EU citizens’ rights according to the EU principles, and thus allowed the exchange of data for commercial purposes between the EU and the US. In its ruling the Court of Justice (Schrems case), besides invalidating this Decision, also clarified that national supervisory authorities are always entitled to investigate the lawfulness of data transfers and, if necessary, to suspend them (even if a Commission Decision exists on it).

The annulment of the Safe Harbour Agreement made illegal all Safe Harbour-based transfers of data to the US. Over 4 000 companies relied on this adequacy decision for their transatlantic data transfers.

The European Parliament has repetitively called for the suspension of Safe Harbour privacy, in particular in its 2014 ‘resolution on the electronic mass surveillance programmes run in the USA and some EU countries’ and in its follow-up of 2015. In the latter resolution, it urged the Commission to suspend ‘Safe Harbour’ immediately and to initiate a new data protection framework.

On 2 February 2016, the College of Commissioners approved the political agreement on a new framework for transatlantic exchanges of personal data for commercial purposes: “The EU-US Privacy Shield” (PS), which was agreed upon after two years of negotiations and aims at addressing both the recommendations made by the Commission in November 2013 on the improvement of Safe Harbour and the requirements set out by the European Court of Justice in its Schrems ruling.

The political agreement was followed on 29 February 2016 by the publication of a draft “Adequacy Decision” and a Communication of the European Commission ‘Transatlantic Data Flows: Restoring Trust through Strong Safeguards’, as well as of a series of documents containing commitments from U.S. authorities on data protection (Annexes to the draft Adequacy Decision).

The Commission assured that the Privacy Shield guarantees effective data protection for Europeans, mainly by: strong obligations on companies; safeguards and transparency obligations on US government access to EU citizens’ data; redress mechanisms (including an Ombudsman) and a monitoring system.

While the PS covers commercial data exchanges, it allows derogations for security purposes, thus other recent reforms in US surveillance legislation are also significant. Notably, the adoption of the US Judicial Redress Act in February (extending access to US courts to EU citizens), which was also a prerequisite for the Umbrella Agreement (on data transfers to the USA for law enforcement purposes).

A hearing on the Privacy Shield was held by the European Parliament’s Civil Liberties, Justice and Home Affairs Committee (LIBE) on 17 March 2016, with among other participants, representatives of the European Commission, the European Data Protection Supervisor, privacy activist Max Schrems, Art 29 WP’s Members and representatives of U.S. authorities. During this hearing and in the media,
reactions to the Privacy Shield have been lukewarm, pointing to the fact that it would still allow US intelligence to collect massive and indiscriminate data and that new challenges could be brought to the Court.

In its April 2016 Opinion, the Article 29 Working Party, whilst welcoming the efforts made, expressed concerns and outlined practical recommendations to improve the Commission's Adequacy Decision, referring to 'four' essential guarantees for justifiable interferences with fundamental rights.

The European Parliament adopted a (non-binding) resolution on “Transatlantic data flow” on 26 May 2016, in which it voiced concern about “deficiencies” in the proposed new arrangement negotiated by the Commission. It urged the Commission to follow the indications of EU Data Protection Authorities (Art29 WP Opinion). It also considered that 'the Privacy Shield is part of a broader dialogue between the EU and third countries [...] in relation to data privacy [...] and objectives of shared interest', while underlining the need to define a general approach on data transfers to third countries'.

The Commission’s Adequacy Decision (which takes the form of an EC Implementing Decision), was finally adopted by the College of Commissioners on 12 July 2016, following approval of representatives of Member States (in Article 31 Committee). The “Adequacy Decision” has been notified the same day to the Member States and, thereby, entered into force immediately. On the U.S. side, the Privacy Shield framework has been published in the Federal Register, the equivalent to our Official Journal.

The Art 29WP issued its Statement on the revised Privacy Shield some weeks after, in which the European data protection authorities welcomed the improvements of the final version but expressed a number of concerns that still remain on both commercial aspects (e.g. lack of specific rules on the right to object, complexity of the redress system) and on the U.S. public authorities access to data (e.g., the lack of stricter guarantees on the independence and power of the Ombudsperson). The crucial moment for assessing the efficiency and robustness of the Privacy Shield seems, however, to be the first joint annual review. For the time being, a cautious approach seems to prevail, with the intention to give the new Privacy Shield at least a chance.

As a consequence, the U.S.-based companies started to sign up to the Privacy Shield, i.e. to self-certify with the U.S. Commerce Department their compliance with the data protection new framework. The Commerce Department has to verify that their privacy policies comply with the high data protection standards required by the Privacy Shield. In practice, they are encouraged to register via an ad hoc website. In parallel, the EC released a Guide to the EU-US Privacy Shield that contains essential indications on the companies’ obligations, on individual rights and redress mechanisms, to which the Art29 WP committed to comment.

The European Parliament may adopt a resolution on the new framework before the end of the year.

The new framework is expected to have a strong impact on digital trade and services operating across the Atlantic.

