2. Economy, science and quality of life

2.1. THE INTERNAL MARKET

2.1.1. THE INTERNAL MARKET: GENERAL PRINCIPLES

The internal market is an area of prosperity and freedom, providing access to goods, services, jobs, business opportunities and culture. Continuous efforts ensure its further expansion bringing benefits for EU consumers and businesses. The digital market opens up opportunities to boost the economy via e-commerce and cuts red tape through e-governance. However, challenges still persist, for example, in the way in which COVID-19 reintroduced obstacles to the four freedoms (free movement of goods, services, capital and persons).

LEGAL BASIS

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The common market created by the Treaty of Rome in 1958 was intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to 'an ever closer union among the peoples of Europe'. The Single European Act of 1986 included the objective of establishing the internal market in the European Economic Community (EEC) Treaty, defining it as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'.

ACHIEVEMENTS

A. The common market of 1958

The common market, the Treaty of Rome's main objective, was achieved through the 1968 customs union, the abolition of quotas, the free movement of citizens and workers, and a degree of tax harmonisation with the general introduction of value added tax (VAT) in 1970. However, the freedom of trade in goods and services and the freedom of establishment were still limited due to continuing anti-competitive practices imposed by public authorities.

B. The launch of the internal market in the 1980s and the Single European Act

The initial approach of detailed legislative harmonisation and the need for unanimity in the Council were seen as impediments to progress. This shifted with the rulings of the Court of Justice of the EU in the cases of Dassonville (Case 8-74) and Cassis de Dijon (Case 120/78) in the 1970s, which deemed certain import restrictions unlawful, introducing mutual recognition. These rulings revitalised the debate on inter-community trading and steered the EEC towards implementing the internal market.

The Single European Act entered into force on 1 July 1987, setting a precise deadline of 31 December 1992 for the completion of the internal market. It also strengthened the decision-making mechanisms for the internal market by introducing qualified majority voting for common customs tariffs, the freedom to provide services, the free movement of capital and the approximation of national legislation. By the time the deadline had

passed, over 90% of the legislative acts listed in the 1985 White Paper had been adopted, largely under the qualified majority rule.

C. Towards a shared responsibility to complete the internal market: 2003-2010

The internal market has made a significant contribution to the prosperity and integration of the EU economy. A new internal market strategy running from 2003 to 2010 focused on the need to facilitate the free movement of goods, integrate services markets, reduce the impact of tax obstacles and simplify the regulatory environment. Substantial progress was made in opening up transport, telecommunications, electricity, gas and postal services.

D. The relaunch of the internal market in 2010

In order to boost the European single market once again and put the public, consumers and small and medium-sized enterprises (SMEs) at the centre of single market policy, the Commission published in October 2010 a communication entitled 'Towards a Single Market Act' (COM(2010)0608). A series of measures were presented to boost the EU economy and create jobs, resulting in a more ambitious single market policy.

In October 2012, the Commission presented the Single Market Act II (COM(2012)0573) to further develop and exploit its untapped potential as an engine for growth. The act sets out 12 key actions across four main drivers to be rapidly adopted by the EU institutions: (1) integrated networks; (2) cross-border mobility of citizens and businesses; (3) the digital economy; and (4) actions that reinforce cohesion and consumer benefits.

In a communication entitled 'Better governance for the Single Market' (COM(2012)0259), the Commission proposed horizontal measures such as an emphasis on clear, easily implementable new regulations, better use of existing IT tools to facilitate the exercise of single market rights, and the establishment of national centres to oversee the operation of the single market. Monitoring is an integral part of the annual reports on single market integration in the context of the European Semester process.

On 28 October 2015, the Commission published a communication entitled 'Upgrading the Single Market: More opportunities for people and business' (COM(2015)0550). It was aimed at providing practical benefits for people and increasing opportunities for consumers and businesses. This supported the Commission's efforts to enhance investment, tap into the digital single market's potential and increase competitiveness. The strategy also focused on a well-functioning energy market and on promoting labour mobility without abusing the rules. Additionally, Directive (EU) 2019/633 on unfair trading practices was adopted on 17 April 2019.

In May 2015, the Commission adopted a digital single market strategy (COM(2015)0192), which set an intensive legislative programme for building a European digital economy. In Ursula von der Leyen's 2019 Agenda for Europe, the Commission firmly placed the strengthening of the digital single market at the heart of its working guidelines. This commitment was renewed in the Commission strategy paper entitled 'Shaping Europe's Digital Future' of February 2020, which outlines how the completion of the digital single market is to be achieved. Specifically, this is to be done by establishing a European single market for data and creating a level playing field on- and offline by means of consistent regulation.

During the COVID-19 pandemic, in its communication 'Europe's moment: Repair and Prepare for the Next Generation', the Commission highlighted the pivotal role that the single market's digitalisation would play in the bloc's eventual recovery. This would be based on four elements: (1) investment in better connectivity; (2) a stronger industrial and technological presence in strategic parts of the supply chain (e.g. AI, cybersecurity, cloud infrastructure, 5G); (3) a real data economy and common European data spaces; and (4) a fairer and easier business environment.

ROLE OF THE EUROPEAN PARLIAMENT

A. General

Parliament was the driving force behind the process that led to the creation of the internal market. Specifically, in its resolution of 20 November 1997, it backed the idea of turning the internal market into a fully integrated single market by 2002. In several resolutions adopted in 2006 (e.g. those of 12 February, 14 February, 16 May and 6 July), Parliament supported the idea that the internal market should be a common framework and a point of reference for many EU policies.

Parliament also played an active role in the relaunch of the internal market. In its resolution of 20 May 2010 on delivering a single market to consumers and citizens, Parliament emphasised that measures must be taken to inform and empower consumers and SMEs more effectively and to increase citizens' confidence. Parliament issued further responses to the Single Market Act with three resolutions adopted on 6 April 2011: 'Governance and Partnership in the Single Market', 'A Single Market for Europeans' and 'A Single Market for Enterprises and Growth'.

Parliament has been similarly active on single market governance. It adopted a resolution on 7 February 2013 with recommendations to the Commission on the governance of the single market, calling for the establishment of a single market governance cycle as a specific pillar of the European Semester. Furthermore, Parliament adopted a resolution on 25 February 2014 on single market governance within the European Semester 2014, followed by a resolution on 27 February 2014 on SOLVIT, the EU-wide service that provides solutions to problems with EU rights. Parliament then adopted a resolution on 12 April 2016 entitled 'Towards improved single market regulation'.

Research by the Committee on the Internal Market and Consumer Protection in 2016 emphasised the EU economy's shift towards digital, green and social policies[1]. Based

[1]Research papers include: Godel, M. I. et al., Reducing Costs and Barriers for Businesses in the Single Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2016; Montalvo, C. et al., A Longer Lifetime for Products: Benefits for Consumers and Companies, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2016; Liger, Q. et al., Social Economy, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2016. More recent examples include: Ström, P., The European Services Sector and the Green Transition, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020; Núñez Ferrer, J., The EU's Public Procurement Framework, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020; Keirsbilck, B. et al., Sustainable Consumption and Consumer Protection Legislation, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020; Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer

on this, Parliament called for a more innovative, deeper and fairer single market. To enhance online accessibility of information and services for citizens and businesses, Parliament adopted a position at first reading on the proposal for a single digital gateway on 13 September 2018. Businesses, especially in other EU countries, often find it hard to understand the applicable rules. The digital gateway is intended to help. Regulation (EU) 2018/1724 was adopted on 2 October 2018, with staggered application dates until 12 December 2023.

Research from 2019 indicated that the principles of free movement of goods and services and legislation in this area generate benefits estimated at EUR 985 billion annually[2]. However, a study[3] published in November 2020 entitled 'Legal obstacles in Member States to Single Market rules' found that although the EU single market was a very successful case of market integration, there are still barriers in Member States which prevent the single market from reaching its full potential. The study called for more local scrutiny of proposed national rules that could potentially conflict with single market rules and principles.

One such area of conflict is the free movement of services. On 2 December 2020, the Committee on Internal Market and Consumer Protection (IMCO) adopted an own-initiative report entitled 'Strengthening the Single Market: the future of free movement of services'. The report, adopted in plenary on 20 January 2021, underlines the need to ensure the implementation of single market rules for services and to improve the enforcement action of the Commission.

Parliament has recognised the benefits of an eGovernment framework, which streamlines administrative processes, enhances service quality and boosts public sector efficiency. Digital public services are set to ease administrative burdens, speed up interactions with government and reduce costs, thereby catalysing the economic and social advantages of the single market. Consequently, the IMCO Committee adopted a final report outlining strategies to expedite the digitalisation of public services, which Parliament subsequently passed on 18 April 2023.

B. The single market overcoming COVID-19

The COVID-19 pandemic has greatly impacted the free movement of goods in the internal market. Given this, Parliament adopted a resolution on 17 April 2020, in which it emphasised that the single market is the source of European collective prosperity and well-being, and a key element of the immediate and continuing response to the pandemic. An IMCO Committee webinar[4] held in November 2020 analysed the impact

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Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[2]Relevant research includes: Poutvaara, P. et al., Contribution to Growth: Free Movement of Goods. Delivering Economic Benefits for Citizens and Businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019; Pelkmans, J. et al., Contribution to Growth: The Single Market for Services. Delivering economic benefits for citizens and businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[3]Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[4]Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and Consumer Protection - IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

of COVID-19 on the internal market and consumer protection, and suggested what could be done to ensure a well-functioning internal market now and in future crises.

A study[5] on the same topic was presented on 22 February 2021 in the IMCO Committee. The research found that the initial border closures and other measures taken by Member States significantly reduced not only the free movement of goods, but also of services and people within the internal market. In the same month, Parliament, together with the Council, established the Recovery and Resilience Facility, which asserted that a sustainable recovery of a well-functioning internal market should involve strong SMEs. The draft own-initiative report on tackling non-tariff and non-tax barriers in the single market (2021/2043(INI)) of June 2021 is very relevant in this regard, as not only does it address general and persistent barriers to the freedom of goods and freedom of services, but it also discusses specifically how COVID-19 and policy responses to the pandemic posed an obstacle to the four freedoms.

C. The Digital Single Market (2.1.7)

Similarly to the Commission, over the last 10 years, Parliament has increasingly focused on the challenges and opportunities for the single market arising from digitalisation. On 11 December 2012, Parliament adopted two non-legislative resolutions relating to the internal market: one on completing the digital single market and one on a digital freedom strategy in EU foreign policy. These resolutions advocate digital freedom in EU foreign policy, emphasising net neutrality to ensure that providers do not unfairly restrict internet usage. The resolutions aimed to harmonise digital market policies across the EU. This initiative led to legislative measures for a unified electronic communications market, including net neutrality and the end of roaming charges.

On 20 May 2021, Parliament adopted a resolution on the digital future of Europe, acknowledging the critical role of the digital developments in the single market and the need to remove barriers that hinder the functioning of the digital single market. The Digital Markets Act (DMA) and the Digital Services Act (DSA) facilitate a competitive, fair, harmonised and safer digital single market. Furthermore, a collection of studies provided by the Policy Department for Economic, Scientific and Quality of Life Policies investigated the opportunities and challenges for the digital single market in the light of the DMA and DSA.

In October 2022, the IMCO Committee organised a hearing to commemorate the 30th anniversary of the EU single market and its achievements. Given the current challenging situation, the speakers also highlighted how important it is to seek further growth potential and consolidate the single market, emphasising the legislative proposal on the Single Market Emergency Instrument.

On 23 November 2022, Parliament and the Council signed Regulation (EU) 2022/2399 concerning the EU Single Window Environment for Customs. Its objective is making international trade easier by reducing the administrative burden and costs with the aid of digital tools. Businesses and traders will thus be able to provide the customs and non-customs data required for goods clearance and complete formalities in one single portal in a given Member State.

In July 2023, IMCO endorsed the Single Market Emergency Instrument, suggesting it be renamed the Internal Market Emergency and Resilience Act, to better prepare

[5]Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

for future crises. Inspired by the challenges posed by the pandemic, this legislation is intended to protect free movement within the EU and establishes various alert levels to manage impending crises proactively. The Commission would oversee Member States' crisis measures to ensure consistency and legality, and establish expedited routes for critical workers and goods if borders close. Additionally, it would be empowered to issue priority orders for essential goods in order to avoid shortages. Parliament adopted the report on 13 September 2023 and interinstitutional negotiations are already underway.

October 2023 saw the publication of a study on market surveillance in the EU emphasising the crucial role of market surveillance authorities (MSAs) in protecting consumers by ensuring that products meet health, safety and environmental standards. It identifies gaps in market surveillance exacerbated by e-commerce growth and the pandemic, such as product traceability and the challenge of monitoring online sales. Key recommendations include expanding EU testing facilities, bolstering digital infrastructure, increasing accountability for online marketplaces, and enhancing cross-border cooperation and information-sharing between MSAs and customs authorities. These measures are aimed at harmonising market surveillance practices, enhancing the oversight of products sold online by requiring online marketplaces to implement measures ensuring compliance with EU regulations, and ensuring consistent consumer protection across the EU.

For more information on this topic, please see the website of the Committee on the Internal Market and Consumer Protection.

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2.1.2. FREE MOVEMENT OF GOODS

The free movement of goods was bolstered by eliminating customs duties as well as other non-tariff barriers. Principles like mutual recognition and standardisation further advanced the internal market. The 2008 New Legislative Framework enhanced the movement of goods, EU market surveillance, and the CE (European Conformity) mark. Yet, challenges on internal market harmonisation remain, as the COVID-19 pandemic and other factors can still hinder the full free movement of goods.

LEGAL BASIS

Article 26 and Articles 28-37 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The right to the free movement of goods originating in Member States, and of goods from third countries which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 28 of the TFEU). Originally, the free movement of goods was seen as part of a customs union between the Member States, involving the abolition of customs duties, quantitative restrictions on trade and equivalent measures, and the establishment of a common external tariff for the Union. Later on, the emphasis was placed on eliminating all remaining obstacles to the free movement of goods, with a view to creating the internal market.

ACHIEVEMENTS

The elimination of customs duties and quantitative restrictions (quotas) between Member States was accomplished by 1 July 1968. This deadline was not met in the case of the supplementary objectives – the prohibition of measures having an equivalent effect, and the harmonisation of relevant national laws. These objectives became central in the ongoing effort to achieve free movement of goods.

A. Prohibition of charges having an effect equivalent to that of customs duties: Article 28(1) and Article 30 of the TFEU

Since there is no definition of the aforementioned concept in the Treaty, case law has had to provide one. The Court of Justice of the European Union (CJEU) considers that any charge 'which, if imposed upon a product imported from a Member State to the exclusion of a similar domestic product has, by altering its price, the same effect upon the free movement of products as a customs duty', may be regarded as a charge having equivalent effect, regardless of its nature or form (Joined Cases 2/62 and 3/62, and Case 232/78).

B. Prohibition of measures having an effect equivalent to quantitative restrictions: Article 34 and Article 35 of the TFEU

In its Dassonville judgment, the CJEU took the view that all trading rules enacted by Member States which are capable of hindering intra-Community trade (whether directly or indirectly, actually or potentially) were to be considered as measures having an effect equivalent to quantitative restrictions (see Case 8/74 *Dassonville* of 11 July 1974

and paragraphs 63 to 67 of Case C-320/03 of 15 November 2005). The Court's reasoning was developed further in the Cassis de Dijon judgment, which laid down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, and with the manufacturing processes of that country, must be allowed onto the market of any other Member State. This was the basic reasoning underlying the debate on defining the principle of mutual recognition, operating in the absence of harmonisation. Therefore, even in the absence of EU harmonisation measures (secondary EU legislation), Member States are obliged to allow goods that are legally produced and marketed in other Member States to circulate and to be placed on their markets.

Importantly, the field of application of Article 34 of the TFEU is limited by the Keck judgment, which states that certain selling arrangements fall outside the scope of that article, provided that they are non-discriminatory (i.e. they apply to all relevant traders operating within the national territory, and affect in the same manner, in law and in fact, the marketing of domestic products and products from other Member States).

C. Exceptions to the prohibition of measures having an effect equivalent to that of quantitative restrictions

Article 36 of the TFEU allows Member States to impose restrictions equivalent to quantitative limits for non-economic reasons such as public morality, policy, or security. These exceptions should be narrowly interpreted and cannot lead to arbitrary discrimination or hidden trade barriers between Member States. They must directly serve the public interest and be proportionate to the intended level of protection.

The Court of Justice, in the Cassis de Dijon case, acknowledged that Member States can exempt certain national measures from EU trade restrictions if they meet mandatory requirements, such as effective fiscal supervision, protection of public health, commercial fairness, and consumer defence. Member States are required to inform the Commission about these exemptions. Information exchange procedures and a monitoring system were established for oversight of such measures, as outlined in Articles 114 and 117 of the TFEU and Council Regulation (EC) No 2679/98). These procedures were updated and formalised in Regulation (EU) 2019/515 on mutual recognition, which was passed in 2019, replacing the previous regulation.

D. Harmonisation of national legislation

The adoption of harmonisation laws has made it possible to remove obstacles (for example by making national provisions inapplicable) and to establish common rules aimed at guaranteeing the free circulation of goods and products, and respect for other EU Treaty objectives, such as protection of the environment and of consumers, or competition.

The harmonisation process in the EU was streamlined by adopting the qualified majority voting for directives related to the single market, as outlined in Article 95 of the Treaty establishing the European Community, as amended by the Maastricht Treaty. The Commission's 1985 White Paper introduced a 'new approach' to avoid detailed harmonisation, focusing on mutual recognition of national regulations. Under this approach, affirmed by Council resolutions and decisions, harmonisation is limited to essential requirements and occurs when national rules are not equivalent and hinder trade. This method aims to ensure free movement of goods by technically harmonising entire sectors and maintaining a high level of public interest protection,

affecting areas such as toys, construction materials, machinery, gas appliances, and telecommunications equipment.

E. Completion of the internal market

The creation of the single market necessitated the elimination of all remaining obstacles to the free movement of goods. The Commission's White Paper (1985) set out the physical and technical obstacles to be removed and the measures to be taken by the Community to this end. Most of these measures have now been adopted. However, the single market still requires substantial reforms if it is to meet the challenges of technological progress, and some non-tariff barriers still persist.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has been a strong advocate for completing the internal market, particularly emphasising the 'new approach' to facilitate the free movement of goods. It played a significant role in shaping the harmonisation directives and was deeply engaged in the New Legislative Framework adopted in 2008. Parliament's priorities were to ensure that all market operators are responsible for product compliance and safety and to enhance the visibility and understanding of the CE mark among consumers. It remains active in these efforts, working on the Alignment Package, which includes nine directives that regulate a variety of products such as lifts, pyrotechnic articles, and explosives.

In its resolution of 8 March 2011, Parliament called for the creation of a unified market surveillance system for all products, which led to the 2013 'Product Safety and Market Surveillance Package'. By April 2019, Parliament had adopted Regulation (EU) 2019/1020 to enhance market surveillance and ensure product compliance. In 2021, the Commission proposed a new regulation to further ensure the safety of non-food consumer products. The updated rules for product safety, aiming to guarantee high safety standards for all products sold in the EU, both online and offline, were formally endorsed by the Parliament in March 2023, leading to the publication of the General Product Safety Regulation on 10 May 2023.

Standardisation plays a central role in the proper functioning of the internal market. Harmonised EU standards help to ensure free movement of goods within the internal market, allow businesses in the EU to become more competitive, and protect the health and safety of consumers and the environment. Aiming to enhance the content of the standardisation reform, Parliament adopted a resolution on 21 October 2010.

On 2 February 2022, the Commission introduced a standardisation strategy to foster a resilient, green and digital single market, proposing changes to the 2012 Standardisation Regulation. Subsequently, Regulation (EU) 2022/2480 was passed on 14 December 2022, updating the EU's legal framework for establishing standards. Subsequently, the Internal Market and Consumer Protection Committee (IMCO) held a hearing on 23 January 2023 to discuss historical and future directions in standardisation policy, with contributions from the Commission and various stakeholders.

Building on the new standardisation strategy, the Commission published a proposal for the harmonisation of the marketing of construction products on 30 March 2022, in which it specifically focused on the standardisation of the green internal market. The IMCO Committee, together with the Committee on the Environment, Public Health and Food Safety (ENVI), held a public hearing and then adopted its report on the revision of the Construction Products Regulation on 23 May 2023, which includes nearly 300

amendments. The regulation is now anticipating its third round of interinstitutional negotiations on 13 December 2023.

The eighth legislature concentrated efforts on regulations for cableway installations, appliances burning gaseous fuels, medical devices and personal protective equipment (PPE), as well as on the eCall Regulation concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 emergency number service. As part of the Circular Economy Package, Parliament adopted legislation on making CE-marked fertilising products available on the single market (Regulation (EU) 2019/1009).

Research from 2019 estimates that the benefits arising from the principle of free movement of goods and related legislation come to EUR 386 billion annually[1]. However, barriers to realising the full freedom of movement of goods remain. The existence of these barriers is evidenced by a study[2] published in November 2020, which reviewed national rules that restrict the free movement of goods and services and the right to establishment across the EU market. One conclusion was that while the EU single market is the world's largest and most successful example of economic integration, it is not yet free from disproportionate obstacles to the free movement of goods.

During the COVID-19 pandemic, in its resolution of 17 April 2020, Parliament emphasised the critical need to maintain open EU internal borders for goods, underlining the single market's role in the EU's collective prosperity and as a pivotal response to the crisis. The Commission's communication from 15 May 2020 proposed a coordinated strategy for restoring freedom of movement and lifting internal border controls. This collaborative approach was key to allowing essential goods, including medical supplies and equipment, to move across the EU, mitigating the impact of state-imposed border restrictions.

In its resolution of 19 June 2020, Parliament recalled that the Schengen area is a cherished achievement at the very heart of the EU project, and called on the Member States to reduce restrictions on free movement and to step up their efforts to achieve the completion of Schengen area integration.

A webinar[3] by the Policy Department for Economic, Scientific and Quality of Life Policies in November 2020 for the Committee on the Internal Market and Consumer Protection reviewed the impact of the pandemic on the EU's free movement of goods, services, and people. It discussed the challenges to the flow of healthcare-related goods such as personal protective equipment and emphasised the need for better EU coordination in public procurement and goods movement for future crises. A follow-up study[4] presented in February 2021 further examined the pandemic's effect on the

[1]Poutvaara, P., Contribution to Growth: Free Movement of Goods – Delivering Economic Benefits for Citizens and Businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.
[2]Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[3]Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and Consumer Protection – IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[4]Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

internal market and consumer protection, suggesting additional measures to enhance the EU internal market's resilience against future crises.

Parliament has been instrumental in customs harmonisation, culminating in the establishment of the EU Single Window Environment for Customs through Regulation (EU) 2022/2399. This regulation, which will unfold over the next decade, initiates with the EU Customs Single Window Certificates Exchange System (EU CSW-CERTEX) already at the pilot stage since 2017. The initial phase up to 2025 aims to enhance intergovernmental exchanges at EU borders, particularly for non-customs procedures. A subsequent phase, starting in 2031, will introduce a business-to-government system to streamline the clearance process for businesses involved in importing or exporting goods, aiming to significantly reduce current trade impediments.

On interoperability solutions for EU public administrations, businesses and consumers for seamless cross-border provision, a newer Interoperable Europe Act is undergoing negotiations, with Council and Parliament currently debating the final technicalities of the regulation.

In a study[5] by the Policy Department for Economic, Scientific and Quality of Life Policies requested by the IMCO Committee, an analysis was published on 9 December 2022 on the Member States' diverging customs authorisation procedures for products entering the EU. As these diverging procedures leading to trade barriers and distortions in the internal market, one of the proposed solutions was the creation of a European customs agency.

Further to this, 17 May 2023 saw a Commission proposal (COM(2023)0257) representing a comprehensive effort to modernise the EU's customs framework. A significant feature of the proposal is the establishment of an EU Customs Data Hub, managed by a newly introduced EU Customs Authority. This hub will serve as a large data repository to detect fraud and non-compliance, and will enable data exchange between the EU and third countries, and foster cooperation between EU Member States' customs authorities.

For more information on this topic, please see the website of the Committee on Internal Market and Consumer Protection.

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[5]Hausemer, P. et al., A Comparative Analysis of Member States' Customs Authorisation Procedures for the Entry of Products into the European Union, publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2022.

2.1.3. FREE MOVEMENT OF CAPITAL

The free movement of capital is one of the four fundamental freedoms of the EU single market. It is not only the most recent one but, because of its unique third-country dimension, also the broadest. The liberalisation of capital flows progressed gradually. Restrictions on capital movements and payments, both between Member States and with third countries, have been prohibited since the start of 2004 as a result of the Maastricht Treaty, although exceptions may exist.

LEGAL BASIS

Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

All restrictions on capital movements between Member States as well as between Member States and third countries should be removed, with exceptions in certain circumstances. The free movement of capital underpins the single market and complements the other three freedoms. It also contributes to economic growth by enabling capital to be invested efficiently and promotes the use of the euro as an international currency, thus contributing to the EU's role as a global player. It was also indispensable for the development of Economic and Monetary Union and the introduction of the euro.

ACHIEVEMENTS

A. First endeavours (before the internal market)

The first Community measures were limited in scope. The Treaty of Rome (1957) required the restrictions to be removed only to the extent necessary for the functioning of the common market. The First Capital Directive from 1960, amended in 1962, ended restrictions on certain types of commercial and private capital movements, such as real-estate purchases, short- or medium-term lending for commercial transactions, and purchases of securities traded on the stock exchange. Some Member States went further by introducing unilateral national measures, thereby abolishing virtually all restrictions on capital movements (e.g. Germany and the Benelux countries). Another directive on international capital flows followed in 1972.

B. Further progress and general liberalisation in view of the internal market

Amendments to the First Capital Directive in 1985 and 1986 brought further liberalisation in areas such as long-term lending for commercial transactions and purchases of securities not dealt on the stock exchange. Capital movements were fully liberalised by a Council Directive in 1988 which scrapped all remaining restrictions on capital movements between Member State residents as of 1 July 1990. It also aimed to liberalise capital movements involving third countries in a similar way.

C. The definitive system

1. Principle

The Maastricht Treaty introduced the free movement of capital as a Treaty freedom. Today, Article 63 TFEU prohibits all restrictions on the movement of capital and payments between Member States, as well as between Member States and third countries. The Court of Justice of the European Union is charged with the task of interpreting the provisions related to the free movement of capital, and extensive case-law exists in this area. In cases where Member States restrict the freedom of capital movement in an unjustified way, the usual infringement procedure set out in Articles 258-260 TFEU applies.

2. Exceptions and justified restrictions

Exceptions are largely confined to capital movements related to third countries (Article 64 TFEU). In addition to the option for Member States of maintaining restrictions on direct investment and other transactions which existed on a given date, the Council may also, after consulting the European Parliament, unanimously adopt measures which constitute a step backwards in the liberalisation of capital movements with third countries. In addition, the Council and the European Parliament may adopt legislative measures involving direct investment, establishment, provision of financial services or the admission of securities to capital markets. Article 66 TFEU covers emergency measures vis-à-vis third countries, limited to a period of six months.

The only justified restrictions on capital movements in general, including movements within the EU, are laid down in Article 65 TFEU. These include: (i) measures to prevent infringements of national law (namely for taxation and prudential supervision of financial services); (ii) procedures for the declaration of capital movements for administrative or statistical purposes; and (iii) measures justified on the grounds of public policy or public security. The latter was invoked during the European sovereign debt crisis, when Cyprus (2013) and Greece (2015) were forced to introduce capital controls in order to prevent an excessive outflow of capital. Cyprus removed all of the remaining restrictions in 2015 and Greece did so in 2019. The emergence of digital finance, especially blockchain-based cryptocurrencies, may challenge current concepts designed to ensure the free movement of capital.

Article 144 TFEU allows, within the framework of the balance of payments assistance programmes, for protective balance of payments measures where difficulties jeopardise the functioning of the internal market or where a sudden crisis occurs. This safeguard clause is only available to Member States outside of the euro area.

Finally, Articles 75 and 215 TFEU provide for the possibility of financial sanctions either to prevent and combat terrorism or based on decisions adopted within the framework of the common foreign and security policy. Free movement of capital is restricted in relation with the economic sanctions imposed against Russia following its invasion of Ukraine.

3. Payments

Article 63(2) TFEU stipulates that ‘all restrictions on payments between Member States and between Member States and third countries shall be prohibited’.

In 2001, a regulation harmonising the costs of domestic and cross-border payments within the euro area was adopted. It was repealed and replaced in 2009, offering

benefits for Member State residents by bringing down the fees for cross-border payments in euro practically to zero. That was then repealed and replaced in 2021, with the aim of bringing down the fees for cross-border payments between euro and non-euro Member States.

The Payment Services Directive (PSD) provided the legal foundation for establishing a set of rules applicable to all payment services in the EU to make cross-border payments as easy, efficient and secure as 'national' payments, and to foster efficiency and cost reduction through more competition by opening up payment markets to new entrants. The PSD provided the necessary framework for an initiative of the European banking and payments industry, called the 'Single Euro Payments Area' (SEPA). SEPA instruments were available, but not much in use by the end of 2010. Consequently, in 2012, a regulation was adopted, setting EU-wide end-dates for the migration of the old national credit transfers and direct debits to SEPA instruments. In 2015, the co-legislators adopted the revised Payment Services Directive (PSD 2), which repealed the existing directive. It enhances transparency and consumer protection and adapts the rules to cater for innovative payment services, including internet and mobile payments. The directive entered into force on 12 January 2016 and took effect on 13 January 2018.

D. Further developments

Despite the progress achieved in liberalising capital flows in the EU, capital markets have remained, to a large extent, fragmented. Building on the Investment Plan for Europe, the Commission launched, in September 2015, its flagship initiative: the Capital Markets Union (CMU). This includes a number of measures aimed at creating a truly integrated single market for capital by 2019. A mid-term review of the CMU Action Plan was published in June 2017. In addition, the Commission and the Member States are working on eliminating obstacles to cross-border investment which fall within national competences. The expert group on barriers to free movement of capital was set up to examine this issue. In March 2017, by way of follow-up to the work of the expert group, the Commission published a report outlining the situation in the Member States. In March 2019, the Commission published a communication entitled 'Capital Markets Union: progress on building a single market for capital for a strong Economic and Monetary Union'. This was followed by a second CMU action plan, with 16 priorities, in September 2020.

The Commission is also working towards discontinuing the existing intra-EU bilateral investment treaties (BITs), many of which existed before the most recent rounds of EU enlargement. These agreements between Member States are considered by the Commission to be an impediment to the single market as they both clash and overlap with the EU legislative framework. For example, the arbitration mechanisms which are integrated into the BITs exclude both the national courts and the Court of Justice of the European Union, thus preventing the application of EU law. BITs may also result in more favourable treatment being given to investors from certain Member States which concluded intra-EU BITs. An agreement was reached on 24 October 2019, which paves the way to terminating these. On 29 May 2020, 23 Member States signed an agreement for the termination of BITs between the Member States of the EU. The Commission also publishes yearly reports and studies on capital flows within the EU and in the global context. During the COVID-19-induced crisis, despite the extreme stress exerted on the financial system, no EU Member State resorted to capital controls on financial outflows.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has strongly supported efforts to encourage the liberalisation of capital movements. However, it has taken the view that such liberalisation should be more advanced within the EU than with the rest of the world to ensure that EU savings fuel EU investment as a priority. It has also pointed out that capital liberalisation should be backed up by full liberalisation of financial services and the harmonisation of tax law in order to create a unified EU financial market. It was thanks to political pressure from Parliament that the Commission was able to launch legislation on the harmonisation of domestic and cross-border payments.

Parliament has supported the launch of the CMU. It adopted a resolution which stressed the need for a level playing field among participants in order to improve the allocation of capital in the EU. The resolution called for existing barriers to cross-border financing to be removed, in particular for small and medium-sized enterprises, and for a stronger role for the European Securities and Markets Authority in improving supervisory convergence. In April 2019, Parliament agreed on a series of legislative acts putting in place the building blocks of a CMU.

For more information on this topic, please see the website of the Committee on Economic and Monetary Affairs.

Christian Scheinert
10/2023

2.1.4. FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

The freedoms of establishment and service provision are pivotal for business and professional mobility within the EU. The complete implementation of the Services Directive is crucial for solidifying the internal market, but obstacles still persist. The COVID-19 pandemic added new challenges. In response, the European Parliament passed a resolution in February 2022, outlining how economic recovery after COVID-19 can best mitigate the negative effects on these vital freedoms.

LEGAL BASIS

Articles 26 (internal market), 49 to 55 (establishment) and 56 to 62 (services) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Self-employed persons and professionals or legal persons within the meaning of Article 54 TFEU who are legally operating in one Member State may: (i) carry out an economic activity in a stable and continuous way in another Member State (freedom of establishment: Article 49 TFEU); or (ii) offer and provide their services in other Member States on a temporary basis while remaining in their country of origin (freedom to provide services: Article 56 TFEU). This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, the adoption of measures to make it easier to exercise them, including the harmonisation of national access rules or their mutual recognition (2.1.6).

ACHIEVEMENTS

A. Liberalisation in the Treaty

1. 'Fundamental freedoms'

The right of establishment includes the right to take up and pursue activities as a self-employed person, and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions as those laid down by the law of the Member State concerned regarding establishment for its own nationals.

Freedom to provide services applies to all services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons. The person providing a 'service' may, in order to do so, temporarily pursue their activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.

2. The exceptions

Under the TFEU, activities connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Article 51 TFEU). This exclusion is, however, limited by a restrictive interpretation: exclusions can cover only those specific activities and functions which imply the exercise of authority. Furthermore, a whole profession can be excluded only if its entire activity is dedicated

to the exercise of official authority, or if the part that is dedicated to the exercise of public authority is inseparable from the rest. Exceptions enable Member States to exclude the production of or trade in war material (Article 346(1)(b) TFEU) and to retain rules for non-nationals in respect of public policy, public security or public health (Article 52(1)).

B. Services Directive – towards completing the internal market

The Services Directive (Directive 2006/123/EC) strengthens the freedom to provide services within the EU. This directive is crucial for the completion of the internal market, since it has huge potential for delivering benefits to consumers and SMEs. The aim is to create an open single market in services within the EU, while at the same time ensuring the quality of services provided to consumers. According to the Commission communication entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth', the full implementation of the Services Directive could increase trade in commercial services by 45% and foreign direct investment by 25%, bringing an increase of between 0.5% and 1.5% in GDP. The directive contributes to administrative and regulatory simplification and modernisation. This is achieved not only through the screening of the existing legislation and the adoption and amendment of relevant legislation, but also through long-term projects (setting up the Points of Single Contact and ensuring administrative cooperation).

The implementation of this directive has been significantly delayed. While initial reforms led to the removal of numerous barriers in the single market for services, momentum has waned since 2012. The reform efforts have decelerated, with meaningful progress mostly seen in Member States that are either receiving financial assistance or those with comprehensive national reform agendas. Despite the directive's capability to increase EU GDP by 2.6%, to date, only 0.9% of this growth potential has been realised, leaving an unexploited margin of 1.7%. The Commission acknowledges these delays but does not consider it necessary to amend the directive. Instead, it is focused on ensuring that the directive achieves its full benefits through enforcement and the introduction of the 'Services Package', which includes new legislative proposals to invigorate the services sector and address the remaining implementation gaps.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament played a key role in liberalising self-employed activities, ensuring that certain, limited activities were reserved for nationals. It also took the Council to the Court of Justice of the European Union for inaction as regards transport policy. The 1985 judgment (Case No 13/83 of 22 May 1985) found the Council to be at fault for not ensuring free international transport services, in violation of the Treaty of Rome. Consequently, the Council had to adopt relevant laws. Parliament's role has expanded with the application of the co-decision and ordinary legislative procedures concerning freedom of establishment and service provision.

Parliament has also been integral to the adoption and monitoring of the Services Directive, urging Member States to comply with and properly execute its provisions. It passed a resolution on 15 February 2011 regarding the directive's implementation and another on 25 October 2011 concerning its mutual evaluation process. After a Commission communication in June 2012, Parliament's IMCO Committee produced a report on the status and future of the internal market for services, which the plenary adopted on 11 September 2013.

On 7 February 2013, Parliament also adopted a resolution with recommendations to the Commission on the governance of the single market, emphasising the importance of the services sector as a key area for growth, the fundamental character of the freedom to provide services, and the benefits of full implementation of the Services Directive.

Parliament prioritised proposals on telecommunications, such as regulations for electronic identification (Regulation (EU) No 910/2014) and a 'Connected Continent'. Parliament's resolution in July 2012 addressed financial services, including basic payment services and mortgage credit (Directive 2014/17/EU). It also tackled package travel through a resolution in March 2014. The Mortgage Credit Directive enforces consumer protection and ensures informed financial capability. The Directive on financial markets (Directive 2014/65/EU) promotes transparency. In 2019, Parliament addressed accessibility requirements (Directive (EU) 2019/882) to support citizens with disabilities. To bolster this, a resolution in October 2022 proposed an AccessibleEU Centre to unify accessibility experts and professionals.

A 2019 study[1] revealed that EU legislation on the free movement of services, including in professional qualifications and retail, yields substantial economic benefits: EUR 284 billion per year under the Services Directive, EUR 80 billion from professional services, and EUR 20 billion from public procurement services. Another study[2] similarly shows that the services sector, which represents 24% of intra-EU trade (up from 20% since the early 2000s) and contributes 78% to the EU's gross added value, is pivotal for growth. However, the study also identified regulatory diversity and informational challenges as factors that increase business costs and impede the free movement of services and the freedom of establishment within the EU.

In its 17 April 2020 resolution, Parliament recognised the single market as pivotal for Europe's prosperity and crucial in responding to COVID-19. Additionally, in its 19 June 2020 resolution, it stressed the significance of the Schengen area to the EU and urged the Member States to ease movement restrictions and work towards full Schengen integration.

On 25 November 2020, Parliament adopted a resolution entitled 'Towards a more sustainable single market for business and consumers', which focuses on different policy areas, in particular the area of consumer protection and business's participation in the green transition (key to enhancing the sustainability of the single market). At the request of the IMCO Committee, the Policy Department for Economic, Scientific and Quality of Life Policies of Parliament's Directorate-General for Internal Policies published a briefing entitled 'The European Services Sector and the Green Transition', which contributed to this resolution.

On 20 January 2021, Parliament adopted a resolution entitled 'Strengthening the single market: the future of free movement of services'. The resolution underlines the need to ensure the implementation of the single market rules for services and to improve the enforcement action of the Commission. It stresses the need to evaluate the level of

[1]Pelkmans, J., Contribution to growth: The Single Market for Services – Delivering economic benefits for citizens and businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.
[2]Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

implementation of the EU legal framework for services and to empower companies by providing them with better access to information.

The COVID-19 pandemic led to reinstated restrictions that affected free movement within the EU's single market, including the services sector. A webinar[3] held on 9 November 2020 by the Policy Department for Economic, Scientific and Quality of Life Policies examined the pandemic's impact, predicting significant future changes in service demand and supply due to technological progress and altered consumer habits. A study[4] presented to the IMCO Committee in February 2021 highlighted that although initial border closures disrupted cross-border professional services, the adoption of digital tools facilitated a return to some level of normalcy.

The Parliament's resolution of 17 February 2022 on tackling non-tariff and non-tax barriers in the single market addressed the generally persisting barriers to the freedom of goods and freedom to provide services, as well as specifically how COVID-19 was detrimental to the four freedoms (the free movement of goods, the free movement of people, the freedom of services and the freedom of movement of capital). This obstacle to the four freedoms persists, despite the extent to which digital tools remedied some of the economic hardship engendered by COVID-19 restrictions.

For more information on this topic, please see the website of the Committee on Internal Market and Consumer Protection.

Christina Ratcliff / Jordan De Bono / Barbara Martinello
11/2023

[3]Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection – IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[4]Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

2.1.5. FREE MOVEMENT OF WORKERS

One of the four freedoms enjoyed by EU citizens is the free movement of workers. This includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State. Restrictions apply for the public service. The European Labour Authority serves as a dedicated agency for the free movement of workers, including posted workers.

LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Freedom of movement for workers has been one of the founding principles of the EU since its inception. It is laid down in Article 45 TFEU and is a fundamental right of workers, complementing the free movement of goods, capital and services within the European single market. It entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. Moreover, this article stipulates that an EU worker has the right to accept a job offer made, to move freely within the country, to stay for the purpose of employment and to stay on afterwards under certain conditions.

Nationals of EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) have the right to work in the EU with the same rights and obligations as EU workers. The EU also has special agreements with other non-EU countries.

ACHIEVEMENTS

In 2021, according to Eurostat data, among EU citizens of working age (20-64), 3.9% (10.2 million) resided in an EU country other than that of their citizenship – up from 2.4% in 2009. Additionally, 1.7 million cross-border workers and 3.6 million postings were recorded..

A. Current general arrangements on freedom of movement

The fundamental right of free movement of workers has been embodied in various regulations and directives since the 1960s. The founding regulation on freedom of movement of workers (Regulation 1612/68) and the complementing directive on the abolition of restrictions on movement and residence (Council Directive 68/360) have been modernised several times. Currently, the key EU provisions are Directive 2004/38/EC on the right of movement and residence, Regulation (EU) No 492/2011 on free movement for workers, Regulation (EU) 2019/1149 establishing a European Labour Authority and Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

1. Workers' rights of movement and residence

Directive 2004/38/EC introduced EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely in EU territory. For the first three months, every EU citizen has the right to reside in the territory of another EU country with no conditions or formalities other than the requirement to hold a valid identity card or passport. For longer periods, the host Member State may require a citizen to register his or her presence within a reasonable and non-discriminatory period of time.

The right of Union citizens to reside for more than three months remains subject to certain conditions: for those who are not workers or self-employed, the right of residence depends on their having sufficient resources in order not to become a burden on the host Member State's social assistance system, and on them having sickness insurance. Students and those completing vocational training also have the right of residence, as do (involuntarily) unemployed persons who have registered as unemployed.

EU citizens acquire the right of permanent residence in the host Member State after a period of five years of uninterrupted legal residence.

The directive modernised **family reunification** by extending the definition of 'family member' (formerly limited to spouse, descendants aged under 21 or dependent children, and dependent ascendants) to include registered partners if the host Member State's legislation considers a registered partnership to be the equivalent of a marriage. Irrespective of their nationality, these family members have the right to reside in the same country as the worker.

2. Employment

Regulation (EU) No 492/2011 lays down rules for employment, equal treatment and workers' families. Any national of a Member State has the right to seek employment in another Member State in line with the relevant regulations applicable to national workers. Member States are not allowed to apply any discriminatory practices, such as limiting job offers to nationals or requiring language skills going beyond what is reasonable and necessary for the job in question. Furthermore, a mobile worker is entitled to receive the same assistance from the national employment office as nationals of the host Member State, and also has the right to stay in the host country for a period long enough to look for work, apply for a job and be recruited. This right applies equally to all workers from other Member States, whether they are on permanent contracts, are employed as seasonal or cross-border workers, or provide services.

However, these rules do not apply to posted workers, as they are not availing themselves of their free movement rights: instead, it is employers who are making use of their freedom to provide services in order to send workers abroad on a temporary basis. Posted workers are protected by the Posting of Workers Directive (Directive (EU) 2018/957 amending Directive 96/71/EC), which provides for the same rules on remuneration as local workers in the host country and regulates the period after which the labour law of the host country applies (2.1.13).

As regards working and employment conditions in the territory of the host Member State, nationals of one Member State working in another have the same social and tax benefits and access to housing as national workers. Moreover, they are entitled to equal treatment in respect of the exercise of trade union rights.

Anti-discrimination rules apply also to the children of a mobile worker. Member States should encourage these children to attend education and vocational training in order to facilitate their integration.

Finally, Article 35 of Directive 2004/38/EC expressly grants Member States the power, in the event of abuse or fraud, to withdraw any right conferred by the directive.

3. Case law on free movement of workers

Since the introduction of EU citizenship, the Court of Justice of the European Union (CJEU) has refined the interpretation of Directive 2004/38/EC in a range of case law on the free movement of workers. A dedicated Commission online database presents case law in this area.

B. Restrictions on freedom of movement

The Treaty allows a Member State to refuse an EU national the right of entry or residence on the grounds of public policy, public security or public health. Such measures must be based on the personal conduct of the individual concerned, which must represent a sufficiently serious and present threat to the fundamental interests of the state. In this regard, Directive 2004/38/EC provides for a series of procedural guarantees.

Under Article 45(4) TFEU, free movement of workers does not apply to employment in the public sector, although this derogation has been interpreted in a very restrictive way by the CJEU.

During a transitional period after the accession of new Member States, certain conditions can be applied that restrict the free movement of workers from, to and between those Member States. There are currently no transitional periods in force.

Brexit put an end to the freedom of movement of workers between the UK and the EU-27 on 31 December 2020. The rights of the EU-27 citizens already living and working in the UK and those UK citizens who were living and working in the EU-27 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights. All new cross-border situations starting on or after 1 January 2021 are covered by the EU-UK Trade and Cooperation Agreement with respect to social security.

C. Measures to support freedom of movement

The EU has made major efforts to create an environment conducive to worker mobility. These include:

— Reform of the system for recognition of professional qualifications completed in other EU Member States in order to harmonise and facilitate the procedure. This includes the automatic recognition of a number of professions in the health sector and of architects (Directive 2013/55/EU amending Directive 2005/36/EC 2.1.6);

— The issuing in 2016 of a European Professional Card for selected regulated professions;

— The coordination of social security schemes, including the portability of social protection, thanks to Regulation (EC) No 883/2004 and implementing Regulation (EC) No 987/2009, currently under revision (2.3.4);

— A European Health Insurance Card (2004) as proof of insurance in accordance with Regulation (EC) No 883/2004, and a directive on cross-border healthcare (Directive 2011/24/EU).

— Improvements in the acquisition and preservation of supplementary pension rights (Directive 2014/50/EU);

— The obligation to ensure judicial procedures providing redress for workers discriminated against and to nominate bodies promoting and monitoring equal treatment (Directive 2014/54/EU).

The European Labour Authority (ELA), an initiative under the European Pillar of Social Rights, was established on 31 July 2019. Its main aims are to ensure better enforcement of EU rules on labour mobility and social security coordination, to provide support services for mobile workers and employers, to support coordination between Member States in cross-border enforcement, including joint inspections and mediation to resolve cross-border disputes, and to promote cooperation between Member States in tackling undeclared work.

The agency integrates or absorbs various previous European initiatives of relevance for labour mobility, in particular the job mobility portal, EURES (European Employment Services) and the European platform tackling undeclared work.

D. Impact of the COVID-19 pandemic and of Russia's aggression against Ukraine on free movement of workers

The COVID-19 pandemic, which hit the EU in early 2020, led to unprecedented restrictions on free movement of labour across EU Member States, notably as a result of the re-introduction of border controls at internal borders. Consequently, cross-border, seasonal and posted workers experienced barriers to mobility and increased unemployment. In March 2020, the Commission issued guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak. On 13 October 2020, the Council adopted a recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic with provisions on waiving quarantine requirements for essential workers, following by an update to the recommendation on 1 February 2021.

Following the Russian invasion of Ukraine, millions of people fled Ukraine for the European Union. The Commission immediately proposed a Temporary Protection Directive to provide effective assistance. The Directive grants people fleeing Ukraine a residence permit and access to education and the labour market. The Commission has produced guidance to help people access jobs, training and adult education. This guidance aims to ensure the rapid and effective integration of Ukrainian refugees into the European labour market and to facilitate the recognition of their academic and professional qualifications. Figures from July 2023 indicate that more than 4.1 million people from Ukraine are currently benefiting from the temporary protection mechanism.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always stressed that the EU and its Member States should coordinate their efforts in order to promote the free movement of workers.

In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU, Parliament recalled that the right of free movement for work purposes should not be associated with abuse of social security systems and called

on the Member States to refrain from any actions that could affect the right of free movement.

Parliament supported the establishment of a European Labour Authority (ELA) in its resolution of 16 April 2019. It pushed for the creation of a single portal for free movement, as well as for the possibility for the ELA to propose joint inspections on its own initiative. Moreover, it added cooperation on undeclared work to its key tasks, thus ensuring that the European platform tackling undeclared work (which was founded in 2016 with strong support from Parliament) continues its activities.

In its 17 April 2020 resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, Parliament called for cross-border travel to remain open for seasonal and cross-border workers, especially in essential sectors. On 19 June 2020, Parliament adopted a resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis. A year later, in a resolution of 19 May 2021 on impacts of EU rules on the free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills, Parliament once again drew attention to the particularly vulnerable situation of frontier, posted, seasonal, cross-border and other mobile workers during the COVID-19 pandemic and called for structural shortcomings in the European and national regulatory frameworks to be addressed. Parliament called for improved implementation, enforcement and monitoring of the revised Posting of Workers Directive and the establishment of a one-stop shop where workers and employers can access digital services for labour mobility and the posting of workers.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs

Aoife Kennedy
10/2023

2.1.6. THE MUTUAL RECOGNITION OF DIPLOMAS

The freedom of establishment and the freedom to provide services are cornerstones of the single market, enabling the mobility of businesses and professionals throughout the EU. In order to implement these freedoms, diplomas and qualifications issued nationally need to be widely recognised. Different measures for harmonisation and mutual recognition have been adopted, and further legislation on the subject is underway.

LEGAL BASIS

Articles 26 and 53 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

In order for self-employed persons and professionals to establish themselves in another Member State or offer their services there on a temporary basis, diplomas, certificates and other documents serving as proof of professional qualifications issued in other Member States need to be mutually recognised. All national provisions governing access to different professions need to be coordinated and harmonised.

ACHIEVEMENTS

Article 53(1) TFEU enables the mutual recognition of diplomas and other qualifications required in each Member State for access to regulated professions to facilitate the freedom of establishment and the provision of services. It also addresses the need to coordinate national rules on the taking-up and pursuit of activities as self-employed persons. Paragraph 2 of the same article subordinates mutual recognition 'in cases where such harmonisation is a difficult process' to the coordination of the conditions governing its exercise in the various Member States. The harmonisation process has evolved through a number of directives since the mid-1970s. On these bases, legislation on mutual recognition is adjusted to the needs of different situations. It varies in completeness according to the profession concerned, and in recent cases has been adopted using a more general approach.

A. The sector-specific approach (by profession)

1. Mutual recognition after harmonisation

Harmonisation has progressed faster in the healthcare sector, for the obvious reason that professional requirements, and especially training courses, do not vary much from one country to the other (unlike in other professions). Therefore, it has not been difficult to achieve harmonisation in a substantial number of professions (e.g. doctors, nurses, veterinary surgeons, midwives and self-employed commercial agents). The Professional Qualifications Directive (Directive 2005/36/EC) clarified, simplified and modernised the existing directives, and brought together the regulated professions of doctors, dentists, nurses, veterinary surgeons, midwives, pharmacists and architects in one legislative text. This directive specifies how the 'host' Member State should recognise professional qualifications obtained in another ('home') Member State. The recognition of professionals includes both a general system for recognition and

specific systems for each of the abovementioned professions. Among many other aspects, it focuses on the level of qualification, training and professional experience (of both a general and a specialist nature). The directive also applies to professional qualifications within the transport sector, and to insurance intermediaries and statutory auditors. These professions were previously regulated under separate directives. On 22 June 2011, the Commission adopted a Green Paper on Modernising the Professional Qualifications Directive (COM(2011)0367), which proposed a reform of the systems for the recognition of professional qualifications, with a focus on facilitating the mobility of workers and adapting training and current labour market requirements. On 19 December 2011, the Commission published a proposal for a revision of the Professional Qualifications Directive (COM(2011)0883) based on the outcome of the various consultation processes and in response to Parliament's resolution of 15 November 2011. The most important key proposals included: the introduction of the European professional card; harmonisation of the minimum training requirements; automatic recognition for seven professions, namely architects, dentists, doctors, nurses, midwives, pharmacists and veterinary surgeons; and the introduction of the Internal Market Information System allowing for enhanced cooperation in diploma recognition. The main objectives of the revision were to facilitate and enhance the mobility of professionals across the EU and to help alleviate personnel shortages in some Member States. The amended directive (Directive 2013/55/EU) was adopted on 20 November 2013.