To be noted that, binding corporate rules and standard contractual clauses remain alternative tools for data transfers, although the legality of these tools has also being challenged (the Irish DP authority recently applied for a declaratory relief in the Irish High Court.
and a referral to the CJEU to determine the legal status of data transfers under Standard Contractual Clauses).

Finally, the issue of data transfers to other countries than in the US is also at stake. Following the EP LIBE Committee mission to China at the end of 2015, and in light of the broader concerns raised by the Schrems case as regards transfers to third countries other than the US, a debate (opened by an oral question to the Commission) on how to ensure safe transfers to China took place at the July 2016 plenary. Next steps may include initiatives aimed at prompting negotiations with other countries, such as China, along the lines of Privacy Shield or other arrangements, so as to increase legal certainty over how personal data should be transferred from the EU to third countries.

References:

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- European Commission, Guide to the EU-U.S. Privacy Shield, 2016
- Article 29 Data Protection Working Party, Statement on the decision of the European Commission on the EU-U.S. Privacy Shield, 2016

Further reading:

- European Parliament, EPRS, Reactions to the EU-US Privacy Shield, the successor to the Safe Harbour agreement, Keysource, 2016

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HYPERLINK REFERENCES

DATA RETENTION FOR THE PURPOSES OF PREVENTION, INVESTIGATION AND PROSECUTION OF CRIME

CONTENT

In a ruling of 8 April 2014, the European Court of Justice annulled the 2006 Directive harmonizing EU efforts in the investigation and prosecution of most serious crimes such as terrorism and organized crime. It considered that the Directive ‘entails a wide-ranging and particularly serious interference with the fundamental rights to the respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary’.

During the debates held in the aftermath of the ruling and through specific written questions, the Members of the EP called the Commission to state whether it intended to put forward a new proposal for a directive on data retention. During the meeting of the JHA Council of 12 March 2015, the Commissioner for Migration, Home Affairs and Citizenship announced that the Commission does not plan to present a new legislative initiative on Data Retention. Instead, it intends to launch a public consultation on the issue.

Considering the possible impact of the decision on other legislations with data retention implications, the European Parliament Committee on Civil Liberties asked for an opinion from the Parliament’s Legal Service on the matter.

According to the opinion, the ECJ ruling did not, in itself, invalidate the other EU instruments that are based on data retention, these enjoying a presumption of legality. However, all these instruments may be examined, for example, under the e-Privacy Directive, which articulates with the Charter of Fundamental Rights.

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- European Court of Justice, Judgment of 8 April 2014 concerning data retention (C-293/12 and C-594/12)
- EP Legislative Observatory, Procedure file of European Court of Justice judgment of 8 April 2014 concerning data retention (C-293/12 and C-594/12), 2014/2698(RSP)

Further reading:

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HYPERLINK REFERENCES

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EUROPEAN AGENDA ON SECURITY

CONTENT


On 28 April 2015, the Commission presented its European Agenda on Security which identifies three priorities for EU action:

- **Terrorism and radicalisation.** Following recent terrorist attacks on European soil, terrorism is given high priority in the new European Security Agenda. Although not new, the phenomenon of returning foreign fighters to and from the ongoing conflict zones in Syria, Iraq and Libya, has taken an unprecedented scale and requires an urgent response tailored to the network nature of these activities. A priority piece of legislation in this respect was the EU-Passenger Name Record (see Arrivals), which became law on 27 April 2016. The Security Agenda also foresees a proposal for the review of the Framework Decision on Terrorism, which the Commission put forward in December 2015.

- **Organised Crime:** Organised crime networks seek to exploit the gaps in enforcement and action across borders, and thus need to be fought through joint EU action. From migrant smuggling, human trafficking, trafficking in firearms and drugs, to environmental and financial crime, these networks have a huge human, social and economic cost. As estimated in a study by the EPRS European Added Value Unit published in March 2016, organised crime costs the European economy alone around 110 billion euro yearly. Furthermore, the Agenda foresees a review of the firearms legislation, as well as possible measures for non-conviction based confiscation.

- **Cybercrime:** With the development of modern technologies, which can be abused for illicit online trade in drugs or weapons, the fight against cyber criminality has become a major priority. Next to the adoption of the directive on network and information security (see Arrivals), which is the first EU-wide legislation on cybersecurity, the Agenda on Security aims at improving law enforcement and the judicial response to cybercrime. It foresees inter alia the extension of legislation on combating fraud and counterfeiting of non-cash means of payments in 2016. The fight against online crime also includes fight against child sexual exploitation.

Member States remain primarily responsible for ensuring internal security. However, the threats for Europe’s citizens are becoming extremely cross-border in nature. Thus, combating organised crime and terrorism is a common responsibility; and the Agenda is to serve as a basis for co-operation and joint action by the Union.
After the second tragic series of terrorist attacks in Paris on 13 November 2015, which followed those in France and Denmark in early 2015, the Justice and Home Affairs Council called on 20 November 2015 for an acceleration of the implementation of the actions and initiatives envisaged in the Statement on Counter-terrorism issued by the Members of the European Council.