At the beginning of the COVID-19 pandemic, the Commission gave guidance in a communication on facilitating the mutual recognition of health workers' qualifications and highlighted the importance of their free movement to the greatest extent possible to ensure patient safety (C(2020)3072).

2. Mutual recognition without harmonisation

For other professions, differences between national rules have prevented harmonisation. This has made achieving mutual recognition more challenging. The diversity of legal systems has prevented the full mutual recognition of diplomas and qualifications that would have secured immediate freedom of establishment on the basis of a diploma obtained in the country of origin. Council Directive 77/249/EEC of 22 March 1977 granted lawyers the freedom to provide occasional services. However, free establishment otherwise requires a diploma from the host country. Directive 98/5/EC of 16 February 1998 was a significant step forward, allowing lawyers holding a diploma from any Member State to establish themselves in another Member State and pursue their profession, although the host country could require them to be assisted by a local lawyer when representing and defending their clients in court. After three years operating on this basis, lawyers can acquire the right to fully exercise their profession, after passing an aptitude test set by the host country and without having to take a qualifying examination. Other directives have applied the same principle to other professions, such as road haulage operators, insurance agents and brokers, as well as hairdressers and architects.

B. The general approach

The drafting of legislation for mutual recognition sector by sector (sometimes with more extensive harmonisation of national rules) has historically been a long and tedious procedure. Therefore, the need for a general system of mutual recognition of diplomas, valid for all regulated professions that have not been the subject

of specific EU legislation, became apparent. This new general approach changed the perspective. Before, 'recognition' was subordinate to the existence of EU rules concerning 'harmonisation' in the specific regulated profession or activity. Afterwards, 'mutual recognition' became almost automatic, under the established rules, for all the regulated professions concerned, without any need for sector-specific secondary legislation. From that moment on, both the 'harmonisation' and the 'mutual recognition' methods continued to be used under a parallel system and, in some cases, both have been used under a complementary system taking the form of both a regulation and a directive (Council resolutions of 3 December 1992 and 15 July 1996 on transparency of qualifications and vocational training certificates). The host Member State cannot refuse applicants access to the occupation in question if they possess the qualifications required in their country of origin. However, if the training they received was of a shorter duration than in the host country, it may demand a certain length of professional experience and, if the training differs substantially, it may require an adaptation period or aptitude test at the discretion of the applicant, unless the occupation requires knowledge of national law.

Nevertheless, in May 2018, the Commission issued a proposal for a Council recommendation (COM(2018)270) to push for the automatic mutual recognition of higher education and upper secondary education periods abroad. This recommendation was adopted by the Council on 26 November 2018 and marks a significant milestone in the Commission's ambition to establish the European Education Area (EEA) (COM(2020)625) by 2025, which entails automatic mutual recognition without separate recognition procedures across the EU.

Despite this commitment to establishing the EEA by 2025, some Member States, in an effort to implement automatic mutual recognition more quickly, have found interregional solutions outside of the EU framework. The Benelux (Belgium, Netherlands and Luxembourg) and the Baltic (Estonia, Latvia and Lithuania) countries signed an agreement for the automatic recognition of diplomas on 27 September 2021.

In response to the Russian war against Ukraine, the Commission issued a recommendation in April 2022 on the recognition of qualifications for people fleeing Ukraine.

ROLE OF THE EUROPEAN PARLIAMENT

On 15 November 2011, Parliament adopted a resolution on the implementation of the Professional Qualifications Directive calling for its modernisation and improvement, and encouraging the use of the most efficient and appropriate technologies. Parliament proposed the introduction of a European professional card, an official to be document recognised by all competent authorities, as a way to facilitate the recognition process.

In response to Parliament's resolution, on 19 December 2011 the Commission presented a proposal for a revision of the Professional Qualifications Directive. After successful trilogue negotiations, Parliament secured its proposed changes, including the introduction of a voluntary professional card, the creation of an alert mechanism, clarification of the rules regarding partial access to a regulated profession, rules regarding language skills and the creation of a mechanism for mutual evaluation of regulated professions to ensure greater transparency. This led to the adoption, on 20 November 2013, of Directive 2013/55/EU of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional

qualifications. As of October 2023, Parliament's Committee on Internal Market and Consumer Protection is deliberating measures to correct this directive to allow Romanian nursing graduates to have their qualifications recognised across the EU without needing to prove professional experience in the area.

Subsequently, Parliament and the Council adopted the Proportionality Test Directive (Directive (EU) 2018/958), which introduces a harmonised proportionality test to be used by all Member States before adopting national regulations on professions. On 25 October 2018, Parliament adopted a resolution on promoting automatic mutual recognition of diplomas.

In November 2020, the Policy Department for Economic, Scientific and Quality of Life Policies published a study[1], at the request of the Committee on the Internal Market and Consumer Protection, which analysed national obstacles to free movement in the single market, including the free movement of services and access to regulated professions. The study found that differences in qualifications, such as different levels or lengths of education, in the rules regarding the recognition of professional qualifications, and in the administrative procedures related to access to professional bodies, act as a barrier to the free movement of professional services in the single market.

For more information on this topic, please see the website of the Committee on Internal Market and Consumer Protection.

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[1]Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

2.1.7. THE UBIQUITOUS DIGITAL SINGLE MARKET

The digital single market benefits the economy, reduces environmental impacts and enhances quality of life through e-commerce and e-governance. With services transitioning from fixed to mobile platforms, this shift necessitates an EU framework for cloud computing, cross-border content access and seamless mobile data, while ensuring privacy and cybersecurity. The European digital single market was vital during the COVID-19 crisis. The Digital Services and Digital Markets Acts will significantly transform the market in the coming years.

LEGAL BASIS

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union.

OBJECTIVES

The digital single market (DSM) aims to eliminate national barriers to online transactions, building on the common market concept designed to remove trade barriers among the Member States. This evolved into the internal market, promoting the free movement of goods, persons, services and capital. The Europe 2020 strategy highlighted the Digital Agenda for Europe, emphasising the importance of information and communications technology (ICT) for the EU's 2020 goals. Recognised as a priority, the DSM is central to the Commission's DSM strategy (COM(2015)0192) and the President of the Commission's 2019-2024[1] agenda.

The DSM can enhance access to information, reduce transaction costs, minimise environmental impacts and introduce better business models. E-commerce growth offers tangible benefits for consumers, such as new products, lower prices, more choice and higher-quality goods, while boosting cross-border trade and offering easy price comparison. Additionally, the rise in e-government services streamlines online compliance and access to jobs and business opportunities for EU entities.

ACHIEVEMENTS

Given that the full potential of the internal market remains unexploited, Parliament, the Council and the Commission have made efforts to relaunch it, and to put the public, consumers and small and medium-sized enterprises (SMEs) at the centre of the single market policy[2]. The DSM has a salient role to play in these efforts.

In its communication entitled 'Europe 2020 - A strategy for smart, sustainable and inclusive growth' (COM(2010)2020), the Commission presented seven flagship initiatives - including the Digital Agenda - intended to 'turn the EU into a smart,

[1]See 'A Union that strives for more – My agenda for Europe: political guidelines for the next European Commission 2019-2014'.
[2]Earlier efforts sought to improve the operation of the internal market and ensure consumer protection through, for example: the Data Protection Directive (95/46/EC), the e-Commerce Directive (2000/31/EC), the Telecommunication Package including the e-Privacy Directive (2002/58/EC), the Payment Services Directive (2007/64/EC), the Consumer Rights Directive (2011/83/EU) and the Roaming Regulation ((EU) No 531/2012).

sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion'.

The Commission communications and Parliament resolution of 20 May 2010 set the stage for the 'Towards a Single Market Act' (COM(2010)0608), introducing measures to boost the EU economy and job creation. In October 2012, the Commission introduced the Single Market Act II (COM(2012)0573), with 12 key actions centred on the four main drivers of growth, employment and confidence: integrated networks, cross-border mobility, the digital economy and actions promoting cohesion and consumer benefits.

On 6 May 2015, the Commission launched the DSM strategy with three pillars: improving access to digital goods/services across the EU; fostering conditions for digital networks and innovative services; and optimising the digital economy's growth potential. Following the strategy's release, the Commission proposed several legislative measures to achieve a DSM. They addressed issues such as unjustified geo-blocking (COM(2016)0289), cross-border parcel delivery (COM(2016)0285), cross-border portability of online content services (COM(2015)0627), a revision of the Consumer Protection Cooperation Regulation (COM(2016)0283), audiovisual media services (COM(2016)0287), contracts for online and other distance sales of goods (COM(2015)0635), and contracts for the supply of digital content (COM(2015)0634). The Commission has also published communications explaining future policy approaches, e.g. to online platforms (COM(2016)0288).

In 2018, the Commission presented its strategy on artificial intelligence (AI) for Europe (COM(2018)0237) and agreed on a coordinated plan with the Member States[3]. In April 2019, the High-Level Expert Group on Artificial Intelligence presented its 'Ethics Guidelines for Trustworthy AI', while in February 2020, the Commission presented its white paper entitled 'Artificial Intelligence - A European approach to excellence and trust' (COM(2020)0065), its communications on Shaping Europe's Digital Future (COM(2020)0067) and the European strategy for data (COM(2020)0066), and, in March 2021, its communication entitled '2030 Digital Compass: the European way for the Digital Decade' (COM(2021)0118).

On 8 April 2020, the Commission issued a recommendation on a common EU toolbox for the use of technology and data to combat and exit from the COVID-19 crisis.

In May 2020, the Commission announced in its communication entitled 'Europe's moment: Repair and Prepare for the Next Generation' (COM(2020)0456) that the DSM would be a pillar of the EU's COVID-19 recovery plan. This communication focuses on: (1) investment in better connectivity, (2) a stronger industrial and technological presence in strategic parts of the supply chain (e.g. AI, cybersecurity, 5G, cloud infrastructure), (3) a real data economy and European data spaces, and (4) fairer and simpler business environments. This communication provides direction for how NextGenerationEU funds are to be allocated by Member States.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a leading role in relaunching the internal market and is a keen promoter and agenda setter for the DSM.

[3]European Commission press release of 7 December 2018 entitled 'Member States and Commission to work together to boost artificial intelligence "made in Europe"'.

In its resolution of 20 April 2012, Parliament emphasised the need for a coherent legal framework for the mutual recognition of electronic authentication and signatures to facilitate cross-border services in the EU. On 11 December 2012, it passed resolutions on completing the DSM and digital freedom in EU foreign policy. Additionally, its resolution of 4 July 2013 highlighted the possibility of maximising the DSM's potential, bridging skills gaps, enhancing security, boosting trust and consumer confidence, promoting legal digital content and establishing mobility services with an international dimension.

In response to the DSM strategy, Parliament passed a resolution on 19 January 2016 entitled 'Towards a Digital Single Market Act'. It urged the Commission to put an end to unjustified geo-blocking, to enhance consumers' access to goods/services and to ensure consistent consumer protection for all digital content. The resolution emphasised the need for better cross-border parcel delivery solutions and support for SMEs and start-ups, while tapping into new ICT technologies such as big data and 3D printing. It also advocated for innovation-friendly policies for online platforms and a review of the e-Privacy Directive to align with new EU data protection standards.

Parliament has been advancing the DSM with robust legislative actions, including: net neutrality guarantees; ending roaming charges on 15 June 2017 (Regulation (EU) 2015/2120); banning unjustified geo-blocking (Regulation (EU) 2018/302); launching a single digital gateway (Regulation (EU) 2018/1724); measures to reduce the costs of high-speed electronic communications networks (Directive 2014/61/EU); rules for electronic identification (Regulation (EU) No 910/2014); European cybersecurity rules (Directive (EU) 2016/1148); contracts for digital content and services (Directive (EU) 2019/770); and digital copyright (Directive (EU) 2019/790).

Preparatory work by the Digital Single Market Working Group has laid the groundwork for Parliament's achievements in the digital area with the support of research and scientific evidence. Research carried out for Parliament shows the significant potential of the DSM, in particular in reducing costs and barriers in the EU for consumers and businesses and making the EU economy greener and more social. In the EU, a significant part of this potential can be achieved through the development of e-government and related services, such as e-health.

The data protection package, including Regulation (EU) 2016/679 and Directive (EU) 2016/680, ensures easier access to personal data, a clarified 'right to be forgotten', data portability and knowledge of data breaches. It became effective on 25 May 2018, with Member States transposing the directive by 6 May 2018. Furthermore, on 20 June 2019, Regulation (EU) 2019/1150 on addressing online intermediation services was adopted. On 18 December 2019, Parliament passed a resolution on the digital transformation of health and care in the DSM.

Parliament's legislative work on the DSM contributes about EUR 177 billion annually to the EU economy. According to a study, key areas of benefit include electronic communications and services (EUR 86.1 billion), data flows and AI (EUR 51.6 billion), the single digital gateway (EUR 20 billion) and regulations on geo-blocking and online platforms (EUR 14 billion). In its April 2020 resolution, Parliament emphasised that the post-COVID-19 recovery would focus on digital transformation to rejuvenate the economy.

Ahead of the Commission proposal on AI that was published in April 2021 (COM(2021)0206), Parliament set up a Special Committee on Artificial Intelligence in a Digital Age in order to analyse the impact of artificial intelligence on the EU economy. On 20 October 2020, it adopted three resolutions outlining how the EU can best regulate AI while preserving intellectual property, ethical standards and civil liability, as supported by various research.

On 21 April 2022, Parliament's Committees on Internal Market and Consumer Protection (IMCO) and on Civil Liberties, Justice and Home Affairs (LIBE) held a joint hearing on the Artificial Intelligence Act proposal, to discuss the Commission's recommendations. The committees adopted a report that recommended amendments such as banning predictive policing and expanding the list of high-risk AI. It also proposed a more inclusive role for the AI Office and closer alignment with the General Data Protection Regulation. Progress was made in the fourth trilogue on 24 October 2023, especially on the contentious filter mechanism for high-risk AI systems. The committees are working towards finalising negotiations by the end of the year, with the next trilogue scheduled for 6 December 2023.

For the DSM to function efficiently, it is essential to understand the Member States' laws. In November 2020, a study for the IMCO Committee entitled 'Legal obstacles in Member States to Single Market rules' revealed that barriers are not solely digital-specific. Numerous DSM strategy measures aimed to address cross-border online sales issues. Although a gap in dependable information on Member State regulations persists, the single digital gateway (Regulation (EU) 2018/1724) will address this by the end of 2023. Another 2020 study for IMCO assessed Points of Single Contact and related services, emphasising the need for better monitoring with the upcoming Single Digital Gateway Regulation.

To advance the DSM, Parliament adopted a resolution on the Digital Services Act on 20 October 2020. It suggests that the package bolsters the internal market, guarantees consumer protection, ensures offline and online activity parity, maintains transparency, respects rights and includes non-EU entities affecting EU consumers. The resolution drew from research, a workshop and a series of studies commissioned by the IMCO Committee.

On 15 December 2020, the Commission submitted its proposed Digital Services Act package to Parliament and the Council under the co-decision procedure. The package comprises two legislative initiatives: the Digital Services Act (DSA) and the Digital Markets Act (DMA). Its main goals are to create a safer digital space in which the fundamental rights of users of digital services are protected, and to establish a level playing field to foster innovation, growth and competitiveness in the European single market and globally. The DSA (Regulation (EU) 2022/2065) and the DMA (Regulation (EU) 2022/1925) were formally adopted by Parliament and the Council on 19 October 2022 and 14 September 2022 respectively, and came into force in May 2023.

A study relevant to the DSA and DMA examined the effects of targeted advertising on consumers and the market. Insights were also gained from a workshop discussing the implications of the DSA and DMA, and from a hearing with Facebook whistleblower Frances Haugen, highlighting big tech's malpractices. The alignment of the DSA and DMA proposals with IMCO's October 2020 report shows that Parliament can influence the legislative agenda, even without a direct right of initiative.

A study from February 2022 examined the impact of 'influencers' on advertising and consumer protection in the single market, particularly in spreading misleading information and promoting unsafe products. This study's findings may guide future legislation on the topic. The influencer marketing industry, which has expanded rapidly, frequently uses deceptive tactics to target vulnerable consumers. The DSA and DMA aim to enhance transparency and regulate online platform gatekeepers – crucial areas in influencer activity.

A study requested by the IMCO Committee and published in December 2022 analyses the environmental footprint of online trade in the context of the circular economy. It also provides information on the role of e-commerce in the implementation of the European Green Deal and makes recommendations for future action.

For more information on this topic, please see the website of the Committee on Internal Market and Consumer Protection.

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2.1.8. AFFORDABLE COMMUNICATIONS FOR BUSINESSES AND CONSUMERS

Information and communication technologies (ICTs), as well as data services, now surpass traditional telephone services in importance for both consumers and businesses. With the surge in on-demand content and 4G/5G growth, the EU has introduced a telecommunications regulatory framework. This encompasses all types of telecommunications, including broadcasting. Research indicates that these services contribute EUR 86.1 billion to the EU's GDP annually, with new measures potentially adding another EUR 40 billion.

LEGAL BASIS

Since the Treaties did not provide for any direct powers in the field of electronic communication networks and services, jurisdiction over this field has instead been drawn from various articles within the Treaty on the Functioning of the European Union (TFEU). Given the complex nature of media goods and services, which can be defined neither solely as cultural goods nor simply as economic goods, policies have to be created based on that jurisdiction. The EU may take relevant actions within the framework of sectoral and horizontal policies, such as: industrial policy (Article 173 TFEU); competition policy (Articles 101-109 TFEU); trade policy (Articles 206 and 207 TFEU); the trans-European networks (Articles 170-172 TFEU); research and technological development and space (Articles 179-190 TFEU); the approximation of laws for technological harmonisation or the use of similar technological standards (Article 114 TFEU); the free movement of goods (Articles 28, 30 and 34-35 TFEU); the free movement of people, services and capital (Articles 45-66 TFEU); education, vocational training, youth and sport (Articles 165 and 166 TFEU); and culture (Article 167 TFEU).

OBJECTIVES

Following on from the Lisbon Strategy, the 10-year Digital Agenda for Europe, published in 2010, identified for the first time the key enabling role of ICTs in helping the EU to reach its goals. In 2015, the agenda further built on the five-year digital single market (DSM) strategy to ensure a fair, open and secure digital environment based on three pillars: providing consumers and businesses with better access to digital goods and services across Europe, creating the right conditions for digital networks and services to flourish, and maximising the growth potential of the digital economy.

In 2020, the second five-year digital strategy, 'Shaping Europe's digital future', focused on three key objectives: technology that works for people, a fair and competitive economy, and an open, democratic and sustainable society. In 2021, it was followed by the 10-year 'Digital Compass: the European way for the Digital Decade', which translates the EU#s digital ambitions for 2030 into concrete terms.

ACHIEVEMENTS

A. Digital single market

In 2015, the Commission published the DSM strategy (COM(2015)0192) aimed at removing virtual borders, boosting digital connectivity and making it easier for consumers to access cross-border online content. In January 2016, Parliament adopted a resolution entitled 'Towards a Digital Single Market Act'.

This commitment to boosting digital connectivity has been renewed in the EU's '2030 Digital Compass: the European way for the Digital Decade', as one of its cardinal points that focuses on the expansion of infrastructure. According to the communication, all EU households should have gigabit connectivity and all populated areas should be covered by 5G. Moreover, the production of cutting-edge and sustainable semiconductors in Europe should amount to 20% of global production and 10 000 climate-neutral, highly secure edge nodes should be deployed across the EU. On 17 January 2022, the EU launched its first quantum computer, a highly advanced technology system that forms part of the Jülich Supercomputing Centre in Germany.

B. Roaming Regulation

The Roaming Regulation established the 'roam like at home' rule that mandated the end of retail roaming charges as of 15 June 2017 in the EU, while also establishing price caps on wholesale charges to enable both cost recovery and sustainable 'roam like at home'. The regulation represents part of the EU's DSM achievements and was in force until 30 June 2022. Given its success, by showing how EU citizens benefit from the DSM, a new regulation was proposed to prolong the current rules for another 10 years (COM(2021)0085).The new regulation, published in April 2022, extends free roaming throughout the EU until 2032. It also bans additional charges greater than the wholesale roaming caps once consumers have exceeded their roaming limits. EU roaming rules stopped applying to the United Kingdom once it left the single market on 31 December 2020.

C. European Electronic Communications Code

In 2015 and 2016, the Commission introduced proposals to reform the EU telecommunications regulatory framework, including the European Electronic Communications Code (EECC) to replace four key directives. The EECC (Directive (EU) 2018/1972), which came into force in December 2018, updated the EU's telecommunications regulations. Additionally, in December 2020, EU-wide voice termination rates were established under Commission Delegated Regulation (EU) 2021/654, with rates of EUR 0.07 cent per minute for fixed calls put in place in 2022 and EUR 0.2 cent per minute for mobile calls to be introduced by 2024.

D. Regulation on privacy and security

Better protection for consumers and businesses has been ensured by the following measures: the adoption of legislation on privacy (Directive 2009/136/EC) and data protection (Regulation (EU) 2016/679) and Directive (EU) 2016/680); strengthening the mandate of the European Union Agency for Cybersecurity[1]; the adoption of

[1]Established under Regulation (EU) 2019/881 on 17 April 2019, the Cybersecurity Act repeals Regulation (EC) No 460/2004 and significantly revamps the mandate and scope of the agency. It expands its responsibilities to include a wider range of cybersecurity issues, such as setting up a framework for a

Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the EU (the NIS Directive); strengthening the right to change fixed-line or mobile operator within one working day while retaining one's original phone number, i.e. number portability (Directive 2009/136/EC), and establishing the 112 single European emergency number (Directive 2009/136/EC), the 116 000 missing children helpline, the 116 111 child helpline, the 116 123 emotional support helpline, and an online platform for dispute resolution between consumers and online traders.

On 16 December 2020, the Commission presented a proposal for a directive on measures for a high common level of cybersecurity across the Union (COM(2020)0823), which aimed to replace and further develop the NIS Directive. Directive (EU) 2022/2555 (the NIS2 Directive), published in December 2022, will effectively ensure that the level of cybersecurity in private and public organisations is well matched to the contemporary challenges these organisations face.

E. Competition and market regulations

Better access to telecommunications has been ensured by the introduction of legislation to stimulate competition with clear and inclusive rules, better quality, better prices and more services (the EECC); by investing in broadband networks supporting high-speed internet; by supporting wireless technologies, such as LTE and 5G, through the radio spectrum policy programme; and by harmonising the use of the 470-790 MHz frequency band in the EU to establish gigabit connectivity for all the main socio-economic drivers.

In order to improve the consistency of national regulatory procedures for telecommunications, the Body of European Regulators for Electronic Communications) (Regulation (EU) 2018/1971) provides for cooperation between national regulators and the Commission. It promotes best practices and common approaches, while at the same time avoiding inconsistent regulation that could cause distortions in the DSM. This updated legislation puts the National Regulatory Authorities in charge of promoting competition in the provision of electronic communication networks and services, as well as setting out the principles underpinning their operation: independence, impartiality and transparency, and the right of appeal.

On 23 November 2022, Parliament and the Council adopted Directive (EU) 2022/2380, introducing a 'common charging solution' for, inter alia, mobile phones, tablets, headphones and portable navigation systems, as of 2024. The same harmonisation will also gradually apply to laptops by 2026. The directive aims to promote technological innovation, oppose market fragmentation and reduce the environmental impact of producing chargers.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament advocates a robust and advanced ICT policy and has been very active in the adoption of legislative acts in this area to increase benefits for consumers and businesses.

Parliament has recalled the need to use the 'digital dividend' spectrum to provide broadband to all EU citizens and has stressed that further action is needed to

European cybersecurity certification of ICT products, services, and processes, and increasing its role in supporting Member States in handling cybersecurity threats and attacks.

ensure ubiquitous and high-speed access to broadband, as well as digital literacy and competences for all citizens and consumers. It likewise stresses the importance of security in cyberspace in order to ensure robust protection for privacy and civil liberties for consumers and businesses in a digital environment. At the same time, Parliament strongly promotes technological neutrality, 'net neutrality' and 'net freedoms' for EU citizens.

Parliament systematically consolidates these guarantees through legislation. It plays a key role in removing obstacles within the DSM and modernising EU telecommunications rules that apply to today's digital and data-driven products and services to increase digital benefits for consumers and businesses. Examples include: Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks and Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market to facilitate electronic businesses. In response to the Commission's proposals, Parliament has supported the modernisation of copyright rules and the updating of EU audiovisual media services rules.

Furthermore, Parliament has successfully finalised the legislative work on reforming data protection with Directive (EU) 2016/680 and Regulation (EU) 2016/679. It has carried out extensive legislative work on the proposals presented as a follow-up to the DSM strategy and its resolution entitled 'Towards a Digital Single Market Act'. Parliament also adopted a resolution on internet connectivity for growth, competitiveness and cohesion: European gigabit society and 5G backing the timetable for 5G deployment to facilitate connectivity for consumers and businesses.

A 2019 study revealed that telecommunication services add EUR 86.1 billion to the EU's GDP every year, with the potential to add EUR 40 billion more through new legislation. Additionally, a study on new developments in digital services has suggested that advancements towards 6G will be vital for EU businesses and consumers.

For more information on this topic, please see the websites of the Committee on the Internal Market and Consumer Protection and the Committee on Industry, Research and Energy.

Kristi Polluveer / Christina Ratcliff / Jordan De Bono / Barbara Martinello
12/2023

2.1.9. INTERNAL ENERGY MARKET

In order to harmonise and liberalise the EU's internal energy market, the European Union has adopted measures to build a competitive, customer-centred, flexible and non-discriminatory EU market with market-based supply prices. These measures address issues of market access, transparency and regulation, consumer protection, interconnections and security of supply. They strengthen the rights of individual customers, energy communities and vulnerable consumers, clarify the roles and responsibilities of market participants and regulators and promote the development of trans-European energy networks. Since the Russian invasion of Ukraine and the resulting energy crisis, the structure of the EU energy market has been undergoing profound structural changes.

LEGAL BASIS

Articles 114 and 194 of the Treaty on the Functioning of the European Union.

OBJECTIVES

In the energy sector, completion of the EU's internal market requires: the removal of numerous obstacles and trade barriers; the approximation of tax and pricing policies and measures in respect of norms and standards; and environmental and safety regulations. The objective is to ensure a functioning market with fair market access and a high level of consumer protection, as well as adequate levels of interconnection and generation capacity.

ACHIEVEMENTS

A. Liberalisation of gas and electricity markets

During the 1990s, the European Union and the Member States decided to open their still monopolistic national electricity and gas markets gradually to competition.

The First Energy Package, adopted between 1996 and 1998, consisted of two directives and introduced a first liberalisation of national electricity and gas markets. The Second Energy Package, adopted in 2003, allowed industrial and domestic consumers to freely choose their own gas and electricity suppliers from a wider range of competitors.

The Third Energy Package, adopted in 2009, further liberalised the internal electricity and gas markets. It introduced several reforms, such as the separation of energy supply and generation from transmission networks (unbundling), new requirements for independent regulators, a European agency for the cooperation of national energy regulators (ACER), European networks for transmission system operators for electricity and gas (ENTSO-E and ENTSO-G) and enhanced consumers' rights in retail markets. The package is the cornerstone of the internal energy market.

The Fourth Energy Package, also called the Clean Energy for all Europeans package, was adopted in 2019 and consisted of one directive (on electricity - Directive (EU) 2019/944) and three regulations (on electricity - Regulation (EU) 2019/943, risk-preparedness - Regulation (EU) 2019/941 and the EU Agency for the Cooperation of

Energy Regulators (ACER) - Regulation (EU) 2019/942). It introduced new electricity market rules on renewable energies and investments, incentives for consumers, limits for subsidies to power plants such as capacity mechanisms. It also required the drawing up of contingency plans and increased ACER's competences for cross-border cooperation.

The Fifth Energy Package or 'Fit For 55' was published in 2021 with the aim of aligning the EU's energy targets with the new European climate ambitions for 2030 and 2050. After Russia invaded Ukraine in February 2022 and cut off of the gas supply to Europe, the Union adopted REPowerEU with a view to rapidly phasing out all Russian fossil energy imports, introducing energy-saving measures, diversifying its energy imports, adopting exceptional and structural measures in electricity and gas markets and accelerating the introduction of renewables.

Currently, the Energy Union is based on the implementation of measures on energy efficiency, renewable energy, electricity market design, security of supply, internal energy market, interconnections, risk-preparedness and governance. The key acts in the package are:

The regulation on the internal electricity market (Regulation (EU) 2019/943), which defines the main market-based principles and rules for the operation of electricity markets. It covers market-based price formation, customers as active market participants, market-based incentives for decarbonised electricity generation, the progressive removal of barriers to cross-border electricity flows, the direct or indirect responsibility of electricity producers and the conditions for the creation of capacity mechanisms.

The directive on common rules for the internal market in electricity (Directive (EU) 2019/944) includes several provisions on consumer protection, including the free determination of electricity supply prices, market-based price competition between suppliers; protection of energy-poor and vulnerable household customers; and entitlement for final customers to electricity. Consumers can request the installation of smart electricity meters at no extra cost; households and microenterprises have access, free of charge, to at least one tool comparing the offers of suppliers, including for dynamic price contracts; they can switch suppliers free of charge within a maximum of three weeks and participate in collective switching schemes. End consumers with smart meters can request dynamic pricing contracts with at least one large supplier; they have the right to act as active customers without disproportionate or discriminatory technical requirements (i.e. sell self-generated electricity) and to receive clear, summarised contractual conditions.

The regulation on risk-preparedness in the electricity sector (Regulation (EU) 2019/941) introduces common rules on preventing and preparing for electricity crises to ensure cross-border cooperation and on crisis management. It also provides a common framework for the evaluation and monitoring of security of electricity supply. Under the Regulation, the European Network of Transmission System Operators for Electricity (ENTSO-E) is required to develop and propose a common methodology for risk identification, in cooperation with ACER and the Coordination Group for Electricity, to be approved by ACER.

The directive on common rules for the internal market in natural gas (Directive 2009/73/EC) introduces market-based and non-discriminatory rules for gas transmission, distribution, supply and storage. EU countries are required to unbundle transmission

systems and system operators from vertically integrated energy companies. This means that companies that produce or supply gas or electricity cannot exercise any rights over a transmission system operator, and vice versa. EU countries (or the competent regulatory authorities in them) are responsible for organising non-discriminatory third-party access to transmission and distribution systems. To do this they publish tariffs.

The regulation on conditions for access to the natural gas transmission networks (Regulation (EC) No 715/2009) introduces rules for access to natural gas transmission networks, gas storage and LNG (liquefied natural gas) facilities. The regulation determines how tariffs for access to networks are set; the services to be offered; the allocation of capacity to gas transmission system operators (TSOs); transparency requirements and balancing rules; and imbalance charges on the market. EU countries or the competent regulatory authorities are responsible for organising a system of non-discriminatory third-party access to transmission and distribution systems based on published tariffs.

B. Further steps

The debate on the energy aspects of the Fifth Energy Package initially took place in the context of the high energy prices driven by the post-pandemic recovery. In 2021, the 'Fit For 55' package was adopted in 2021. Furthermore, revisions of the Gas Directive 2009/73/EC and the Gas Regulation (EC) No 715/2009 aim to establish the new regulatory framework for competitive decarbonised gas markets, including the new EU hydrogen market and methane emission reductions.

The debate on the Fifth Energy Package changed radically after the Russian invasion of Ukraine. The EU needed to react to the escalating world energy crisis, so it put forward several proposals for profound structural changes to its energy markets. In March 2022, the REPowerEU communication explicitly stated the EU's intention to phase out its dependency on Russian fossil fuels. In May 2022, the REPowerEU plan operationalised this aim with actions to save energy, diversify supplies, increase security of energy supply, replace fossil fuels and accelerate the roll-out of renewables. This was followed in July 2022 by new rules on coordinated demand reduction measures for gas - 'Save gas for a safe winter'.

The urgency of the situation led Commission to put forward Council Regulation (EU) 2022/1369 on coordinated demand reduction measures for gas, setting a voluntary 15% target, which is mandatory in case of emergency, for reducing Member States' gas consumption between 1 August 2022 and 31 March 2023, which entered into force on 9 August 2022. In September 2022, it was followed by a new Council regulation on an emergency intervention to address high energy prices and reduce energy bills for European citizens and businesses. Between September and December 2022, the Council adopted three exceptional temporary market measures: a voluntary overall reduction target of 10% of gross electricity consumption between 1 December 2022 and 31 March 2023 and a mandatory reduction target of 5% of electricity consumption in peak hours; a market revenue cap at 180 euro/MWh for electricity generators using renewables, nuclear and lignite; and a mandatory temporary solidarity levy for the fossil fuel sector.

On 14 March 2023, the Commission proposed a reform of the electricity market design, notably the Electricity Regulation and Directive and the REMIT Regulation (EU) No 1227/2011. The proposal incentivises long-term contracts, introduces rules on

access to renewables, renewable energy sharing, long-term contracts for consumers, new support schemes for demand response and storage, protection of vulnerable consumers, extension of regulated retail prices to households and SMEs during crises, obligations for Member States to designate suppliers of last resort. In October 2023, Parliament and Council adopted their negotiation positions and opened the trilogue for the adoption of this legislation.

C. Energy market regulation: the EU Agency for the Cooperation of Energy Regulators

The EU ACER was created in 2009 and has been operational since March 2011. ACER is responsible for promoting cooperation between national regulatory authorities at regional and European level and for monitoring the development of the network and the internal electricity and gas markets. It also has the competence to investigate cases of market abuse and to coordinate the application of appropriate penalties with the Member States.

In June 2019, Regulation (EU) 2019/942 (the ACER Regulation) strengthened ACER's role in coordinating the actions of national regulators, especially measures for cross-border areas at risk of fragmented national or regional decision-making. Under the recast of the electricity regulation (Regulation (EU) 2019/943), ACER now has increased responsibilities for drafting and submitting the final proposal for network codes to the Commission and for influencing the regional electricity market (bidding zone) review process. The regulation therefore introduced fees as an additional source of funding to cover the costs of REMIT-related activities ('REMIT fees').

The European Union has also created cooperation structures for European Network Transmission Systems Operators (ENTSOs) for electricity and gas in Regulation (EU) 2019/943 and Regulation (EC) No 715/2009. Together with ACER, ENTSOs create detailed network access rules and technical codes and ensure the coordination of grid operation through the exchange of operational information and the development of common safety and emergency standards and procedures. ENTSOs are also responsible for drafting a 10-year network investment plan every two years, which is in turn reviewed by ACER.

Regulation (EU) 2016/1952 improves the transparency of gas and electricity prices charged to industrial end-users by obliging Member States to communicate prices and pricing systems to Eurostat once or twice a year. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) guarantees fair trading practices on EU energy markets.

D. Security of energy supply

Regulation (EU) 2019/941 on risk-preparedness in the electricity sector establishes measures to safeguarding the security of electricity supply in order to ensure the proper functioning of the internal market for electricity, an adequate level of interconnection between Member States, generation capacity and balance between supply and demand. Regulation (EU) 2018/1999 on the governance of the Energy Union sets an electricity interconnection target of at least 15% by 2030. Regulation (EU) 2017/1938 on security of gas supply establishes measures to safeguard the security of gas supply by allowing for exceptional measures in the event of emergency. This regulation was revised in 2022 after Russia's invasion of Ukraine. The EU adopted mandatory gas

storage filling targets, requiring EU countries to fill their gas storage facilities to 80% of their capacity by 1 November 2022 and to 90% in subsequent years.

Regulation (EU) 2022/2576 boosts energy solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks. It provides a legal framework for the EU Energy Platform to support EU countries in preparing for the winter of 2023-2024 and, in particular, filling their gas storage facilities. Directive 2009/119/EC aims to ensure security of oil supply, obliging Member States to maintain minimum oil stocks, equivalent to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater. The scope of the Gas Directive 2009/73/EC includes future gas pipelines to and from non-EU countries, with derogations for existing pipelines. Special provisions exist under Directive 2013/30/EU on the safety of offshore oil and gas operations.

E. Trans-European Networks for Energy (TEN-E)

TEN-E is a policy focused on linking the energy infrastructures of the Member States. As part of the policy, 11 priority corridors have been identified: three for electricity, five for offshore grids and three for hydrogen. There are also three priority thematic areas: smart electricity grid deployment, smart gas grids and a cross-border carbon dioxide network.

The TEN-E Regulation (EU) 2022/869 lays down guidelines for trans-European energy networks, identifying projects of common interest (PCIs) among EU countries, projects of mutual interest (PMIs) between the EU and non-EU countries, and priority projects involving trans-European energy networks. It ended support for new natural gas and oil projects and required mandatory sustainability criteria for all projects. New PCIs for energy and cross-border renewable energy projects are funded by the Connecting Europe Facility 2021-2027 for Energy (CEF-E), a funding instrument with a seven-year budget of EUR 5.84 billion allocated in the form of grants managed by the Climate, Infrastructure and Environment Executive Agency. The Commission draws up the list of PCIs via a delegated act, which enters into force only if Parliament or the Council express no objection within two months following notification.

ROLE OF THE EUROPEAN PARLIAMENT

In adopting the legislative package on internal energy markets, Parliament has strongly supported transmission ownership unbundling in the electricity sector as the most effective tool to promote investment in infrastructure in a non-discriminatory way, fair access to the grid for new entrants, and transparency in the market.

Parliament has also stressed the importance of a common European view of mid-term investments (indicative European 10-year plan focused on interconnections); greater cooperation between regulatory authorities, Member States and transmission system operators; and a strong process of harmonisation of network access conditions. On the initiative of Parliament, special importance was placed on consumer rights, which were part of the deal reached with the Council: the resolutions insisted on increasing consumer rights (change of suppliers, direct information through smart meters and efficient treatment of complaints made to an energy 'ombudsman').

Parliament also obtained recognition of the concept of 'energy poverty'. It strongly supported the establishment of ACER, stressing that it had to be granted the necessary powers to overcome the issues that cannot be solved by national regulators and

which hamper the integration and proper functioning of the internal market. Since Russia's invasion of Ukraine, Parliament has adopted several resolutions on phasing out Russian fossil fuels and the following key positions:

— On 14 September 2023, Parliament confirmed the start of the negotiations on the electricity market. It wants to strengthen consumer protection against volatile prices, guarantee the right to choose between fixed and dynamic price contracts and prohibit the adoption of unilateral changes to the terms of contracts. It also called for a ban on suppliers disconnecting electricity supplies, including during disputes, and the prohibition of any requirement for vulnerable customers to use prepayment systems.

— On 5 October 2022, Parliament adopted a resolution on energy prices, calling again for an immediate and full embargo on Russian oil, coal, nuclear fuel and gas and stressing its position against energy the disconnection of vulnerable consumers. It called for an appropriate price cap for imports of pipeline gas, new measures to tackle speculation, a cap on revenues of inframarginal electricity producers in favour of consumers and businesses and tasked the Commission with analysing the decoupling of electricity and gas prices. Finally, it regretted that the Commission had chosen Council regulations as the legislative tool to tackle the energy crisis.

— On 19 May 2022, Parliament adopted a resolution on the social and economic consequences for the EU of the Russian war in Ukraine, calling on the Member States to urgently adopt the sixth package of sanctions. It reiterated its call for an immediate and full embargo on Russian imports of oil, coal, nuclear fuel and gas.

— On 7 April 2022, Parliament adopted a resolution calling for an immediate and full embargo on Russian imports of oil, coal, nuclear fuel and gas, for Nordstream 1 and 2 to be completely abandoned and for a plan to to continue ensuring the EU's security of energy supply in the short-term;

— On 1 March 2022, Parliament condemned Russia's illegal, unprovoked and unjustified military aggression against Ukraine, as well as Belarus's involvement in this aggression. It called for the scope of sanctions to be broadened and for them to be aimed at strategically weakening the Russian economy and industrial base, especially the military-industrial complex. In particular, it called for restrictions on the import of key Russian export goods, including oil and gas.

For more information on this topic please see the website of the Committee on Industry, Research and Energy (ITRE).

Matteo Ciucci
11/2023

2.1.10. PUBLIC PROCUREMENT CONTRACTS

Public authorities enter into contracts for works and services accounting for a trading volume of EUR 2.448 billion in the EU, making public procurement a major driver of economic growth, job creation, and innovation. The public procurement package adopted in 2014 adds EUR 2.88 billion annually to EU GDP. Furthermore, EU directives concerning public procurement have fostered an increase in total award values, which rose from under EUR 200 billion in 2009 to approximately EUR 525 billion in 2017.

LEGAL BASIS

Articles 26, 34, 53(1), 56, 57, 62 and 114 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Public procurement contracts are vital to Member States' economies, contributing over 16% of the EU's gross domestic product (GDP). Before European Community legislation, only 2% of such contracts were given to non-national firms. These contracts are crucial in sectors such as construction, energy, and telecommunications, where traditionally national suppliers were preferred. This preference hindered the single market, raising costs and limiting competitiveness in key industries.

Applying internal market principles ensures optimal use of economic resources and public funds. It makes it possible to purchase high-quality products and services at competitive prices. Preferring top-performing firms across Europe boosts European companies' competitiveness and upholds principles of transparency, equal treatment, and efficiency, minimising fraud and corruption risks.

ACHIEVEMENTS

The European Community adopted legislation aimed at coordinating national rules, imposing obligations on the publication of calls for tender and the objective criteria used to examine tenders. Starting in the 1960s, several normative acts relating to public procurement were adopted, but later the Community decided to simplify and coordinate legislation in this field, and adopted four directives (Directives 92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC). Three of these directives merged into Directive 2004/18/EC, concerning procedures for the award of public works contracts, public supply contracts and public service contracts; Directive 2004/17/EC coordinated the procurement procedures of entities operating in the water, energy, transportation and postal services sectors. A few years later, Directive 2009/81/EC introduced specific rules for defence procurement, which aimed to facilitate access to the defence markets of other Member States.

REFORM

In 2014, Parliament and the Council adopted a new public procurement package which includes Directive 2014/24/EU on public procurement (repealing Directive 2004/18/

EC) and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC). The public procurement package was completed by a new directive on concessions (Directive 2014/23/EU), which establishes a legal framework for the award of concessions[1], ensuring that all EU economic actors have effective and non-discriminatory access to the EU market, and provides greater certainty on applicable legal provisions.

The external aspect of public procurement was also taken into account in the Commission's 2012 proposal for a regulation establishing rules on the access of third-country goods and services to the EU's internal market in public procurement and procedures supporting negotiations on access of EU goods and services to the public procurement markets of third countries. A deadlock in negotiations resulted in a new proposal by the Commission in 2016. The formal adoption procedure was concluded by the co-legislators in June 2022 and the final act was signed on 23 June 2022.

In April 2012, the Commission adopted a strategy for e-procurement with the aim of reaching full e-procurement by mid-2016. On 16 April 2014, Parliament and the Council adopted Directive 2014/55/EU on electronic invoicing in public procurement.

On 3 October 2017, the Commission published two communications: 'Making Public Procurement work in and for Europe' (COM(2017)0572) and 'Helping investment through a voluntary ex ante assessment of the procurement aspects for large infrastructure projects' (COM(2017)0573). With the aim of further improving European public procurement as part of the public procurement strategy package, it also published a recommendation entitled 'The professionalisation of public procurement – Building an architecture for the professionalisation of public procurement'.

PUBLIC PROCUREMENT PROCEDURE

Procedures must adhere to EU law principles, including the free movement of goods, establishment, and service provision. Principles like equal treatment, non-discrimination, and transparency are essential, and competition, confidentiality, and efficiency must be upheld.

A. Types of procedure

Calls for tender align with various procedure types, based on a threshold system. The directives outline methods for calculating the estimated value of each public contract[2] and the associated procedures. In the 'open procedure', any interested operator can submit a tender. The 'restricted procedure' allows only invited candidates to tender. The 'competitive procedure with negotiation' allows any operator request participation, but only those invited following an assessment are able to tender. The 'competitive dialogue' is for situations where authorities[3] cannot define their needs; only invited candidates participate in the dialogue. Contracts are awarded based on the best price-

[1]'Concessions' are contracts of pecuniary interest concluded by means of which one or more contracting authorities or contracting entities entrust the execution of works or the provision and management of services to one or more economic operators. Economic operators awarded a concession acquire the exclusive right to exploit the works or services that are the object of the contract, or they acquire that right together with payment.
[2]'Public contracts' are contracts of pecuniary interest concluded between one or more economic operators and one or more contracting authorities, and having as their object the execution of works, the supply of products or the provision of services.
[3]'Contracting authorities' are the state, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities, or one or more such bodies governed by public law.

to-quality ratio. The 'innovation partnership' procedure is for innovative solutions not yet on the market. The authority collaborates with one or several entities for research and development to negotiate a novel solution during tendering. In special cases, contracts can be awarded without prior publication.

B. Criteria for the award of a contract

Contracting authorities are required to award public contracts based on the 'most economically advantageous tender' (MEAT) criterion, introduced in the public procurement rules reform. Instead of just the lowest price, MEAT emphasises best value for money by considering quality, environmental and social factors, life cycle costs, and innovation.

C. Rules on publication and transparency

Procurement procedures must ensure the required transparency at all stages. This is achieved in particular through the publication of the essential elements of procurement procedures, and by publishing information on candidates and tenderers, as well as through the provision of sufficient documentation on all steps of the procedure.

D. Remedies

The Remedies Directive (2007/66/EC) ensures an effective review system for breaches of public procurement rules. It introduces the 'standstill' period, which, after a contract decision, gives bidders at least 10 days to review the decision before the contract is signed by the authorities. This allows potential challenges to the decision.

E. Other aspects of public procurement

The new rules emphasise green procurement, considering environmental impacts and allowing eco-label references. They also highlight social inclusion and simplify service contracts. The rules aim to reduce bureaucracy, aid SMEs with the 'European single procurement document', and encourage dividing contracts into lots. E-procurement is prioritised, with specific e-procurement techniques outlined. The directives recognise EU Court of Justice decisions on in-house contract awards and reinforce regulations against conflicts of interest and corruption.

On 11 March 2020, the Commission published a working document on EU green public procurement criteria for data centres, server rooms and cloud services with the aim of ensuring that data centre equipment and services are procured in an environmentally friendly way in line with the EU's energy, climate change and resource efficiency objectives.

In response to the COVID-19 pandemic, the European Commission proposed the EU4Health Programme (COM(2020)0405), aimed at significantly increasing the budget for public health procurement, including medicines, vaccines, and health data systems. This proposal led to the adoption of Regulation (EU) 2021/522, effective from 1 January 2021 and enacted on 27 March 2021, establishing the programme. The Commission provided new guidance for public buyers for rapid procurement of essential equipment, initiated five joint procurements of protective equipment with Member States, and emphasised the digitalisation of public procurement through national e-procurement platforms, as part of its broader post-COVID-19 recovery strategy (COM(2020)0456).

ROLE OF THE EUROPEAN PARLIAMENT

Before its adoption of the public procurement package on 15 January 2014, Parliament had adopted several resolutions, including those of 18 May 2010 on 'New Developments in Public Procurement', of 12 May 2011 on 'Equal Access to Public Sector Markets in the EU and in Third Countries', and of 25 October 2011 on 'Modernisation of Public Procurement'. In these resolutions, Parliament called for simplification measures and greater legal certainty, as well as for value and sustainability to be considered when awarding contracts.

As part of efforts to further improve European public procurement, Parliament adopted a resolution on the public procurement strategy package on 4 October 2018, calling for improved uptake of digital technologies in public procurement in the EU, facilitation measures for SMEs and social economy enterprises, improved access of EU suppliers to third-country public procurement markets, and professionalisation of buyers[4]. In November 2020, a study[5] found that disparities in professionalism in public procurement among Member States were a significant cause of uneven access to public procurement.

Research has estimated that Parliament's recent legislative activity could generate up to EUR 2.88 billion annually. At the same time, EU directives on public procurement led to an increase in total award values from less than EUR 200 billion to approximately EUR 525 billion[6].

In April 2020, a briefing was published on 'The EU's Public Procurement Framework'[7], which examines how this framework contributes to the achievement of the objectives in the Paris Agreement and the Circular Economy Strategy. This research paper was requested by the Committee on the Internal Market and Consumer Protection (IMCO) for its own-initiative (INI) report entitled 'Towards a more sustainable single market for business and consumers', adopted by Parliament on 25 November 2020.

On 22 February 2021, a study[8] on COVID-19's impact on the internal market was shared with the IMCO Committee. It suggests policy approaches for future crises, including reserved funds for vaccine development and EU-level rule coordination. The study highlighted that Member States swiftly saw the importance of coordinated efforts in procuring medical and personal protective equipment due to the intensity of the crisis.

On 1 December 2021, the IMCO Committee held a public hearing on sustainable public procurement with the Committee on Environment, Public Health and Food Safety

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[4]Relevant research includes Bovis, C., Contribution to Growth: European Public Procurement – Delivering improved rights for European citizens and businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.
[5]Dahlberg, E. et al., *Legal obstacles in Member States to Single Market rules*, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[6]Relevant research includes Becker, J. et al., Contribution to Growth: European Public Procurement – Delivering Economic Benefits for Citizens and Businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.
[7]Núñez Ferrer, J., The EU's Public Procurement Framework, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[8]Marcus, J. S. et al., The Impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

(ENVI). The objective was to see how public purchasing could support the European Green Deal's goals. At the hearing, experts from European universities, businesses, Member State ministries, and NGOs discussed optimising green procurement, promoting its use by the parties concerned, enhancing their access, and improving information dissemination on sustainable procurement.

On 9 June 2022, the Parliament approved a resolution on the Commission's International Procurement Instrument (IPI) proposal, with the final act signed on 23 June 2022. The IPI seeks to promote the global opening of procurement markets. In May 2022, a study[9] for the IMCO Committee entitled 'The Digital Single Market and the digitalisation of the public sector' was released, exploring the potential of an EU GovTech platform to modernise the public sector.

On defence procurement, in September 2023 Parliament adopted a text concerning COM(2022)0349, which resolved to substantially boost defence spending, promote collaborative investments in joint projects, enhance joint defence capabilities procurement, invest in diverse mission capabilities, harness synergies, spur innovation, and fortify the European defence industry, with an emphasis on supporting SMEs.

For more information on this topic, please see the Committee on Internal Market and Consumer Protection website.

Christina Ratcliff / Jordan De Bono / Barbara Martinello
11/2023

[9]Hoekstra, M. et al., The Digital Single Market and the digitalisation of the public sector, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2022.

2.1.11. COMPANY LAW

European company law is partially codified in Directive (EU) 2017/1132, and Member States continue to operate separate company acts, which are amended from time to time to comply with EU directives and regulations. Ongoing efforts towards establishing a modern and efficient company law and corporate governance framework for European undertakings, investors and employees aim to improve the business environment in the EU.