The action which the Council expected to be taken concerned inter alia:

- **the adoption of the European PNR Directive**, which was finally adopted on 27 April 2016;
- **the revision of the framework on firearms**: in November 2015, the Commission adopted the Action Plan on firearms and explosives, which included, most importantly, the proposal for a revised Firearms Directive. In July 2016, the Parliament's IMCO Committee voted on amendments to this proposal; a mandate to open trilogue negotiations with the Council was voted on 5 September;
- **the improvement of the framework on the financing of terrorism**: in February 2016, the Commission put forward an Action Plan on strengthening the fight against terrorist financing. The Commission was also invited to present proposals to strengthen, harmonise and improve the powers of, and co-operation between Financial Intelligence Units (FIU's), through the proper embedment of the FIU.net network for exchange of information;
- **the strengthening of controls at EU external borders**: in April 2016, the Commission presented up-dated proposals on Smart Borders; Moreover, in September 2016, a regulation on the European Border and Coast Guard was published in the Official Journal;
- **Counter-terrorism measures**: In December 2015, the Commission submitted a proposal for a Directive on combating terrorism. Following the July 2016 LIBE committee report, negotiations are ongoing between the Parliament and the Council.

The purpose of the new framework is to implement new international standards by criminalising such activities as travelling for terrorist purposes; the funding, organisation and facilitation of such travel; receiving training for terrorist purposes; and providing funds used for committing terrorist offences. Furthermore, in July 2016, the European Commission proposed new measures for strengthening the fight against terrorism financing, such as targeted amendments to the recent Fourth Anti-Money Laundering Directive of May 2015 (see Train 4c “Financial Services”), as well as legislative proposals on harmonising criminal sanctions for money laundering across the EU and on illicit cash movements (to be presented before the end of 2016).

On 9 July 2015, the Parliament adopted a resolution on the European Agenda on Security In its resolution, the Parliament:

- Took note of the Agenda, stressing however that it should be structured in a flexible way to respond to possible new challenges in the future;
- Reiterated the need to further address the root causes of crime, including inequality, poverty and discrimination;
- Called for the right balance to be sought between prevention policies and repressive measures in order to preserve freedom, security and justice.

The progress made on the European Agenda on Security was assessed in the Commission Communication of April 2016 promoting the
concept of collective security in the form of a ‘Security Union’.

References:

- European Commission, *Communication on delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union*, COM(2016) 230 final

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**TERRORISM AND RADICALISATION**

**CONTENT**

Terrorism and radicalisation. Following recent terrorist attacks on European soil, terrorism is given high priority in new the European Security Agenda. Although not new, the phenomenon of returning foreign fighters to and from the ongoing conflict zones in Syria, Iraq and Libya, has taken an unprecedented scale and requires an urgent response tailored to the network nature of these activities. A priority piece of legislation in this respect was the EU-Passenger Name Record (see Arrivals), which became law on 27 April 2016. The Security Agenda also foresees a proposal for the review of the Framework Decision on Terrorism, which the Commission put forward in December 2015.

**LEGISLATIVE FILE(S) INCLUDED**

- Review of the Framework Decision on terrorism
- Action plan to fight terrorism financing - Legislative proposals
- Preventing radicalisation

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**ORGANISED CRIME**

**CONTENT**

Organised Crime: Organised crime networks seek to exploit the gaps in enforcement and action across borders, and thus need to be fought through joint EU action. From migrant smuggling, human trafficking, trafficking in firearms and drugs, to environmental and
financial crime, these networks have a huge human, social and economic cost. As pointed out in a study by the EPRS European Added Value Unit published in March 2016, organised crime costs the European economy alone around 110 billion euro yearly. Furthermore, the Agenda intends to review legislation on firearms in 2016, as well as possible measures for non-conviction based confiscation.

**LEGISLATIVE FILE(S) INCLUDED**

- REVIEW OF LEGISLATION on FIREARMS
- Common rules for non-conviction based confiscation
- Criminal sanctions against environmental crime - approximation

**CYBERCRIME**

**CONTENT**

**Cybercrime**: With the development of modern technologies, which can be abused for illicit on line trade in drugs or weapons, the fight against cyber criminality has become a major priority. Next to the adoption of the directive on network and information security (see Arrivals), which is the first EU-wide legislation on cybersecurity the Agenda on Security will aim to improve law enforcement and the judicial response to cybercrime. It foresees inter alia the extension of legislation on combatting fraud and counterfeiting of non-cash means of payments in 2016. The fight against online crime also includes fight against child sexual exploitation.

**LEGISLATIVE FILE(S) INCLUDED**

- Combating fraud and counterfeiting of non-cash means of payments
- Removing legal obstacles to criminal investigations on cybercrime