LEGAL BASIS

Articles 49, 50(1) and (2)(g), and 54, second paragraph, of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

An effective corporate governance framework creates a positive EU-wide business environment in the internal market. The objective of harmonising company law is to promote the achievement of freedom of establishment (Title IV, Chapter 2 of the TFEU) and to implement the fundamental right laid down in Article 16 of the Charter of Fundamental Rights of the European Union, the freedom to conduct a business within the limits of Article 17 of the Charter (right to property) (4.1.2).

Article 49, second paragraph, of the TFEU, guarantees the right to take up and pursue activities in a self-employed capacity and to set up and manage undertakings, in particular companies or firms (2.1.4).

The purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, enjoying the freedom of movement of persons, services and capital (2.1.3), to provide protection for shareholders and other parties with a particular interest in companies, to make businesses more competitive, and to encourage businesses to cooperate over borders (2.1.5).

The internal market implies the creation of Europe-wide companies. There are currently around 24 million companies in the EU, of which approximately 80% are limited liability companies. While around 98-99% of limited liability companies are small and medium-sized enterprises (SMEs), companies must be able to act throughout the EU according to a uniform legal framework.

ACHIEVEMENTS

A. A minimum set of common obligations

Although there is no codified European company law as such, harmonisation of the national rules on company law has created some minimum standards and covers areas such as the protection of the interests of shareholders and their rights, rules on takeover bids for public limited companies, branch disclosure, mergers and divisions, minimum rules for single-member private limited liability companies, financial reporting and accounting, easier and faster access to information on companies, and certain disclosure requirements for companies. The 2019 Company Law package

has, nevertheless, streamlined many rules that previously applied under several EU instruments.

1. Setting up a company, capital and disclosure requirements

The First Council Directive (68/151/EEC), dating back to 1968, has been amended many times and was finally replaced by Directive (EU) 2017/1132 of the European Parliament and of the Council relating to certain aspects of company law. It aimed to give the public easier and faster access to information on companies and deals, among other things, with the validity of obligations entered into by a company and nullity of the company. It applies to all public and private limited liability companies. A second Council Directive (77/91/EEC of 1976), equally replaced by Directive (EU) 2017/1132[1], related only to public limited liability companies; the constitution of such companies requires a minimum amount of authorised capital (currently EUR 25 000) as security for creditors and a counterpart to the limited liability of members. There are also rules on maintaining and modifying the capital and a minimum content requirement for public limited liability companies' instruments of incorporation. The 12th Company Law Directive (2009/102/EC of 16 September 2009) provides a framework for single-member private limited liability companies where all shares are held by a single shareholder.

2. Company operations involving more than one country

Directive (EU) 2017/1132 relating to certain aspects of company law introduced disclosure requirements for foreign branches of companies. It covered EU companies that set up branches in another EU country or companies from non-EU countries setting up branches in the EU. A proposal for a directive to further expand and upgrade the use of digital tools and processes in company law was adopted by the Commission on 29 March 2023. It aims to improve transparency and trust in the business environment in the single market.

Council Directive 2014/86/EU of 8 July 2014 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States introduces tax rules that are neutral from the point of view of competition for groups of companies of different Member States. There is no double taxation of dividends distributed by a subsidiary in one Member State to its parent company in another (see also Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital).

Directive 2004/25/EC on takeover bids aims to establish minimum guidelines for the conduct of takeovers of companies governed by the laws of Member States. It sets minimum standards for takeover bids or changes of control and aims to protect minority shareholders, employees and other interested parties. In order to allow limited liability companies to exercise their freedom of establishment in the single market, Directive (EU) 2017/1132 deals with the interconnection of central, commercial and companies registers (business registers) and harmonises the safeguards required across the EU for the protection of the interests of companies' shareholders and third parties in the event of division or mergers within one country, as well as cross-border mergers of a limited liability company and a public limited liability company.

[1]Amended by Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 as regards the use of digital tools and processes in company law, OJ L 186, 11.7.2019, p. 80.

In addition, Commission Implementing Regulation (EU) 2021/1042 sets out technical specifications and procedures required for the system of interconnection of business registers.

3. Company restructuring (mergers and divisions, transfer of seat)

Transferring the registered office of a limited liability company from one Member State to another, as well as merging or dividing it, is an inherent aspect of the freedom of establishment guaranteed by Articles 49 and 54 of the TFEU (see the Cartesio ruling of the Court of Justice of the European Union[2] (CJEU)). However, the principle of freedom of establishment does not guarantee that a company that moves from its home Member State to another Member State can retain its status as a company governed by the law of the Member State of incorporation.

Shareholders and third parties have the same guarantees during restructuring of the company (mergers and divisions). The rules concerning mergers between limited liability companies and public limited liability companies, and their division, were changed by Directive (EU) 2017/1132, which also guarantees protection for shareholders, creditors and employees.

The possibility of operating beyond national borders is an important part of a company's life and may include carrying out a cross-border merger, division or conversion, providing the chance to survive and grow by, for example, tapping into new business opportunities in other Member States or adapting to changing market conditions. Concerning cross-border conversions, mergers and divisions, in November 2019 Parliament and the Council adopted Directive (EU) 2019/2121. The directive aims to remove unjustified obstacles to the freedom of establishment of EU companies in the single market by facilitating cross-border conversions, mergers and divisions, and introduces comprehensive procedures for those operations and additional rules for cross-border mergers of limited liability companies established in an EU Member State. Moreover, the directive outlines similar rules on employee participation rights and seeks to ensure that employees will be adequately informed of and consulted about their expected impact. Minority and non-voting shareholders' rights enjoy greater protection, while creditors of the companies concerned are given clearer and more reliable safeguards.

The question of cross-border transfer of registered offices has not yet been resolved. In Case C-106/16, Polbud, the CJEU, in answer to a preliminary question, further specified the conditions of 'freedom of establishment', stating that it is applicable also to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purpose of its conversion.

4. Guarantees concerning the financial situation of companies

To ensure that information provided in accounting documents is equivalent in all Member States, Directives 2006/43/EC and 2013/34/EU require company accounts (annual accounts, consolidated accounts and approval of persons responsible for carrying out statutory audits) to give a true and fair view of the company's assets, liabilities, financial position and profit or loss. Directive 2006/43/EC aims to improve the reliability of the financial statements of companies by establishing minimum requirements for the statutory audit of annual and consolidated accounts.

[2]Case C-210/06, ECLI:EU:C:2008:723, paragraphs 111-113.

Directive 2013/34/EU simplifies the financial reporting requirements for micro-enterprises in order to enhance their competitiveness and also introduced the obligation for EU listed companies to provide a corporate governance statement in their annual report. Regulation (EC) No 1606/2002 on the application of international accounting standards harmonises the financial information presented by publicly traded companies in order to guarantee protection for investors. Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (on the basis of Article 81 of the TFEU on civil law cooperation) helps to resolve conflicts of jurisdiction and laws, and ensures the recognition of judgments across the EU. It does not harmonise substantive insolvency laws of the Member States, it simply establishes common rules on the court competent to open insolvency proceedings, the applicable law, and the recognition of the court's decisions. The main objective is to avoid the transfer of assets or judicial proceedings from one Member State to another. Directive (EU) 2019/1023 aims to offer a 'second chance for entrepreneurs'. This directive addresses concerns raised by large numbers of investors about the risk of lengthy or complex insolvency procedures abroad, which they attribute as the main reason for not investing outside their own country.

5. The cross-border exercise of shareholders' rights

Directive 2007/36/EC (amended by Directives 2014/59/EU and (EU) 2017/828) on the exercise of certain rights of shareholders in listed companies abolishes the main obstacles to a cross-border vote in listed companies that have their registered office in a Member State, by introducing specific requirements for a certain number of shareholder rights at the general meeting. It also sets out certain rights for shareholders in listed companies, including timely access to relevant information on general meetings and easier proxy voting. Directive (EU) 2017/828 encourages shareholder engagement, and introduces requirements in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders' rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.

6. Company reporting

The EU provides rules on financial information to be disclosed by companies and auditing to improve the integrity of financial statements.

a. Financial reporting

All limited liability companies have to prepare financial statements to monitor the health of their business and provide a true and fair view of their financial position. In Directive 2013/34/EU (the Accounting Directive), the EU introduced rules to ensure consistent and comparable financial reporting across the EU.

b. Corporate sustainability reporting

EU rules also require certain companies to report annually on the social and environmental impacts and risks related to their activities. This helps investors, civil society organisations, consumers, policymakers and other stakeholders to evaluate the non-financial performance of large companies and encourages companies to develop a responsible approach to business.

Directive 2014/95/EU (the Non-Financial Reporting Directive) lays down the rules on the disclosure of non-financial and diversity information by certain large companies. These cover areas such as environmental matters, social matters and the treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on

company boards (e.g. age, gender, educational and professional background). The directive applies to large public-interest companies with more than 500 employees.

On 5 January 2023, the Corporate Sustainability Reporting Directive ((EU) 2022/2464) entered into force. The directive modernises the rules concerning the social and environmental information that companies are obliged to report. A broader set of large companies, as well as listed SMEs, will be required to report on sustainability.

The new rules will ensure access to the information necessary to assess investment risks arising from climate change and other sustainability issues, creating a culture of transparency about the impact of companies on people and the environment. Reporting costs will be reduced for companies over the medium to long term by harmonising the information to be provided.

B. EU legal entities

European legal entities apply throughout the EU and coexist with national ones.

1. The European Company (SE)

After a long period of stalemate (during which the negotiations lasted 30 years), the Council adopted the two legislative instruments needed to establish a European company, namely Regulation (EC) No 2157/2001 on the Statute for a European company and Directive 2001/86/EC supplementing the Statute with regard to the involvement of employees in the European company. This enables a company to be set up within the territory of the EU in the form of a public limited liability company, known by the Latin name 'Societas Europaea' (SE). Several options are made available to undertakings of at least two Member States that wish to set themselves up as an SE: merger, establishment of a holding company, formation of a subsidiary, or conversion into an SE. The SE must take the form of a company with share capital. In order to ensure that such companies are of reasonable size, a minimum amount of capital is set, i.e. not less than EUR 120 000.

Directive 2001/86/EC is aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of that SE.

2. The European Cooperative Society (SCE)

Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) puts in place a genuine single legal statute for the SCE. It enables a cooperative to be established by persons resident in different Member States or by legal entities established under the laws of different Member States. With a minimum capital of EUR 30 000, these new SCEs can operate throughout the single market with a single legal personality, set of rules and structure.

Directive 2003/72/EC supplements this statute with regard to the involvement of employees in the SCE, in order to ensure that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of that SCE.

3. European Economic Interest Grouping (EEIG)

Council Regulation (EEC) No 2137/85 sets out a statute for European Economic Interest Groupings (EEIGs**)**. The EEIG, which is endowed with legal capacity, enables a company in one Member State to cooperate in a joint venture (for example, to facilitate or develop the economic activities of its members, but not to make profits for itself)

with companies or natural persons in other Member States, the profits being shared between the members. An EEIG may not invite investment from the public.

4. European private company (SPE)

The Commission proposal of 2008 for a statute for a European private company with limited liability (Societas Privata Europaea) aimed at making it easier for SMEs to do business in the internal market, to improve their market performance and enhance their competitiveness by facilitating their establishment and operation. The proposal did not seek to regulate matters related to labour law, tax law, accounting or the insolvency of the company. Nevertheless, it had to be withdrawn in 2014 because of concerns in the European Parliament about safeguarding workers' co-determination rights.

5. Single-member private limited liability company (SUP)

The Commission proposal of 2014 for a directive of the European Parliament and of the Council on single-member private limited liability companies (Societas Unius Personae) aimed at making it easier to set up such a company with a single shareholder in the EU across borders between Member States. As Parliament's Committee on Employment and Social Affairs had serious concerns about the participation of trade unions during the drafting process of the proposal, it was also finally withdrawn in 2018.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always succeeded in amending legislation, e.g. defending worker participation in companies or making progress in the creation of the various forms of European companies in order to facilitate the cross-border activities of enterprises. In February 2007, Parliament asked the Commission to present a proposal for a European private company adapted to the needs of SMEs and to prepare for a review of the European company statute in order to simplify procedures for the constitution of such companies. Following the withdrawal of the two proposals for regulations on a European association and mutual society, Parliament invited the Commission to resurrect these projects. Finally, on 5 September 2023, the Commission adopted the proposal on European cross-border associations. The draft directive will improve the functioning of the internal market by removing legal and administrative barriers. This will create a level playing field between non-profit associations in the EU that wish to operate in more than one Member State. Parliament also called for an appropriate legal framework for foundations. On 8 February 2012, the Commission proposed a Council Regulation on the Statute for a European Foundation, 'Fundatio Europaea', designed to make it easier for such organisations to work for the public good anywhere in the EU.

In its resolution of 14 June 2012 on the future of European company law, Parliament took the view that EU company forms supplementing the existing forms available under national law have considerable potential and should be further developed. In order to address the specific needs of SMEs, Parliament urged the Commission to make further efforts with a view to the adoption of the Private Company Statute (SPE). In response to the Commission communication on the matter, Parliament adopted a resolution on a renewed EU strategy for corporate social responsibility in February 2013. Its resolution of 14 March 2013 on the Statute for a European mutual society contained recommendations to the Commission on such a statute. Finally, Parliament has, on numerous occasions, called for a directive on the cross-border transfer of company seats, through various resolutions and oral questions deploring the current lack of

common rules that undermine corporate mobility and thus freedom of establishment[3]. Directive (EU) 2019/2121 of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions was adopted at the end of 2019.

In Parliament's resolution of 13 June 2017 on cross-border mergers and divisions, attention was drawn to the rights of minority shareholders and rules on creditor protection, as well as to the lengthy and complex procedures required for cross-border divisions. It has also called, on numerous occasions, for a proposal on the cross-border transfer of seats (14th Company Law Directive).

A number of petitions dealing with digitalisation of EU company law and cross-border operations have been received by Parliament. The Committee on Petitions usually asks the Commission to provide relevant information or give its opinion on the points raised by the petitioner. (4.1.5).

In May 2017, Parliament adopted a resolution on the EU e-Government action plan, in which it called on the Commission to consider further ways to promote digital solutions for formalities throughout a company's lifecycle and underlined the importance of interconnecting business registers. Parliament has a long-standing body of research calling for digital facilitations in this area[4].

In April 2019, Parliament adopted substantial amendments to the Commission's proposal to amend Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, with additional rules on cross-border mergers of limited liability companies.

In July 2019, Parliament adopted Directive (EU) 2019/1151 to amend Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, which is designed to facilitate the establishment of businesses by electronic means and promote online operations throughout company life cycles. A full set of online registration procedures for businesses has not yet been provided by all Member States, despite the fact that online registration is twice as fast on average and can be up to three times cheaper than traditional paper-based formats. Parliament is currently considering the Commission's proposal of 29 March 2023 to further expand and upgrade the use of digital tools and processes in company law and amending Directive (EU) 2017/1132.

On 1 June 2023, Parliament adopted its position on a proposal for a corporate sustainability due diligence directive. The proposed legislation would oblige firms to identify, and where necessary prevent, end or mitigate the negative impacts of their activities, including those of their business partners, on human rights and the environment. This includes child labour, slavery, labour exploitation, pollution, environmental degradation and biodiversity loss.

This fact sheet was written by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

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[3]See, for example, its resolutions of 25 October 2007 on the European Private Company and the Fourteenth Company Law Directive on the transfer of the company seat and of 13 June 2017 on cross-border mergers and divisions.

[4]Godel, M. I. et al., Reducing Costs and Barriers for Businesses in the Single Market, Directorate-General for Internal Policies, Policy Department for Economic and Scientific Policy, April 2016; van Veenstra, A. F. et al., Ubiquitous Developments of the Digital Single Market, Directorate-General for Internal Policies, Policy Department for Economic and Scientific Policy, October 2013.

Udo Bux / Mariusz Maciejewski
11/2023

2.1.12. INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY

Intellectual property includes all exclusive rights to intellectual creations. It encompasses two types of rights: industrial property, which includes inventions (patents), trademarks, industrial designs and models and designations of origin, and copyright, which includes artistic and literary property. Since the entry into force of the Treaty on the Functioning of the European Union (TFEU) in 2009, the EU has had explicit competence for intellectual property rights (Article 118).

LEGAL BASIS

Articles 114 and 118 TFEU.

OBJECTIVES

Although governed by different international and national laws, intellectual property rights (IPR) are also subject to EU legislation. Article 118 TFEU provides that in the context of the establishment and functioning of the single market, Parliament and the Council, acting in accordance with the ordinary legislative procedure, establish measures for the creation of EU intellectual property law in order to provide uniform protection of IPR throughout the EU, and for the setting-up of centralised, EU-wide authorisation, coordination and supervision arrangements. The legislative activity of the EU consists chiefly of harmonising certain specific aspects of IPR through the creation of its own system, as is the case for the EU trademark and design, and as will be the case for patents. Many of the EU instruments reflect the Member States' international obligations under the Berne and Rome Conventions, as well as under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the 1996 World Intellectual Property Organization (WIPO) international Treaties.

ACHIEVEMENTS

A. Legislative harmonisation

1. Trademarks, designs and models

In the EU, the legal framework for trademarks is based on a four-tier system for trademark registration, which coexists with national trademark systems harmonised by means of the Trademark Directive (Directive (EU) 2015/2436 of 16 December 2015 to approximate the laws of the Member States relating to trademarks). In addition to the national route, possible routes to trademark protection in the EU are the Benelux route, the EU trademark, introduced in 1994, and the international route. Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trademark (the EU Trademark Regulation) codifies and replaces all earlier EC regulations on the EU trademark. The codification was carried out in the interests of clarity, given that the EU trademark system had already been substantially amended several times. The EU trademark has a unitary character and equal effect throughout the EU. The European Union Intellectual Property Office (EUIPO) is responsible for managing the EU trademark and design.

The EU Trademark Regulation also sets the fee amounts payable to EUIPO. They are fixed at a level which ensures that the revenue they produce covers EUIPO's expenses and that they complement the existing national trademark systems.

Directive 98/71/EC of 13 October 1998 approximated national legislation on the legal protection of designs and models. Council Regulation (EC) No 6/2002 of 12 December 2001 (amended) instituted a Community system for the protection of designs and models. Council Decision 2006/954/EC and Council Regulation (EC) No 1891/2006, both of 18 December 2006, linked the EU system for the registration of designs or models to the international registration system for industrial designs and models of WIPO.

2. Copyright and related rights

Copyright ensures that authors, composers, artists, filmmakers and others receive payment and protection for their work. Digital technologies have profoundly changed the way creative content is produced, distributed and accessed. EU copyright legislation consists of 13 directives and two regulations which harmonise the essential rights of authors, performers, producers and broadcasters. By setting some EU standards, national discrepancies are reduced, a level of protection required to foster creativity and investment in creativity is ensured, cultural diversity is promoted and access for consumers and businesses to digital content and services across the single market is facilitated.

a. Copyright

Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society adapted legislation on copyright and related rights to technological developments, but is out of pace with the extraordinarily fast developments that have taken place in the digital world, such as the distribution of and access to television and radio programmes, with 49% of internet users in the EU accessing music, audiovisual content and games online (Eurostat estimate). Harmonised copyright legislation across the EU for consumers, creators and companies is therefore necessary.

The EU Copyright Directive (Directive (EU) 2019/790) of 17 April 2019 provides for an ancillary copyright for press publishers and fair remuneration for copyrighted content. So far, online platforms have had no legal responsibility for using and uploading copyrighted content on their sites. The new requirements will not affect the non-commercial upload of copyrighted works to online encyclopedias such as Wikipedia. Directive (EU) 2019/789 (the CabSat Directive) was adopted on the same day and aims to increase the number of TV and radio programmes available online to EU consumers. Broadcasting organisations are increasingly offering online services in addition to their traditional broadcasts, as users expect to have access to television and radio content at anytime, anywhere. The directive introduces the country of origin principle to facilitate the licensing of rights for certain programmes that broadcasters offer on their online platforms (e.g. simulcasting and catch-up services). Broadcasters have to obtain copyright permissions in their EU country of establishment (i.e. country of origin) in order to make radio programmes, television news and current affairs programmes, and fully financed own productions available online in all EU countries. Member States had until 7 June 2021 to pass appropriate legislation to meet the directive's requirements.

Directive (EU) 2017/1564 of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit

of persons who are blind, visually impaired or otherwise print-disabled facilitates access to books and other print material in appropriate formats and their circulation in the single market.

Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market aims to ensure that consumers who buy or subscribe to films, sports broadcasts, music, e-books and games can access them when they travel to other EU Member States.

b. Term of protection of copyright and related rights

These rights are protected for life and for 70 years after the death of the author/creator. Directive 2011/77/EU amending Directive 2006/116/EC on the term of protection of copyright and certain related rights extended the term of copyright protection for performers of sound recordings from 50 to 70 years after recording, and for authors of music, such as composers and lyricists, to 70 years after the author's death. The term of 70 years has become an international standard for the protection of sound recordings. Currently 64 countries around the world protect sound recordings for 70 years or longer.

c. Computer programs and databases

Directive 91/250/EEC required Member States to protect computer programs, by copyright, as literary works under the Berne Convention for the Protection of Literary and Artistic Works. It was codified by Directive 2009/24/EC. Directive 96/9/EC (the Database Directive) provides for the legal protection of databases, defining a database as 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'. The directive stipulates that databases are protected both by copyright, which covers intellectual creation, and by a *sui generis* right protecting investment (of money, human resources, effort and energy) in obtaining, verifying or presenting content. On 23 February 2022, the Commission presented a proposal for a new regulation on harmonised rules on fair access to and use of data (the data act) aimed at ensuring fairness in the allocation of value from data among actors in the data economy and at fostering access to and the use of data. After intensive legislative work supported by academic research[1], on 9 November 2023 Parliament's plenary adopted at first reading a position on this proposal. On 30 May 2022, Parliament and the Council adopted the Data Governance Act, which introduces mechanisms to facilitate the reuse of certain categories of protected public sector data, increase trust in data intermediation services and foster data altruism across the EU.

d. Collecting societies

A licence must be obtained from the different holders of copyright and related rights before content protected by such rights may be disseminated. Rights holders may entrust their rights to a collecting society, which manages those rights on their behalf. Unless a collective management organisation has justified reasons to refuse management, it is obliged to manage these rights. Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market lays down requirements for collective management organisations, with a view to ensuring high standards of governance, financial management, transparency and reporting. It aims to ensure that rights holders

[1]Leistner, M. and Antoine, L., 'IPR and the use of open data and data sharing initiatives by public and private actors', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2022.

have a say in the management of their rights and envisages a better functioning of collective management organisations by means of EU-wide standards. Member States must ensure that collective management organisations act in the best interests of the rights holders whose rights they represent.

3. Patents

A patent is a legal title that can be granted to any invention having a technical character, provided that it is new, involves an inventive step and could have an industrial application. A patent gives the owner the right to prevent others from making, using or selling an invention without permission. Patents encourage companies to make the necessary investment in innovation, and provide an incentive for individuals and companies to devote resources to research and development. In Europe, technical inventions can be protected either by national patents granted by the competent national authorities, or by European patents granted centrally by the European Patent Office. The latter is the executive branch of the European Patent Organisation, which now has 39 contracting states. The EU itself is not a member of this organisation.

After years of discussions among the Member States, Parliament and the Council approved the legal basis for a European patent with unitary effect (unitary patent) in 2012. An international agreement between the Member States thus set up a single and specialised patent jurisdiction.

The Court of Justice's (CJEU's) confirmation of the patent package in its judgment of 5 May 2015 in cases C-146/13 and C-147/13 cleared the way for a truly European patent. The previous regime coexists with the new system with transitory measures in place.

Since entering into force on 1 June 2023, the EU unitary patent, which is granted by the European Patent Office, has provided uniform protection with equal effect in all participating EU countries. Businesses will have the option of protecting their inventions in all EU Member States with a true EU patent. They will also be able to challenge and defend unitary patents in a single court action through the newly created Unified Patent Court (UPC). This will streamline the system and save on translation costs. The UPC Agreement (UPCA) provides that the primacy of EU law must be respected (Article 20 of the UPCA) and that the decisions of the CJEU are binding on the UPC. The UPC is a court that is currently common to 17 EU Member States. It is made up of a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance has a decentralised structure and comprises a central division in Paris with a section in Munich, as well as various regional and local divisions all over Europe. The Court of Appeal has its seat in Luxembourg and decides on appeals against decisions of the Court of First Instance and on requests for the rehearing of final decisions of the Court.

4. Trade secrets

The practice of keeping business information (know-how) confidential goes back centuries. Legal instruments to protect trade secrets, whether or not defined as part of IPR, exist in many countries. The level of protection afforded to confidential information cannot be compared to other areas of intellectual property law such as patents, copyrights and trademarks, but can, in principle, apply indefinitely, rather than for a limited period only. The protection of trade secrets varies more from country to country than other areas of IPR law, and can be even more advantageous and cheaper than seeking formal patent protection. Since 2016, an EU legal framework has existed, namely Directive (EU) 2016/943 on the protection of undisclosed know-

how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

5. IPR for plant varieties

Plant variety protection, also called the 'plant breeder's right', is a form of IPR granted to the breeder of a new plant variety. The EU's system of protection for plant varieties, based on the principles of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, contributes to the development of agriculture and horticulture. A system for the protection of plant variety rights was established by EU legislation. The system allows IPR to be granted for plant varieties. The Community Plant Variety Office implements and applies this scheme.

6. Geographical indications

Under the EU's IPR system, names of products registered as having a geographical indication are legally protected against imitation and misuse within the EU and in non-EU countries with which a specific protection agreement has been signed. Product names can be granted a geographical indication if they have a specific link to the place where the product is made. This recognition enables consumers to trust and distinguish quality products while also helping producers to market their products better. Recognised as intellectual property, geographical indications are playing an increasingly important role in trade negotiations between the EU and other countries. On 31 March 2022, the Commission put forward a legislative proposal on EU geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, and Parliament adopted a position on the proposal on 1 June 2023. On 12 September 2023, Parliament adopted its position on a regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753. This gives geographical indications for industrial products that can be associated with their geographical area of production (such as Albacete knives, Bohemian glass and Limoges porcelain) protection similar to that given to regionally produced food or beverages.

At international level, Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications designates its EUIPO as the competent authority in relation to geographical indications.

7. Combating counterfeiting

According to estimates, imports of counterfeit and pirated goods into the EU amount to approximately EUR 85 billion (up to 5% of total imports). Worldwide, trade in pirated goods accounts for as much as 2.5% of trade and is worth up to EUR 338 billion, which causes significant damage to rights holders, governments and economies.

As differences in national systems for penalising counterfeiting and piracy were making it difficult for Member States to combat those offences effectively, Parliament and the Council adopted Directive 2004/48/EC on the enforcement of intellectual property rights as a first step. It aims to step up the fight against piracy and counterfeiting by approximating national legislative systems to ensure a high, equivalent and homogeneous level of intellectual property protection in the single market and provides for measures, procedures and compensation under civil and administrative law. Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property

rights provides procedural rules for customs authorities to enforce IPR with regard to goods liable to customs supervision or customs checks.

B. Concept of the 'exhaustion' of rights

1. Definition

This legal concept or doctrine applying to all fields of industrial property means that after a product covered by an IPR (e.g. a patent) has been sold by the IPR holder or by others with the consent of the owner, the IPR is said to be exhausted. In the EU, the CJEU has always interpreted the EU Treaties as meaning that rights conferred by IPR are exhausted within the single market by virtue of putting the relevant goods on the market (by the rights holder or with their consent). The proprietor of an industrial or commercial intellectual property right protected by the law of one Member State cannot invoke that law to prevent the importation of products which have been put into circulation in another Member State.

2. Limits

'Exhaustion' of EU rights does not apply in the case of the marketing of a counterfeit product, or of products marketed outside the European Economic Area (Article 6 of the TRIPS Agreement). In 1999, the CJEU ruled, in its judgment in *Sebago Inc. and Ancienne Maison Dubois et Fils SA* v *GB-Unic SA* (C-173/98), that Member States may not 'provide in their domestic law for exhaustion of the rights conferred by the trademark in respect of products put on the market in non-member countries'.

3. Legal acts in this area

EU rules on exhaustion are largely the result of the jurisprudence of the CJEU interpreting Article 34 TFEU on measures having equivalent effect to quantitative restrictions between Member States[2]. This jurisprudence is reflected in each of the relevant pieces of EU law relating to IPR.

C. Recent case-law of the CJEU

In 2012, the CJEU confirmed in the SAS case (C-406/10) that, in accordance with Directive 91/250/EEC, only the expression of a computer program is protected by copyright and that ideas and principles which underlie its logic, algorithms and programming languages are not protected under that directive (paragraph 32 of the judgment). It stressed that neither the functionality of a computer program nor the programming language and format of data files used in a computer program in order to exploit certain of its functions constitutes a form of expression of that program for the purposes of Article 1(2) of Directive 91/250/EEC (paragraph 39).

In its judgment in Case C-160/15 (*GS Media BV* v *Sanoma Media Netherlands BV and Others*), the CJEU declared that the posting on a website of a hyperlink to works protected by copyright and published without the author's consent on another website does not constitute a 'communication to the public' when the person who posts that link does not seek financial gain and acts without the knowledge that those works have been published illegally.

In its judgment in Case C-484/14 of 15 September 2016, the CJEU held that making a Wi-Fi network available to the general public free of charge in order to draw the attention of potential customers to the goods and services of a shop constitutes an

[2]See *Centrafarm and Adriaan de Peijper* v *Sterling Drug Inc* (Case C-15/74), and *Merck and Co Inc.* v *Stephar BV and Petrus Stephanus Exler* (Case C-187/80).

'information society service' under Directive 2000/31/EC, and confirms that, under certain conditions, a service provider who provides access to a communication network may not be held liable. Consequently, copyright holders are not entitled to claim compensation on the grounds that the network was used by third parties to infringe their rights. Securing the internet connection by means of a password ensures a balance between, on the one hand, the IPR of rights holders and, on the other hand, the freedom to conduct a business of access providers and the freedom of information of the network users.

ROLE OF THE EUROPEAN PARLIAMENT

Intellectual property creates added value for EU businesses and economies. Its uniform protection and the enforcement thereof contribute to the promotion of innovation and economic growth. Parliament is therefore committed to trying to harmonise IPR through the creation of a single EU system in parallel with national systems, as is the case with the EU trademark and design and the European unitary patent.

In various resolutions on IPR, and particularly on the legal protection of databases, biotechnological inventions and copyright, Parliament has argued for the gradual harmonisation of such rights. It has also opposed the patenting of parts of the human body. On 27 February 2014, Parliament adopted an own-initiative resolution on private copying levies (the right to make private copies of legally acquired content), as digital private copying has taken on major economic importance as a result of technological progress. Parliament also played a very active role in the drafting of the WIPO treaty on copyright exceptions for the visually impaired (the Marrakesh Treaty).

As preparatory work for the overhaul of EU copyright rules (see A.2.a), Parliament adopted, in September 2018, a report containing a number of important recommendations on all issues at stake. Throughout the legislative process, there was a heated public debate focused on Articles 11 and 13 of the draft directive on copyright in the digital single market. This debate culminated in a vote in Parliament backing efforts to create a new right for media publishers to monetise content on certain big news platforms and a new right making it easier to track copyright infringements on the internet. While the creative industry rejoiced, tech company representatives slammed the proposals. In the end, Parliament's vote once again set the tone for the adoption of the EU Copyright Directive.

Research prepared for Parliament's Committee on Legal Affairs and commissioned by its Policy Department for Citizens' Rights and Constitutional Affairs indicates that artificial intelligence (AI) defies new frontiers of copyright protection, in particular with regard to the undisclosed training of AI on copyrighted material or protected data and the subsequent generation of content by this AI[3]. In addition, a number of contractual arrangements facilitate the washing away of intellectual property rights from data or allow subjects' intellectual property rights to be taken over, on the basis that publication occurred on a particular platform or that creation/invention occurred within the framework of a service contract. Such arrangements include:

— Legal arrangements that deprive users of intellectual property rights or force them to give away non-remunerated licences with respect to content placed on digital platforms' services and servers, and/or that transfer such rights to the platforms,

[3]Maciejewski, M., 'Metaverse', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2023, p. 57.

— Buy-out contracts through which platforms take over creators' intellectual property rights,

— Legal arrangements that deprive employees, inventors or creators of intellectual property rights with respect to content created in the course of their employment or service, and/or that transfer such rights to the employer ('work for hire')[4].

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[4]Macrez, F. et al., 'Buyout contracts imposed by platforms in the cultural and creative sector', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2023; Maciejewski, M., 'Metaverse', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2023.

2.1.13. POSTING OF WORKERS

A ‘posted worker’ is a worker who is sent by his or her employer to provide a service in another EU Member State on a temporary basis. Freedom of establishment and freedom to provide services are fundamental freedoms enshrined in the Treaty on the Functioning of the European Union (TFEU). The principle governing the status of posted workers is ‘equal pay for the same work in the same place’.

LEGAL BASIS

Articles 54 and 56 to 62 of the TFEU.

OBJECTIVES

A ‘posted worker’ is an employee sent by his or her employer to carry out a service in another EU Member State on a temporary basis. EU law on posted workers is generally regarded as a targeted effort to regulate and balance the following two principles:

— Creating a level playing field for cross-border service provision in a way that is as unrestricted as possible;

— Protecting the rights of posted workers by guaranteeing a common set of social rights in order to prevent unfair treatment and the creation of a low-cost workforce.

ACHIEVEMENTS

A. History of the Posting of Workers Directive

The Posting of Workers Directive (PWD) stems from the freedom to provide services (Article 56 of the TFEU) and the EU’s commitment to removing obstacles to the free cross-border movement of services within the internal market. As the European Union expanded in 1986 with the accession of Spain and Portugal, the issue of the cross-border provision of services was brought to the forefront of the internal market debate. Following a decade of legislative gridlock, it was a judgment by the Court of Justice of the European Union (CJEU) (C-113/89), coupled with the accession of Austria, Finland and Sweden, that eventually triggered the adoption of a directive to regulate the situation of posted workers.

The first directive was adopted on 16 December 1996. It established a set of ‘hard core’ minimum terms of employment and working conditions (such as maximum work periods, minimum paid annual holidays, minimum rates of pay, health and safety at work, etc.). For the rest of the employment relationship, the labour law rules of the sending country would continue to apply. As regards social security, posted workers remained insured in the social security system in their home country provided the posting lasted – in general – for less than two years. As far as taxation was concerned, the right to levy income tax remained with the sending country for 183 days, moving to the receiving country only after that period had elapsed.

Consequently, labour cost differentials between local and posted workers could be significant, depending on wage levels, social security contributions and income tax to be paid.

In the years following the adoption of the first PWD, the implementation, legal interpretation and regulation of the special case of posted workers brought three specific challenges:

— Increasing wage gaps and divergence in labour costs, which made it more attractive for businesses to use posted workers; as a consequence, between 2010 and 2014 the number of postings went up by 44.4%;

— An environment conducive to malpractice, such as rotational posting or the practices of 'letter-box companies', which exploited loopholes in the directive to circumvent employment and social security legislation and engage in operations in other Member States;

— A lack of clarity in the established standards, and weaknesses in the cooperation between authorities, both within Member States and across borders, which created problems for enforcement bodies.

In view of the social policy provisions introduced into the European Treaties since the 2007 Lisbon Treaty revision, it was questionable whether the 1996 PWD provided an adequate legal instrument for ensuring a level playing field for free cross-border service provision while at the same time delivering an adequate foundation for the social rights of workers. In cases where the PWD left implementation and enforcement of minimum standards of employment to Member States, it relied on CJEU rulings to interpret the terminology in the PWD. However, CJEU rulings after the adoption of the PWD did not provide the necessary legal clarity. As the Commission rightfully noted, the lack of a clear standard generated uncertainty about rules and practical difficulties for the bodies responsible for the enforcement of the rules in the host Member State; for the service provider when determining the wage due to a posted worker; and for the posted workers themselves in terms of their awareness of their entitlements. In addition, with its four judgments in 2007/2008 in the cases Viking (C-438/05), Laval (C-341/05), Rüffert (C-346/06) and Commission vs Luxembourg (C-319/06), the CJEU turned employment standards originally conceived as minimum standards in the PWD into a 'maximum ceiling' of terms and conditions of employment. Since then, however, the CJEU has issued two judgments with a more protective effect for posted workers: in the Sähköalojen ammattiliittory case (C-396/13), it ruled that categorising workers in different pay groups which are universally binding and transparent in a collective agreement must also be applied to posted workers. More recently, it ruled in the Regio-Post case (C-115/14) that Member States can require tenderers of public procurements and their subcontractors to pay their employees a set minimum wage.

B. Reforms to improve performance

In the light of these shortcomings, the Commission pursued reform in an effort to update the original PWD and strengthen enforcement. These reforms took account of updates to the European Treaties and the strong upward trend in the use of posting.

The two main legislative proposals:

1. Enforcement Directive 2014/67/EU

The Enforcement Directive 2014/67/EU creates a common legal framework for identifying a genuine posting of workers and allows for a more uniform implementation, application and enforcement of common standards. It clarifies the definition of posting and defines the responsibilities incumbent on Member States to verify compliance with

the PWD, especially in sectors with a greater risk of malpractice, such as construction or road haulage. It seeks to achieve better cooperation between national authorities in charge of posting, by enforcing the obligation to respond to requests for assistance and setting time limits for responses to information requests. Finally, administrative penalties and fines imposed on service providers by one Member State can now be enforced and recovered in another Member State.

2. Revised Posting of Workers Directive

In March 2016, the Commission proposed a revision of the original PWD (96/71/EC) with a view to ensuring the application of the host Member State's labour law in the case of long-term posting, and addressing issues such as equal pay, the applicability of collective agreements and the treatment of temporary agency workers.

Upon publication of this proposal, 11 Member State parliamentary chambers submitted a reasoned opinion, thereby triggering a subsidiarity check – the so-called yellow card procedure. Most opinions deplored the fact that the proposal would cause competitive disadvantage for their workers and that Member States would lose their right to decide on the basic working and employment conditions of posted temporary agency workers as provided for in the 2008 Temporary Agency Work Directive.

Following intensive negotiations between the Commission, the Council and the European Parliament, the Council adopted the revised directive on 21 June 2018. Effective from 30 July 2020, the revised Posted Workers Directive (Directive EU 2018/957) affects the following areas:

— Long-term posting: Posting can last up to 12 months, with a possible extension of six months (the Commission had originally proposed 24 months). After this period, the provisions of the host Member State's labour law will apply;

— Remuneration: All host country rules applicable to local workers will also apply to all posted workers from day one, i.e. the principle of equal pay for the same work in the same place will apply. As regards other elements of remuneration, the revision introduces clearer rules for allowances, while travel, board and accommodation costs are not deductible from workers' salaries. As stipulated by the Enforcement Directive, the mandatory elements that constitute remuneration in a Member State must be available on a single national website;

— Working conditions: Member States may apply large, representative regional or sectoral collective agreements. Previously this was valid only for universally applicable collective agreements in the construction sector. As regards accommodation conditions in the host country, existing national rules for local workers away from home for work must be applied;

— Posted temporary agency workers: The revised PWD ensures equal treatment of posted temporary agency workers. The same conditions applicable to national temporary employment agencies will also apply to those cross-border agencies hiring out workers;

— Transport: Directive (EU) 2020/1057 lays down specific rules for posting drivers in the road transport sector. In the Dobersberger judgment (C-16/18) of 19 December 2019, the CJEU excluded workers performing on-board services on international trains from the PWD's scope of application.

C. Other initiatives

In 2019, the Commission established the European Labour Authority (ELA) to guarantee the correct application of the rules on labour mobility and social security. In 2023, the ELA, together with the Commission, launched the 'Posting 360 Programme', a framework for cooperation between relevant stakeholders with a view to improving the exchange of information, enhancing administrative cooperation and increasing knowledge of the EU and national rules on the posting of workers.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has been a driving force in legislating on freedom of movement of people and services.

Since 2014, Parliament has recalled the need to improve the PWD in several resolutions. During the negotiations on the revision of the PWD, Parliament specifically pushed for 'equal pay for equal work' and for Member States to be able to apply regional, sectoral or industry agreements. In addition, it sought to enable Member States, by means of a review clause, to place foreign undertakings under the same national obligations in the event of sub-contracting.

In March 2021, Parliament expressed concern about the current lack of harmonised interpretation of the recently revised PWD, calling on the Commission to directly assist Member States during the entire transposition process so as to ensure a uniform interpretation of European law. In a resolution of 20 May 2021 on impacts of EU rules on the free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills, Parliament drew attention to the particularly vulnerable situation of mobile workers, including posted workers, during the COVID-19 pandemic and called for structural shortcomings in the European and national regulatory frameworks to be addressed. To this end, Parliament called for improved implementation, enforcement and monitoring of the revised Posting of Workers Directive and the establishment of a one-stop shop where workers and employers can access digital services regarding labour mobility and the posting of workers.

In 2016, the Commission proposed a regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004. One of the objectives of the proposal was to clarify the conflict rules on applicable legislation and the relationship between the Regulation on social security coordination and the Posted Workers Directive. In December 2021, the Council and the European Parliament reached a provisional agreement on the file. However, this agreement was not confirmed and the file is now on hold.

In a resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility, Parliament emphasised the need for an EU-wide digital instrument for all mobile workers, including posted workers. Such an instrument would ensure effective identification, traceability, aggregation and portability of social security rights and improve enforcement of EU rules on labour mobility and social security coordination in the labour market in a fair and effective way. On 6 September 2023, the Commission presented a communication on digitalisation in social security

coordination. The communication sets out the various projects being developed in the area of digitalisation, including the European social security pass (ESSPASS) project. The ESSPASS project focuses on digitalising the process of requesting and receiving entitlement documents, and real-time verification to allow social security institutions, labour inspectorates, healthcare providers and other relevant entities to verify these documents instantly across Europe.

For more information on this topic please consult the website of the Committee on Employment and Social Affairs.

Aoife Kennedy
10/2023

2.2. CONSUMER PROTECTION AND PUBLIC HEALTH

2.2.1. CONSUMER POLICY: PRINCIPLES AND INSTRUMENTS

Effective consumer protection policy ensures that the single market functions properly. It safeguards consumers' rights against merchants and provides extra protection for vulnerable consumers. Consumer protection rules can boost market outcomes overall. They promote fairer markets and, with better consumer information, foster greener, more social outcomes. Empowering consumers and safeguarding their interests are key EU policy goals.

LEGAL BASIS

Articles 4(2)(f), 12, 114 and 169 of the Treaty on the Functioning of the European Union (TFEU) and Article 38 of the Charter of Fundamental Rights of the European Union.

OBJECTIVES

To promote consumer interests and ensure high-level protection, the Union must safeguard consumers' health, safety and economic interests. It should also foster consumers' rights to information, education and to organise themselves in order to safeguard their interests. Consumer protection should be integrated into all pertinent EU policy areas.

ACTIONS

A. General

The programme of EU action in the field of consumer policy is based on the New Consumer Agenda, adopted on 13 November 2020. The agenda presents an updated vision for EU consumer policy from 2020 to 2025, with the headline, 'Strengthening consumer resilience for sustainable recovery'. It also aims to address consumers' immediate concerns regarding the COVID-19 pandemic.

The agenda covers five key priority areas:

— Green transition: tackling the new challenges to consumer rights and opportunities for empowerment presented by the green transition, ensuring that sustainable products and lifestyles are accessible for all, regardless of geography or income;

— Digital transformation: creating a safer digital space for consumers where their rights are protected and ensuring a level playing field to enable innovation to deliver newer and better services to all Europeans;

— Effective enforcement and redress: addressing the impact of COVID-19 on consumer rights and tackling misleading green claims and unfair commercial practices in online influencing techniques and personalisation. While enforcement of consumer rights is first and foremost the responsibility of national authorities, the EU plays an important coordinating and supporting role, underpinned by the Consumer Protection Cooperation Regulation;

— Addressing specific consumer needs: taking account of the needs of consumers who, in certain situations, may be vulnerable and require extra safeguards. This

may be driven by social circumstances or particular characteristics of individuals or groups of consumers;

— Consumer protection in the global context: ensuring the safety of imports and protecting EU consumers from unfair practices used by non-EU operators through market surveillance and closer cooperation with the relevant authorities in EU partner countries.

EU institutions use the consumer conditions scoreboard to track consumer policy and assess national consumer conditions in areas such as knowledge, trust, compliance and enforcement. The scoreboard also examines EU retail market integration via cross-border transactions and e-commerce growth. It surveys recent buyers to gauge the performance of more than 40 markets on indicators such as trust, comparability, choice and consumer satisfaction.

Moreover, on 28 April 2021, the single market programme was initiated to bolster the single market and aid Europe's COVID-19 recovery. With a EUR 4.2 billion budget for 2021-2027, it offers a comprehensive package to enhance single market governance, including for financial services.

B. Sectoral measures (2.2.2)

1. Consumer groups

The EU institutions prioritise involving groups that represent consumer interests. The European Consumer Consultative Group (ECCG) is the Commission's primary consultation forum for national and European consumer organisations. Established by Commission Decision 2009/705/EC, the ECCG can advise the Commission on consumer-related issues at EU level. In 2017, the Union adopted Regulation (EU) 2017/826 to bolster consumer involvement in Union policy-making regarding financial services for the period 2017-2020.

2. Consumer education

The EU has integrated consumer education into primary and secondary school syllabuses. An example of this is 'Consumer Classroom', a multilingual European website for teachers. It offers a vast library on consumer education and tools for sharing lessons with students and peers. The online tool 'Dolceta' targets trainers, teachers and consumers, and addresses consumer rights, product safety and financial literacy.

3. Consumer information

Better knowledge of consumer rights can boost confidence. The EU established European Consumer Centres (ECC-Network) to advise on cross-border shopping and complaints. FIN NET addresses complaints about cross-border financial services. The Commission runs consumer information campaigns and offers practical guides. SOLVIT resolves disputes concerning breaches of EU law.

The Your Europe portal plays an important role in offering access to improved information on consumer policy and in gathering different information sources into one reference information centre. Access to information has been improved through a single digital gateway (Regulation (EU) 2018/1724).

On 30 March 2022, as part of the circular economy package, the Commission published a proposal for a directive on empowering consumers for the green transition through better protection against unfair practices and better information. The main objective

of the proposal is to encourage consumers to make eco-friendly choices by providing them with the necessary information.

4. Enforcement of consumer rights

Effective enforcement of consumer rights is as vital as their existence. Mainly national public authorities handle this enforcement. Regulation (EU) 2017/2394 connects these authorities through an EU network, facilitating information exchange and collaborative actions against breaches of consumer protection law. This network conducts coordinated investigations, such as internet sweeps, in order to ensure website compliance.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament continually refines EU consumer protection rules. Consumer protection has evolved from merely standardising technical standards to advancing a 'citizens' Europe' objective. Since 13 June 2014, Member States have implemented national laws from the Consumer Rights Directive, overwhelmingly approved by Parliament.

On 12 December 2017, Parliament approved Regulation (EU) 2017/2394 to enhance cooperation between national authorities enforcing consumer protection laws.

Following the Commission's New Deal for Consumers, Parliament passed Directive (EU) 2019/2161 on 27 November 2019 for better enforcement and modernisation of consumer rules. On 25 November 2020, Directive (EU) 2020/1828 was adopted for the protection of collective consumer interests.

Beyond EU legislation, Parliament adopts own-initiative reports to guide consumer protection policies. It has emphasised increased budgetary provisions for consumer measures and the development of consumer representation, especially in post-2004 EU Member States. On 13 September 2018, a resolution was adopted stating that dual quality of products in the single market is discriminatory.

On 25 November 2020, Parliament passed a resolution on a sustainable single market, emphasising product durability, reparability and equipping consumers with knowledge for making sustainable decisions. On 28 March 2023, the Committee on the Internal Market and Consumer Protection (IMCO) adopted a report on consumer empowerment for the green transition through better information and protection against unfair practices.

During the COVID-19 crisis, consumer protection became vital for service reimbursements and to counter misinformation and the sale of faulty medical equipment. On 23 March 2020, the IMCO Committee penned a letter to EU officials urging action on the COVID-19 crisis and underscoring democratic oversight. On 9 November 2020, a webinar[1] for the IMCO Committee discussed COVID-19's impact on the internal market, the measures taken and future preparations. On 19 November, Commissioner Didier Reynders presented the new Consumer Agenda to IMCO, assessing COVID-19's impact on consumers and addressing long-term policy topics, including the green and digital shifts, consumer vulnerabilities, rights enforcement and international cooperation.

[1]Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection – IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

On 22 February 2021, a comprehensive study[2] outlining the impact of COVID-19 on the internal market was presented to the IMCO Committee. The study enumerates the impact of restrictions at Member State and EU level on the free movement of goods, services and people. It makes policy recommendations for how future crises could be handled in order to allow free movement to continue, such as the provision of funds to be drawn on for the development and procurement of future vaccines and the continued coordination of the relevant rules at EU level.

Consumer policy in the fields of online and digital services is an area that Parliament and, in particular, the IMCO Committee have been focusing on. In June 2020, a study[3] requested by the IMCO Committee into online platforms' moderation of illegal content found that there was scope for the EU legal framework to be strengthened, alongside co-regulation by online platforms, to protect consumers from illegal or harmful content online. A study published in June 2021 analysed the impact of targeted advertising on advertisers, market access and consumer choice.

On 20 October 2020, Parliament adopted three resolutions, entitled 'Digital Services Act: Improving the functioning of the Single Market', 'Digital Services Act and fundamental rights issues posed', and 'Digital Services Act: adapting commercial and civil law rules for commercial entities operating online', setting out its plan on how the functioning of the digital single market should be ensured prospectively, including stronger protection for online consumer protection. Much of the content of the own-initiative reports made its way into the Commission proposals, which were amended and successfully voted on in the IMCO Committee in December 2021 (2.1.7). The Digital Markets Act and the Digital Services Act, which were adopted by the co-legislators on 14 September and 19 October 2022, are vitally important for consumer protection in the digital environment.

On 27 September 2021, the IMCO Committee held a hearing on consumer protection and automated decision-making tools. The session looked into safeguarding consumers from the risks of artificial intelligence and enhancing the quality of information provided to them. Representatives from consumer groups, businesses, academia and certification bodies shared insights on the EU's current framework, changes needed and enforcement challenges. IMCO members emphasised that the regulatory environment was trustworthy. In May 2022, the committee also held a hearing on digital product passports to boost transparency and consumer protection in a digital era.

On 7 April 2022, Parliament passed a resolution on consumers' right to repair, targeting durable and repairable products. On 8 December, the IMCO Committee discussed the forthcoming Commission proposal on this right and how to enhance consumer guarantees for systematic, cost-effective repairs.

On 20 April 2022, the IMCO Committee discussed consumer rights when shopping outside the EU, covering pre-contractual information and protection against unfair practices and terms.

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[2]Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.
[3]De Streel, A. et al., Online Platforms' Moderation of Illegal Content Online, Publication for the Committee on the Internal Market and Consumer Protection, European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, Luxembourg, 2020.

For more information on this topic, please see the website of the Committee on the Internal Market and Consumer Protection.

Christina Ratcliff / Jordan De Bono / Barbara Martinello
11/2023

2.2.2. CONSUMER PROTECTION MEASURES

European measures for consumer protection are intended to protect the health, safety, and economic and legal interests of European consumers, wherever they live, travel or shop in the EU. EU provisions regulate both physical transactions and e-commerce, and contain rules of general applicability together with provisions targeting specific products, including medicines, genetically modified organisms, tobacco products, cosmetics, toys and explosives.

LEGAL BASIS

Articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

To ensure that all consumers in the Union - wherever they live, travel or shop in the EU - enjoy a high common level of protection against risks and threats to their safety and economic interests, and to increase the ability of consumers to defend their own interests.

ACHIEVEMENTS

A. Protection of consumers' health and safety

1. EU actions in the field of public health and tobacco (2.2.4)

2. Foodstuffs (2.2.6)

3. Medicinal products (2.2.5)

4. General Product Safety System and market surveillance

Directive 2001/95/EC sets out safety standards for consumer products. If a product poses a major risk, it must be reported via RAPEX, a system for the rapid exchange of information between Member States and the Commission. This directive will be replaced by a new General Product Safety Directive on 13 December 2024, which focuses on comprehensive risk management, enhanced traceability, stricter surveillance, specific responsibilities for businesses and online marketplaces, mandatory accident reporting, and structured recall procedures with consumer remedies.

5. Safety of cosmetic products, explosives for civilian use and toys

Regulation (EC) No 1223/2009 ensures cosmetic product safety with proper labelling, effective since 11 July 2013. Directives 2014/28/EU, 2008/43/EC, and Decision 2004/388/EC cover safety for civilian explosives, updated by Directives 2014/28/EU and 2013/29/EU. Toy safety is governed by Directive 2009/48/EC, with the European Committee for Standardisation handling relevant standards.

6. Affordable communications for businesses and consumers (2.1.8)

B. Protection of consumers' economic interests

1. Information society services, electronic commerce and electronic and cross-border payments

The E-commerce Directive (2000/31/EC) regulates online service providers in the EU, including various online activities. It was updated by the Digital Services Act, which was adopted on 19 October 2022. Other acts, such as Directive (EU) 2015/2366 and Regulation (EU) 2021/1230, ensure equal charges for cross-border euro payments between Member States.

2. TV without frontiers

Directive 2010/13/EU provides for free movement with regard to broadcasting, safeguarding public interests such as cultural diversity and the protection of minors. It governs advertisements for alcohol, tobacco and medicines, as well as teleshopping and explicit content. Events of major importance for society must be broadcast free of charge, regardless of exclusive rights bought by subscription TV channels.

3. Distance selling contracts and contracts negotiated away from business premises, the sale of goods and guarantees, and unfair terms in contracts

From 13 June 2014, the Consumer Rights Directive (2011/83/EU) replaced and amended older directives. It enhances consumer rights by setting rules on information provision, withdrawal rights and contractual provisions. On 11 May 2022, a proposal was introduced to update Directive 2002/65/EC on the distance marketing of consumer financial services, which is currently under negotiation by the EU institutions.

4. Unfair commercial practices and comparative and misleading advertising

Directive 2005/29/EC addresses unfair business-to-consumer practices, including misleading activities and coercion. Directive 2006/114/EC regulates misleading and comparative advertising. Reviews were proposed to address gaps, leading to Directive (EU) 2019/2161, which modernised and enhanced consumer protection rules. Concerning unfair practices, in April 2022 the Committee on Internal Market and Consumer Protection (IMCO) held a public hearing on upholding consumer rights when shopping outside the EU, seeking to map out the challenges consumers face when buying from outside the EU.

5. Liability for defective products and price indication

Directive 1999/34/EC holds producers responsible for damage caused by defective products, with consumers having to prove damage, defect and causation within three years. Directive 98/6/EC mandates showing sale and unit prices to facilitate product comparisons. Directive 1999/44/EC ensures product guarantees, with traders having to address defects appearing within two years of delivery. This was updated in 2011 and later replaced by Directive (EU) 2019/771.

6. Consumer credit and mortgage credit

Directive 2008/48/EC standardises consumer credit information and allows consumers a 14-day withdrawal period and early credit repayment options. In June 2021, the Commission proposed updates to expand its scope, streamline advertising information, refine pre-contractual presentation, improve creditworthiness assessment rules, and promote financial education and debt advice accessibility in the Member States.

Directive 2014/17/EU provides guidelines for consumer credit agreements tied to residential property. Its goal is to create a unified mortgage market benefiting consumers and mandates high professional standards from lenders and credit intermediaries[1].

7. Package holidays, timeshare properties and short-term accommodation rental services

Directive (EU) 2015/2302 protects consumers when booking package holidays or combined travel. Directive 2008/122/EC focuses on timeshares, providing for clear contract information and a 14-day withdrawal period. In November 2022, the Commission proposed a regulation for data collection and sharing for short-term accommodation rentals in order to address challenges such as affordable housing and to ensure effective local policies.

8. Air transport

Regulations (EC) No 261/2004 and (EC) No 2027/97 cover passenger compensation for flight issues and carrier liability following accidents. Regulation (EC) No 80/2009 addresses computerised reservation systems for air transport, ensuring equal participation and information dissemination. It also sets common criteria for airfares and cargo rates. Regulation (EC) No 300/2008 established aviation security standards following the 9/11 terrorist attacks.

9. Energy markets

The third EU energy package (adopted in 2009) aimed to enhance the internal energy market and addressed issues such as retail market transparency. Directive 2012/27/EU gives consumers easy access to their energy consumption data. Regulation (EU) 2017/1369 ensures the clear presentation of energy consumption data for domestic appliances, helping people to make informed purchases. EU citizens can connect their homes to energy networks and freely choose any energy supplier in their area.

10. European Consumer Centres Network (ECC Network or 'Euroguichets') and Your Europe Portal

The ECC Network assists consumers with cross-border transactions and collaborates with European networks such as FIN-NET (financial), SOLVIT (internal market) and the European judicial network. The Your Europe portal offers detailed consumer information on various topics. Improvements were made with the introduction of the Single Digital Gateway (Regulation (EU) 2018/1724).

C. Protection of consumers' legal interests

1. Alternative dispute resolution procedures and online dispute resolution

Alternative dispute resolution (ADR) mechanisms offer out-of-court solutions for consumers and traders to resolve conflicts through third parties such as mediators. Various EU directives and resolutions set principles for ADR, offer cheaper and quicker remedies for consumers, introduce options for obtaining injunctions against cross-border commercial infringements, and provide avenues for both online and offline

[1]Relevant research includes Wiewiórowska A. et al., Contribution to Growth: Legal Aspects of Protecting European Consumers, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

dispute resolutions. Regulation (EU) No 524/2013 established an EU-wide online dispute resolution platform, accessible since February 2016.

2. European judicial network in civil and commercial matters and obligation for national authorities to cooperate

Decision 2001/470/EC created a European judicial network to assist citizens in cross-border litigation, enhance judicial cooperation and provide practical information. Regulation (EC) No 2006/2004 set up a network of national authorities to enforce EU consumer protection law. This has obligated them to collaborate, since 29 December 2005, in ensuring compliance with EU law and addressing infringements through legal measures such as injunctions.

3. Representative actions for the protection of the collective interests of consumers

Directive 2009/22/EC standardised injunctions for collective consumer protection. Directive 2014/104/EU allowed those harmed by competition law violations to claim compensation. Directive (EU) 2020/1828 broadened the injunction system to cover more EU instruments for collective consumer interests and set compensatory redress methods.

D. Measures implemented following the COVID-19 outbreak

During the pandemic, due to a rise in online irregularities, the Commission and consumer protection authorities in the Member States issued a Consumer Protection Cooperation common position, urging online platforms to address illegal marketing. They also emphasised the importance of combating disinformation through a joint communication. Amidst border controls and travel restrictions, the Commission, on 18 March 2020, provided guidelines ensuring the consistent application of EU consumers' rights. EU citizens have unique protection, covering all modes of travel. Carriers must offer refunds or re-routing for cancelled services.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament is working to enhance EU consumer protection laws, ensuring a balance between market and consumer interests. This effort is guided by the New Consumer Agenda 2020-2025, the New Deal for Consumers, the European Green Deal and the Circular Economy Action Plan. European consumers benefit from measures strengthening the EU internal market, in particular from the digital single market initiative. This includes regulations on roaming charges, internet connectivity, the portability of online content, cross-border parcel delivery, general data protection and geo-blocking, the Directive establishing the European Electronic Communications Code and the free flow of non-personal data, and the Directive on Copyright in the Digital Single Market[2].

In a November 2020 resolution, Parliament advocated an update to the General Product Safety Directive (GPSD) to ensure that market surveillance rules are relevant for both offline and online products and to address challenges posed by emerging technologies such as artificial intelligence and robotics. A 2022 study for the IMCO Committee highlighted the need for a revised GPSD to account for these new

[2]Relevant research includes Wiewiórowska A. et al., Contribution to Growth: Legal Aspects of Protecting European Consumers, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

technologies. Additionally, Parliament has discussed consumer protection in the digital age, emphasising robust measures for online marketplaces through the Digital Services Act, as highlighted in an E-commerce workshop in February 2020, as well as by a number of studies[3]. Experts and stakeholders have insisted on the need to put in place strong consumer protection measures for online marketplaces via the Digital Services Act.

Recent research has delved into various aspects of consumer protection. A study[4] from October 2020 discussed 'loot boxes' in video games and their potential to act as gateways to gambling, especially among young people. The IMCO Committee adopted a draft implementation report in December 2022 on consumer protection in online video games.

In January 2021, a briefing[5] entitled 'Reimbursement and compensation in case of transport cancellation or delay: rights and their enforcement' detailed consumer rights under EU law for transport cancellations, specifically referencing the COVID-19 pandemic. Another study[6] examined targeted advertising's impact on consumer choice, noting the benefits of personalised advertisements but raising concerns about transparency, the targeting of vulnerable consumers, and 'dark patterns' that may manipulate consumer decisions. The IMCO Committee held a public hearing in March 2022 to address the risks of dark patterns for consumers.

On 28 October 2021, the IMCO Committee held a public hearing on dual quality of goods in the single market. Experts from consumer associations and business organisations highlighted the challenges that dual quality practices have created, both for consumers and the industry, for example in terms of consumer information about the differentiation of goods. They also discussed how to raise consumer awareness on the issue.

A month later, on 9 December 2021, the IMCO Committee voted on the draft implementation report on the Toy Safety Directive to ensure that only safe toys are sold on the Union's market.

In February 2022, a study[7] examined the impact of influencers on advertising and consumer protection, highlighting concerns about misleading content and the promotion of unsafe products in the rapidly growing influencer marketing industry. The Digital Services Act and Digital Markets Act aim to enhance transparency and regulate online platform gatekeepers, which are crucial in influencer activities. Another 2022

[3]Maciejewski M., Blandin L., Digital Services Act: Opportunities and Challenges for the Digital Single Market and Consumer Protection, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[4]Cerulli-Harms, A. et al., Loot boxes in online games and their effect on consumers, in particular young consumers, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[5]Maciejewski, M. et al., Reimbursement and compensation in case of transport cancellation or delay: rights and their enforcement, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.
[6]Fourberg, N et al., Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.
[7]Michaelsen, F., Collini, L. et. al., The impact of influencers on advertising and consumer protection in the Single Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2022.

study[8] in September analysed overdraft facilities in the EU, revealing significant interest rate variations among Member States. The authors advocated stricter, more equitable regulations, especially where interest rates are highest.

In November 2022, a study was published examining the increasingly prevalent practice of personalised pricing, where prices are tailored to individual consumers based on data analysis and often without their full awareness. This strategy may maximise profits for sellers by exploiting consumers' willingness to pay. This raises ethical concerns and potential consumer backlash due to perceived unfairness and the impact on price transparency and comparison. Currently, personalised pricing is permitted under EU law except where it violates anti-discrimination laws. New EU directives, such as Article 6(1)(ea) of the Consumer Rights Directive, require some disclosure of personalised pricing practices, but these are seen as insufficient. Given consumer opposition to this kind of pricing, future regulations could ban price discrimination leading to higher-than-regular prices. They could also expand and clarify information obligations and facilitate enforcement by reversing the burden of proof in cases of suspected price personalisation.

The Commission is set to re-evaluate Directive 2015/2302/EU on package travel, building on insights from the 2020 New Consumer Agenda and the 2021 report on the Directive's application. This reassessment aims to confirm if the Directive consistently offers robust consumer protections, including during insolvency, and reflects on lessons from the COVID-19 crisis, aligning with the sustainable and smart mobility strategy. Anticipated changes may involve streamlining the distinction between linked travel arrangements and packages, simplifying information requirements while preserving consumer safeguards, and clarifying rules such as those concerning voluntary vouchers. The Commission plans to propose legislative revisions, accompanied by an impact assessment, in the last quarter of 2023.

For more information on this topic, please see the website of the Committee on the Internal Market and Consumer Protection.

Christina Ratcliff / Jordan De Bono / Barbara Martinello
11/2023

[8]Knops, K. et al., Consumer protection in the context of overdraft facilities and overrunning, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2022.

2.2.3. PASSENGER RIGHTS

Common rules have been drawn up to ensure that passengers receive at least a minimum level of assistance in the event of serious delays to or cancellation of their journey, irrespective of the mode of transport used, and, in particular, to protect more vulnerable travellers. The rules also provide for compensation schemes. A wide range of derogations may be granted for rail and road transport services, however, and court actions challenging the application of the rules are still common.

LEGAL BASIS

Articles 91(1) and 100(2) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

EU legislation on passenger rights seeks to ensure that passengers enjoy a harmonised minimum level of protection, irrespective of the mode of transport used, with a view to facilitating mobility and encouraging the use of public transport.

RESULTS

The EU has over time adopted a body of rules designed to protect passengers, irrespective of the mode of transport they use. These rules build on previous legislation on the protection of consumers[1] and package holidays[2] and on the applicable international conventions[3], the Charter of Fundamental Rights and the relevant national provisions. However, they are proving difficult to apply, leading to frequent court cases. The Court of Justice of the European Union plays a leading role in interpreting the rules.

The rules lay down a set of basic rights common to all modes of transport, such as non-discrimination, special protection for reduced-mobility passengers[4], traveller information, national enforcement bodies and arrangements for handling complaints.

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[1]Including Directive 93/13/EEC on unfair terms in consumer contracts, Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market, Regulation (EC) No 2006/2004 on consumer protection cooperation, and Directive 2011/83/EU on consumer rights.
[2]Directive 90/314/EEC on package travel, package holidays and package tours. From 1 July 2018, this text (including the relevant provisions of Regulation (EC) No 2006/2004 and Directive 2011/83/EU) was replaced by a new directive which takes into account the now dominant role of the internet in package holiday marketing (Directive (EU) 2015/2302 of 25 November 2015).
[3]Rules on carrier liability in the event of accidents have been brought into line with the appropriate international conventions: Montreal Convention for air transport (transposed into EU law and extended to cover domestic flights by Regulation (EC) No 889/2002); Athens Convention for maritime transport (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 392/2009); Convention concerning International Carriage by Rail (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 1371/2007). In cases not covered by these conventions or their transposition into EU law, the relevant national provisions apply (bus or coach transport and inland waterway transport).
[4]Reduced-mobility passengers should, for example, receive appropriate assistance without being required to pay additional charges – provided that the carrier has been informed in advance: 36 hours before departure for bus or coach travel and 48 hours beforehand for all other means of transport.

A. Air transport: Regulations (EC) No 261/2004 and (EC) No 1107/2006

Regulation (EC) No 261/2004 has been the cause of numerous disputes and has been clarified in a series of rulings[5].

Denied boarding:

— The carrier must first call for volunteers, who are offered: (i) a freely negotiated sum in compensation, and (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date;

— Passengers who cannot board must be offered: (i) assistance (meal, telephone calls and accommodation if necessary), (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date, and (iii) an immediate predetermined sum in compensation as follows:

Flights ≤ 1 500 km	**Flights 1 500-3 500 km Flights EU ≥ 1 500 km**	**Flights ≥ 3 500 km**
EUR 250 (EUR 125 if rerouted and arriving less than two hours late)	EUR 400 (EUR 200 if rerouted and arriving less than three hours late)	EUR 600 (EUR 300 if rerouted and arriving less than four hours late)

Cancellation:

— Assistance (meal, telephone calls and accommodation, if necessary)[6];

— A choice between (i) being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or (ii) being rerouted or continuing their journey as soon as possible or (iii) at a mutually agreed later date;

— Immediate compensation, as in the case of denied boarding, unless the passenger was notified in advance of the flight's cancellation[7] or there are extraordinary circumstances[8].

Delays of at least two hours for flights of 1 500 km or less, at least three hours for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and at least four hours for flights over 3 500 km:

— Assistance (meal, telephone calls and accommodation, if necessary);

[5]In March 2013, the Commission proposed that these rules should be clarified (and the definition of 'extraordinary circumstances' in particular should be improved) to facilitate application of the rules. The proposal is still under discussion and was given a first reading in Parliament on 5 February 2014 (OJ C 93, 24.3.2017, p. 336). In the meantime, the Commission adopted an interpretation of the rules currently in force on the basis of case law of 10 June 2016.

[6]The CJEU has ruled that this assistance is due irrespective of the grounds for cancellation, and with no time limit or monetary limit other than that represented by the expenses actually incurred by the passenger.

[7]At least two weeks before the flight date. This deadline may be shortened in the event of rerouting.

[8]Court of Justice of the European Union (CJEU) case law has restricted this to cases of *force majeure*.

— In the event of a delay longer than three hours, passengers should be offered reimbursement within seven days (and, if necessary, a free flight to the initial point of departure) and compensation as in the event of cancellation[9].

Upgrading/downgrading:

— The carrier may not demand any extra payment when it upgrades a passenger;

— In the event of downgrading, the carrier must reimburse the passenger within seven days as follows: (i) 30% of the ticket price for flights of 1 500 km or less, (ii) 50% for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and (iii) 75% for flights of over 3 500 km.

Reduced-mobility passengers:

Reduced-mobility passengers and those accompanying them should always be given priority for boarding. Where boarding is denied, or in the event of a flight cancellation or delay, irrespective of the duration of the delay, they should always be offered assistance (meals, telephone calls and accommodation, if necessary).

The Commission presented a new proposal amending Regulation (EC) No 261/2004 in March 2013 with a view to further enhancing the enforcement of the EU rules by clarifying key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past. The codecision process is still ongoing and final solutions are yet to be agreed between Parliament and the Council of the EU. A proposal for the revision of the passenger rights regulatory framework is scheduled for 2023 in the Commission's 2023 work programme.

B. Rail transport: Regulation (EC) No 1371/2007

Member States may derogate from the majority of these rules for domestic rail passenger services (until 2024) and local services (i.e. urban, suburban and regional services), and for international services if a significant part of the journey is provided outside the EU[10].

Cancellation or delay of over 60 minutes:

— A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) at a mutually agreed later date, or (iii) being reimbursed within one month (and, if necessary, a free return journey to the initial point of departure);

— Where no reimbursement is made entitlement to transport stands, with compensation to be paid within one month at the request of the passenger (except if they were informed of the delay before purchasing the ticket) as follows: 25% of the ticket price paid for delays of between 60 and 119 minutes and 50% for longer delays;

— A meal at the station or on board the train, if possible, and accommodation, if necessary and possible;

[9]The CJEU has acknowledged that passengers whose flights have been delayed by over three hours are comparable to passengers whose flights have been cancelled. Regulation (EC) No 261/2004 provided only for the possibility of reimbursement for delays of over five hours.

[10]In 2017, the Commission proposed amending the regulation to restrict the use of national derogations. The proposal is being considered by the legislative authority.

— The carrier is not held liable if the cancellation or delay is due to unavoidable extraordinary circumstances; compensation is always due, however, even in such circumstances[11].

The recast of Regulation (EC) No 1371/2007 launched by the Commission in September 2017 provides the foundation for an even clearer framework for the relationship between carriers and customers. The Regulation should establish rules applicable to rail transport to provide for effective protection of passengers and encourage rail travel.

The Regulation was adopted by Parliament at second reading in April 2021 (Regulation (EU) 2021/782). The Commission is planning to adopt an implementing regulation in accordance with Regulation (EU) 2021/782 to simplify the process for rail passengers to request reimbursement or compensation by creating a standard form in the event that rail services are delayed or cancelled.

C. Maritime and inland waterway transport: Regulation (EU) No 1177/2010

The rights of passengers travelling by sea or inland waterway (for journeys of more than 500 m, using motorised vessels carrying more than 12 passengers and three crew members) can be enforced only if (i) the port of embarkation or (ii) the port of destination is situated in the EU and if the service is operated by an EU carrier. Cruise-ship passengers must embark at an EU port in order to enjoy these rights and are not covered by some of the provisions on delays.

Cancellation or delay of over 90 minutes on departure:

— Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time;

— A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) being reimbursed within seven days (and, if necessary, a free return journey to the initial point of departure) should be offered;

— Assistance (except if the passenger was informed of the delay before purchasing the ticket): meals, if possible, and accommodation on board or on land, if necessary; accommodation on land is restricted to three nights at a cost of EUR 80 per night; accommodation need not be provided if the cancellation or delay is caused by bad weather.

Significant delay on arrival:

Compensation should be paid within one month at the request of the passenger (except if he or she was informed of the delay before purchasing the ticket or if the delay was caused by bad weather or *force majeure*) as follows:

Compensation	25% of the ticket price paid	50% of the ticket price paid
Journey ≤ 4 hours	Delay ≥ 1 hours	Delay ≥ 2 hours
Journey 4 to 8 hours	Delay ≥ 2 hours	Delay ≥ 4 hours
Journey 8 to 24 hours	Delay ≥ 3 hours	Delay ≥ 6 hours

[11]In 2013, the CJEU ruled that rail passengers are entitled to partial reimbursement of the cost of their ticket in the event of a significant delay, even if that delay is attributable to *force majeure* (C-509/11). Under the proposal amending the regulation, submitted by the Commission in 2017, such automatic compensation would be abolished.

Journey ≥ 24 hours	Delay ≥ 6 hours	Delay ≥ 12 hours

D. Bus and coach transport: Regulation (EU) No 181/2011

The rights of passengers travelling by bus or coach can be enforced in full only on regular services of over 250 km where passengers board or alight in the territory of a Member State[12].

Cancellation or delay of over 120 minutes on departure:

— Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time;

— A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) being reimbursed within 14 days (and, if necessary, a free return journey to the initial point of departure) should be offered; if the carrier fails to offer the passenger this choice, the passenger must be reimbursed and also has the right to compensation amounting to 50% of the ticket price, to be paid within one month;

— For journeys of over three hours, if the service is 90 minutes late, assistance must be offered (meals and accommodation, if necessary, for a maximum of two nights at a cost of EUR 80 per night); accommodation does not need to be provided if the cancellation or delay is caused by bad weather or a natural disaster.

RESPONSE TO THE COVID-19 CRISIS

The spread of COVID-19 prompted the Commission to adopt Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19 on 18 March 2020, in which it recalled that passengers have the right to choose between reimbursement and rerouting. On 13 May 2020, the Commission adopted a further recommendation on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.

On 23 May 2022, the Commission adopted the 'Contingency Plan for Transport' to draw lessons from the COVID-19 pandemic and to take into account the challenges that the transport sector has been facing due to Russia's war against Ukraine. Both of these crises have strongly affected the transport of goods and people.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always been a strong advocate of passenger rights irrespective of the mode of transport used. Its main aim is now to ensure that the texts adopted in recent years are properly applied. Parliament has therefore called for more readily comprehensible rules, the provision of clear and accurate information to passengers before and during their journey, straightforward, quick complaints procedures and better enforcement of the existing rules.

Parliament has also come out in favour of improving existing rights, in particular as regards misleading or unfair terms in transport contracts, and improving access to transport infrastructure for reduced-mobility passengers and the introduction of new rights, such as minimum quality standards or rules which are such as to protect

[12]Certain rights also apply to regular services covering a short distance (information, non-discrimination, reduced-mobility passenger access) or on occasional services (non-discrimination, compensation in the event of accident or damage to mobility equipment for reduced-mobility passengers).

passengers making multimodal journeys. This last point would require Member States to refrain from making derogations when applying the rules on rail or road transport.

Main European Parliament decisions concerning passenger rights:

— Resolution of 25 November 2009 on passenger compensation in the event of airline bankruptcy;

— Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020;

— Resolution of 29 March 2012 on the functioning and application of established rights of people travelling by air;

— Resolution of 23 October 2012 on passenger rights in all transport modes;

— Legislative resolution of 5 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air;

— Resolution of 7 July 2015 on delivering multimodal integrated ticketing in Europe;

— Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, in which Parliament called on the Commission to see that its Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19, published on 18 March 2020, were properly implemented;

— Resolution of 13 December 2022 on the action plan to boost long-distance and cross-border passenger rail. Parliament called on ensuring the uniform protection of passengers' rights in all different transport modes.

Davide Pernice
10/2023

2.2.4. PUBLIC HEALTH

Public health policy has recently taken centre stage in EU policymaking with the COVID-19 pandemic, Parliament's making cancer one of its areas of focus, and the push towards a stronger European Health Union. The European Health Union initiative addresses immediate and future health concerns, including the COVID-19 crisis, building resilience against cross-border health threats, implementing the Beating Cancer Plan, advancing the Pharmaceutical Strategy for Europe, and enhancing digital health.

LEGAL BASIS

Article 168 (protection of public health), Article 114 (single market) and Article 153 (social policy) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

EU public health policy aims to:

— Protect and improve the health of EU citizens;

— Support the modernisation and digitalisation of health systems and infrastructure;

— Improve the resilience of Europe's health systems;

— Better equip EU countries to prevent and address future pandemics.

CONTEXT

The Maastricht Treaty of 1992 created a clear legal basis for the adoption of health policy measures. Subsequently, the Amsterdam Treaty of 1997 strengthened these provisions, enabling the EU to adopt measures ensuring a high level of human health protection.

The emergence of major health issues, coupled with the free movement of patients and health professionals within the EU, and the socio-economic consequences of health issues, mean that public health has attained an ever more prominent position on the EU agenda. The setting up of specialised agencies such as the European Medicines Agency (EMA) and the European Centre for Disease Prevention and Control (ECDC) underlined the EU's growing role in health policy. Agencies like the European Chemicals Agency (ECHA) and the European Food Safety Agency (EFSA) further contribute to strengthening European health policies. The EU4Health programme, established by Regulation (EU) 2021/522, provides funding in the area of health for the period 2021-2027. The COVID-19 crisis intensified efforts, emphasising collective resilience and cross-border health security, driving the EU towards a robust European Health Union.

The general objectives of the European Health Union for 2021-2027 focus on immediate and enduring health concerns. These span from addressing the COVID-19 crisis, fortifying defences against cross-border health risks, implementing initiatives like Europe's Beating Cancer Plan, the Pharmaceutical Strategy for Europe, and advancing digital health. The EU will also persist in collaborating globally to tackle

health challenges, including developing vaccines and tackling antimicrobial-resistant infections.

ACHIEVEMENTS AND CURRENT DEVELOPMENTS

A. Health in All Policies (HiAP)

The HIAP approach, formulated as a EU approach in 2006 and codified in the TFEU and the Charter of Fundamental Rights of the European Union (the Charter), responds to the cross-sectoral nature of public health issues and aims to integrate health aspects in all relevant policies (Articles 9 and 168(1) of the TFEU; Article 35 of the Charter). This approach systematically takes into account the health implications of decisions in all other policy fields in order to improve population health and health equity. For example, the 'Farm to Fork' strategy contributes to the production of not only sustainable, but also healthier food; the Zero pollution action plan creates a cleaner and also healthier living space; the EU4Health Programme (2021-2027), together with other funds and programmes, helps address health issues from different perspectives. Several policies aim to prevent the damage to health from climate change, such as the increasing number of deaths due to heatwaves and natural disasters, and changing patterns of infection for water-borne diseases and diseases transmitted by insects, snails or other cold-blooded animals. Furthermore, the 8th Environment Action Programme, which became effective in 2022, advocates for enhancing the connections between environmental policies, which encompass climate concerns, and health policies.

B. Disease prevention and health promotion

Prevention encompasses a wide range of areas, including initiatives against cancer, communicable and non-communicable diseases, vaccination, and combating antimicrobial resistance.

Cancer is the second leading cause of death in the EU. Its impact extends beyond personal and familial spheres, affecting healthcare systems, financial resources, and overall economic productivity. Cancer is addressed at European level through several initiatives. Parliament set up a dedicated Special Committee on Beating Cancer (BECA) (2020-2022), examining the measures that the EU can implement to combat cancer. Europe's beating cancer plan in 2021, covers prevention, early diagnosis, treatment and follow-up, and represents the EU's reaction to the increasing challenges in the field of cancer management. In September 2022 the Commission presented a new approach to support Member States' efforts to boost the uptake of cancer screening. The objective of the recommendation is to raise the participation rate in breast, colorectal, and cervical cancer screenings, in line with Europe's Beating Cancer Plan goal of extending these screenings to 90 % of eligible individuals by 2025.

In December 2021, the Commission launched the 'Healthier together – EU non-communicable diseases initiative' to assist EU countries in reducing major NCD burdens and enhancing citizens' well-being. It is estimated that more than 84 million people in the EU are struggling with mental health problems. The EU Joint Action on Mental Health and Well-being ran from 2013 to 2018, and created the European Framework for Action on Mental Health and Wellbeing, which contributes to the promotion of mental health. With suicide being the second main cause of death in the 15-29 age group, prevention, awareness, non-stigmatisation and access to help when it comes to depression, self-harm and suicide remain of key importance. On 13 September 2022, in a resolution concerning the effects of COVID-19 on

young people, Parliament called on the Commission to establish a European Year of Mental Health. The 2023 EU4Health Work Programme continues to offer support for mental health promotion and preventing mental health issues. Cardiovascular disease represents the biggest cause of death in the EU. Drugs, alcohol and tobacco use are lifestyle factors with a serious impact on human health, and cardiovascular disease, and the fight against them is a major issue in public health policy. The Tobacco Product Directive (Directive 2014/40/EU; applicable from 2016) and the Tobacco Tax Directive (Council Directive 2011/64/EU) were milestones in this fight. The use of drugs also generates costs for and harm to public health and safety. In December 2020, the Council approved the new 2021-2025 EU Drugs Strategy. The document establishes an overarching political framework and sets out strategic priorities for EU policy on illicit drugs under three main strands: drug supply reduction, drug demand reduction and addressing drug-related harm. Efforts to revise the 2006 EU Alcohol Strategy are currently stalled.

For communicable diseases and cross-border threats to health, the ECDC has put in place an Early Warning and Response System and the EU Health Security Committee coordinates the response to outbreaks and epidemics. Cooperation with the UN's World Health Organization (WHO) is pivotal in those cases, as was seen with the outbreak of the COVID-19 pandemic in early 2020. Many ad hoc measures were adopted under urgency procedures (see the dedicated EUR-Lex webpage and the Commission coronavirus response webpage) including:

— Regulation (EU) 2020/1043 of the European Parliament and of the Council of 15 July 2020 on the conduct of clinical trials with and supply of medicinal products for human use containing or consisting of genetically modified organisms intended to treat or prevent coronavirus disease (COVID-19);

— The Commission communications 'EU Strategy for COVID-19 vaccines' and 'Preparedness for COVID-19 vaccination strategies and vaccine deployment';

— The Council recommendation of 13 October 2020 established common criteria and a common framework on travel measures in response to the COVID-19 pandemic.

Throughout 2020, the Commission continued to take additional action to help build increased resilience across several areas in all Member States. Measures include connecting national contact apps, broadening travel exemptions, more extensive testing and securing supplies for vaccines. The COVID-19 response package includes:

— Commission communication on additional COVID-19 response measures;

— Commission recommendation on COVID-19 testing strategies;

— Commission recommendation on the use of rapid antigen tests.

In 2022, the EMA's mandate was extended and a new regulation on serious cross-border health threats extended the ECDC's mandate and provided extra powers to the European Health Emergency Preparedness and Response Authority (HERA).

C. Societal changes, demographic transition

The 2023 Commission Report on Demographic Change explores challenges arising from ageing, population decline, and reduced numbers of working-age individuals. Addressing the EU's ageing population, ensuring a high quality of life in old age, and sustainable healthcare systems are key challenges. In 2020, the WHO launched the

Decade of Healthy Ageing, and in this context, the Commission published a green paper on ageing in January 2021.

In response to the challenges posed by the migration crises, the Action Plan on the Integration of Third-Country Nationals was adopted in 2016. The action plan addresses, inter alia, health-related disadvantages experienced by migrants, including access to health services. In 2020, the Commission put forward the European Agenda for Migration and the New Pact on Migration and Asylum, which aim to further streamline European policies in this area.

Back in 2015, Parliament called for action to reduce childhood inequalities in areas such as health, and for the introduction of a Child Guarantee in the context of an EU plan to combat child poverty. In June 2021, the Commission's proposal to establish a European Child Guarantee was adopted by the Council. As a next step, Member States are developing national plans outlining how they will implement the Child Guarantee up until 2030.

D. Medicines (2.2.5)

A medicinal product (medicine) is a substance or combination of substances that is used for the treatment or prevention of diseases in human beings. Directive 2001/83/EC and Regulation (EC) No 726/2004 lay down the requirements and procedures for marketing authorisation, as well as the rules for monitoring authorised products. Regulation (EU) 2019/1243 brought changes to these regulations, implementing particular actions aimed at guaranteeing the accessibility of medications and handling shortages across the EU. Medicinal products may be authorised by national authorities through the decentralised procedure or by the Commission through the centralised procedure where EMA conducts the scientific assessments. EMA is also responsible for facilitating development of medicines, evaluating marketing authorisations, monitoring the safety of medicines, and providing information to healthcare professionals. Clinical trials investigate the effectiveness and safety of medicines in humans. Regulation (EU) No 536/2014, which took effect in January 2022, established harmonised rules for the authorisation and conduct of clinical trials.

The Commission presented its Pharmaceutical Package in April 2023, aiming to make medicines more available, accessible and affordable. At the same time it proposed a Council Recommendation to step up the fight against antimicrobial resistance (AMR). On 13 June 2023, the Council approved the recommendation to intensify EU actions against antimicrobial resistance through a One Health approach.

E. eHealth

The EU is in the middle of transformative efforts to digitalise healthcare systems. The digitalisation of health refers to the integration of digital technologies and information management systems into various aspects of the healthcare industry. It involves the use of electronic health records (EHRs), telemedicine, wearable devices, mobile apps, data analytics, and other digital tools. In her speech to the 2023 Future of Health Summit, Commissioner Stella Kyriakides stated that 'digitalisation has the potential to increase quality, accessibility and resilience of healthcare.' The digitalisation of the healthcare sector forms part of the EU's digital single market strategy, which aims at closer digital harmonisation between the EU Member States.

The eHealth Network is a voluntary network set up under Article 14 of Directive 2011/24/EU which provides a platform for Member States' competent authorities dealing with

eHealth. The 2018 Commission communication on the Digital Transformation of Health and Care in the Digital Single Market identifies as priorities secure access by citizens to their health data, also across borders; personalised medicine through shared EU data infrastructure, allowing researchers and other health professionals to pool resources across the EU; and empowering citizens with digital tools for user feedback and person-centred care (mobile health solutions, personalised medicine). The eHealth Digital Service Infrastructure ensures the continuity of care for European citizens while they are travelling abroad in the EU. A legislative proposal for a European health data space was presented in May 2022 and seeks to empower EU citizens to control their health data, enabling cross-border use for research and innovation while ensuring data protection compliance.

F. Health Technology Assessment (HTA)

HTA aims to offer evidence-based data on health technologies to ensure safe, effective, patient-focused, and cost-efficient health policies. National authorities also utilise HTA findings to guide decisions about which technologies should be reimbursed at the domestic level. HTA assesses the added value of health technologies including medicines, medical devices and diagnostic tools, surgical procedures, as well as measures for disease prevention, diagnosis or treatment. A new regulation for assessing health technologies was adopted in December 2021.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has consistently promoted the establishment of a consistent public health policy. It has also actively sought to strengthen and promote health policy through numerous opinions, studies, debates, written declarations and own-initiative reports on a wide range of health issues. At the start of the current legislative period, it moved into a more proactive agenda-setting role with its push to make beating cancer a top priority of EU health policy. During the COVID-19 crisis, Parliament took an active role in promoting a coordinated European response and underlined the need to engage in far stronger cooperation in the area of health to create a European Health Union.

The Committee for Environment, Public Health, and Food Safety (ENVI) is Parliament's main actor on health matters. In early 2023, the ENVI Committee set up a new permanent Subcommittee on Public Health (SANT) that will reinforce Parliament's role in exercising scrutiny over EU health policies and promoting their development. Parliament also put the need for a more coordinated European approach to fighting cancer high on the political agenda in its current 9th legislative period, with the establishment of a Special Committee on Beating Cancer.

Parliament insisted on a standalone European health programme, securing support for EU4Health. It also scrutinises the implementation of the Recovery and Resilience Facility through dialogues, questions, studies, and internal research, emphasising health reforms' importance. Parliament has also consistently advocated for the advancement of mental well-being and prioritising mental health in EU policy formulation.

For more information on this topic, please see the websites of the Committee on the Environment, Public Health and Food Safety and the Subcommittee on Public Health.

Maria-Mirela Curmei / Christian Kurrer

10/2023

2.2.5. MEDICINES AND MEDICAL DEVICES

Medicines and medical devices are subject to the rules of the single market and have a direct impact on people's health. A robust legal framework is in place to protect public health and guarantee the safety of these products. Access to affordable medicines, the fight against antimicrobial resistance, the ethical conduct of clinical trials, the use of artificial intelligence in medical devices and incentives to research and development are just some of the key issues the EU deals with in this field.

LEGAL BASIS

Articles 168 and 114 of the Treaty on the Functioning of the European Union.

CONTEXT

Member States are responsible for devising health policies and organising and delivering health services and medical care. The EU has a complementary competence that enables it to support and coordinate actions and adopt binding legislation concerning medicines and medical devices.

ACHIEVEMENTS AND CURRENT DEVELOPMENTS

A. General rules on medicines

A medicinal product (medicine) is a substance or combination of substances that is used for the treatment or prevention of diseases in human beings. With the aim of safeguarding public health, the market authorisation, classification and labelling of medicines has been regulated in the EU since 1965. The evaluation of most medicines has been centralised through the European Medicines Agency (EMA). The 1995 centralised authorisation procedure was implemented to streamline approvals and maintain a stable supply of medicinal products. The primary legislative frameworks in this area are Directive 2001/83/EC and Regulation (EC) No 726/2004, which lay down the rules for establishing centralised and decentralised procedures for marketing authorisations. These frameworks were amended by Regulation (EU) 2019/1243, which introduces specific measures to ensure the availability of medicines and to manage shortages within the EU. In April 2023, the Commission adopted a proposal for a new directive and a new regulation to repeal Directive 2001/83/EC and Regulation (EC) No 726/2004 respectively.

Once medicines are placed on the market, they are monitored throughout their entire lifespan by the EMA under the pharmacovigilance system, which records any adverse drug effects in daily clinical practice.

In addition to the general rules on medicines, specific regulations are also in place for orphan medicinal products for the treatment of rare diseases (Regulation (EC) No 141/2000), medicines for children (Regulation (EC) No 1901/2006) and advanced therapies (Regulation (EC) No 1394/2007). More information on this topic is set out in section D.

B. Clinical trials

Clinical trials are systematic investigations of medicines in humans that are intended to study the effectiveness and safety of a given medicine. In order for a medicine to be placed on the market, it must be accompanied by documents indicating the results of the tests that it has undergone. Standards have been developing progressively – both in the EU and internationally – since 1990 and are codified in EU legislation, a process that is mandatory for the pharmaceutical industry. The latest revision of the EU legislation from 2014 established harmonised rules for the authorisation and conduct of clinical trials (Regulation (EU) No 536/2014). Clinical trials must undergo a scientific and ethical review and must receive prior authorisation. Furthermore, they may only take place if the rights, safety, dignity and well-being of participants are protected and prevail over all other interests, and only if the trial is designed to generate reliable and robust data. Regulation (EU) No 536/2014 took effect at the end of January 2022 and established the EU Clinical Trials Information System to centralise submitted applications for clinical trials and provide the results of these trials, enhancing transparency and accessibility in clinical research.

C. Advanced-therapy medicinal products

Advanced-therapy medicinal products are a relatively new kind of product or pharmaceutical based on advances in cellular and molecular biotechnology and novel treatments, including gene therapy, cell therapy and tissue engineering. These complex products, which involve pharmacological, immunological or metabolic actions, cannot be treated in the same way as conventional drugs, and they require specific legislation as laid down in Regulation (EC) 1394/2007 and Directive 2009/120/EC. Because of the risk of disease transmission that they pose, tissues and cells must be subject to strict safety and quality requirements. Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells is therefore of great relevance to these products. A committee for advanced therapies was created at the EMA with responsibility for assessing the quality, safety and efficacy of advanced-therapy medicinal products and following scientific developments in this emerging field of biomedicine, which has enormous potential for patients and industry.

D. Orphan medicinal products and medicines for children

Paediatric medicinal products are also specifically regulated (Regulation (EC) No 1901/2006) to ensure that they have been tested specially for children in an ethical way, that they meet the needs of children and that they have age-appropriate doses and formulations. Regulation (EU) 2019/5 amends Regulation (EC) No 1901/2006 to account for the fact that the specific obligations subject to financial penalties are now laid down in Regulation (EC) No 726/2004. Pharmaceutical companies carry out studies on children to obtain evidence about the safety and efficacy of new medicines before requesting marketing authorisation. The EMA's Paediatric Committee assesses those studies and the data generated by them.

In the EU, rare diseases are those which affect no more than five in every 10 000 people. Orphan medicinal drugs are specifically designed to treat these illnesses. Regulation (EC) No 141/2000 lays down the centralised procedure for the designation of orphan drugs. Owing to the low number of people who are affected by rare diseases, research in this field is not very economically attractive. The EU has therefore launched the Innovative Medicines Initiative to encourage the pharmaceutical industry to develop

orphan drugs. In 2017, the Commission began its evaluation of the legislation on medicines for children and rare diseases. Between May and July 2021, the Commission conducted a public consultation on this issue. In November 2022, the Commission published the Notice Guideline on the format and content of applications for designation as orphan medicinal products and on the transfer of designations from one sponsor to another. Given that rare diseases are a worldwide concern, the EMA collaborates extensively with its global counterparts to designate and evaluate orphan medicines.

Orphan and paediatric medicines are also addressed by the 2023 Commission proposal for a new regulation as part of the 'pharmaceutical package' laying down Union procedures for the authorisation and supervision of medicinal products for human use.

E. Medical devices

A medical device is any product used for medical purposes, including diagnosis, prevention, treatment, investigation or changes to anatomy, as well as contraception devices and sterilising medical equipment.

Regulation (EU) 2017/745 (Medical Devices Regulation) and Regulation (EU) 2017/746 set the rules on placing medical and in vitro diagnostic (IVD) devices on the market and on related clinical investigations. These regulations came into force in May 2021 and May 2022 respectively. Devices are grouped according to their risk category, each of which has a specific set of rules. These regulations introduce more stringent procedures for conformity assessment and post-marketing surveillance, require manufacturers to produce clinical safety data, establish a unique device identification system for the traceability of devices, and provide for the setting up of a European database on medical devices. Regulation (EU) 2023/607 of the European Parliament and of the Council of 15 March 2023 amends the abovementioned regulations as regards the transitional provisions for certain medical devices and IVD medical devices. This new regulation introduces a staggered extension of the transition period provided for in the Medical Devices Regulation, subject to certain conditions. It also deletes in both the Medical Devices and IVD Regulations the 'sell-off' deadline after which devices placed on the market before or during the transition periods that are still in the supply chain would have to be withdrawn.

F. Antimicrobial resistance

Antimicrobial agents are substances that kill or inhibit microorganisms, including bacteria, viruses, fungi and parasites. The use (and misuse) of antimicrobial agents is linked to an increasing prevalence of microorganisms that have developed resistance to such agents, thereby posing a threat to public health and significantly increasing costs. EU-level action to tackle antimicrobial resistance dates back to the late 1990s. The European One Health Action Plan against antimicrobial resistance (AMR), adopted in 2017, ensures effective treatment of infections by reducing the emergence and spread of AMR and boosting the development and availability of new, effective antimicrobials. On 1 June 2023, Parliament passed a resolution addressing EU efforts to counter AMR. Additionally, on 13 June 2023, the Council approved a recommendation on stepping up EU actions to combat AMR through a One Health approach. In February 2023, the Commission published Delegated Regulation (EU) 2023/905 supplementing Regulation (EU) 2019/6 as regards the application of the prohibition of use of certain antimicrobial medicinal products in animals.

ADDITIONAL CHALLENGES

The EU continuously strives to implement initiatives to foster research and innovation in the pharmaceutical sector. Research framework programmes have always supported health-related research. The current research and innovation funding programme, Horizon Europe, will promote health-related research and respond to the current challenges by addressing topics such as lifelong health, environmental and social health determinants, non-communicable and rare diseases, infectious diseases, tools, technologies and digital solutions for health and care, and healthcare systems.

Other EU funding programmes such as the 2021-2027 EU4Health programme, which was adopted to improve crisis preparedness, and the 2021-2027 European Social Fund Plus, which supports access to healthcare, also play an important role. Furthermore, the EU has given considerable support to developing innovative drugs and urgently needed treatments, and accelerating patient access to new treatments via the Innovative Medicines Initiative and its predecessors.

Access to essential medicines is part of the right to health, according to the World Health Organization. However, access to health treatment is becoming more and more heavily dependent on the availability of affordable medicines. Findings show differences in sales of innovative medicines between different Member States, which can be attributed to economic disparities and differences in healthcare infrastructure. The problem has been exacerbated by the economic crisis. Parliament, concerned with this serious situation, has published several own-initiative reports on access to medicines. In 2017, Parliament adopted a resolution on options for improving access to medicines. Access to affordable medicines remains a priority for the current Commission, as emphasised in its 2020 pharmaceutical strategy.

At the EMA, a Task Force on the Availability of Authorised Medicines for Human and Veterinary Use provides strategic and structural solutions to tackle disruptions in the supply of medicines and ensure their continued availability in the EU, while the structures and processes that the EMA set up for dealing with medicine shortages in accordance with Regulation (EU) 2022/123 on the EMA's reinforced role are primarily focused on activities related to crisis situations.

Given the increasing concerns about shortages of certain medicines, which have been aggravated by geopolitical events like the war in Ukraine, the energy crises and high inflation, the supply aspect of medicines also requires attention. To this end, in 2019, the EMA issued guidance on the detection and notification of shortages of medicinal products.

In December 2021, Regulation (EU) 2021/2282 on health technology assessment and amending Directive 2011/24/EU was published. The regulation entered into force in January 2022 and will apply as of January 2025. The new regulation will define a support framework and procedures for cooperation on the clinical assessment of health technologies at EU level, and common methodologies for the same. Among other things, it will help accelerate access to new medicines.

On 7 March 2023, the Council adopted the Commission's proposal which aims to extend the transition period to adapt to the new rules under the Medical Devices Regulation.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has consistently promoted the establishment of a coherent public health policy and a policy on pharmaceuticals that takes into account both the public health interest and industrial aspects. Recent pieces of legislation, adopted with the very active participation of Parliament as co-legislator, include regulations on clinical trials, medical devices and in vitro devices. Parliament has advocated for patient safety to be strengthened during the legislative process. Non-legislative resolutions and debates on current issues, such as the use of artificial intelligence in medical devices, access to medicines or AMR, highlight the attention that Parliament attaches to ongoing challenges and emerging threats. During the hearing of Commissioner Kyriakides, Parliament further emphasised the need to act on those challenges.

In the 2021 negotiations on Regulation (EU) 2021/2282 on health technology assessment, Parliament was keen to ensure that health technology assessment would be used to promote innovations that achieve the best results for patients and society in general, and would enable medical staff, patients and medical institutions to determine whether a new health technology is an improvement on existing health technologies, in terms of its risks and benefits.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI) and the Subcommittee on Public Health (SANT).

Maria-Mirela Curmei / Christian Kurrer
10/2023

2.2.6. FOOD SAFETY

EU food safety policy aims to protect human health and consumer interests, and to foster the smooth operation of the single market. In recent years, a paradigm shift broadened food safety objectives to include climate change-induced food insecurity. The EU ensures that standards are adhered to in the areas of feed and food-product hygiene, animal health, plant health, food-borne zoonotic diseases and prevention of food contamination. The EU also regulates labelling for food and feed products.

LEGAL BASIS

Articles 43, 114, 168(4) and 169 of the Treaty on the Functioning of the European Union.

GENERAL BACKGROUND

In the wake of a series of human food and animal feed crises (e.g. the bovine spongiform encephalopathy (BSE) outbreak and the dioxin scare), EU food safety policy underwent substantial reform in the early 2000s. This has led to the development of the 'Farm to Fork' approach, which seeks to ensure a high level of safety at all stages of the production and distribution process for all food products marketed within the EU, whether produced within the EU or imported from non-EU countries. This body of legislation forms a complex and integrated system of rules covering the entire food chain, from animal feed and health, through plant protection and food production, to processing, storage, transport, import and export, and retail sales. The EU upholds high food and feed safety standards, yet food and feed safety incidents still occur. The EU, together with national authorities and the European Food Safety Authority (EFSA), has a robust system to detect and respond to these safety issues. These rules will be further developed, applying a 'one health' approach in the context of the Commission's 'Farm to Fork' strategy, which was presented in 2020 as part of the European Green Deal, and aims to align food production with environmental conservation.

ACHIEVEMENTS

A. General legislation

A 2002 framework regulation lays down the general principles and requirements of EU food and feed law and takes into account the 'precautionary principle' (2.5.1). The regulation set out a risk assessment approach and established general traceability provisions for food and feed. It introduced the rapid alert system for food and feed, allowing Member States and the Commission to exchange information rapidly and to coordinate their responses to health threats caused by food or feed. It also established EFSA, which is tasked with assessing and providing information on all risks related to the food chain. After a fitness check, and in response to the European Citizens' Initiative on glyphosate, the EU reviewed its general food law to improve the transparency of EFSA's risk assessments and the independence of the underlying scientific studies and to improve cooperation with Member States on providing experts and data. The Commission also set out to review other key pieces of legislation in the areas of novel foods, genetically modified organisms (GMOs), pesticides, food contact materials and

food additives to bring them into line with the revision of the general food law and to boost transparency.

B. Hygiene of foodstuffs

The EU aims to ensure food hygiene from farms to consumers. In April 2004, as part of the 'Farm to Fork' approach, a new legislative framework, known as the 'Hygiene Package' (Regulation (EC) No 852/2004), was adopted addressing the hygiene of foodstuffs, laying down specific hygiene rules for food of animal origin and putting in place a Community framework for official controls on products of animal origin intended for human consumption. The Community framework also lays down specific rules for fresh meat, bivalve molluscs, milk and milk products. The package puts the responsibility for the hygiene of foodstuffs directly on the various players in the food chain through a self-regulating system using the method of hazard analysis and critical control points, which is monitored by means of official controls that must be conducted by the competent authorities. The annexes to the regulation were updated in March 2021. Regulation (EC) No 852/2004 was amended several times in order to enforce hygiene practices to prevent allergens, facilitate safe food redistribution and enhance food safety awareness among establishment employees.

Regulation (EC) No 178/2002 on the general principles of EU food law adds rules for traceability. If a food poses a health risk, businesses must promptly withdraw it from the market, inform users and alert the relevant authority.

C. Food contamination

Food contamination may occur naturally or result from cultivation practices or production processes. Regulation (EU) 2023/915, which replaced the previous Regulation (EC) No 1881/2006, came into force in May 2023 and focuses on establishing maximum levels for various contaminants present in food. To protect public health, maximum levels for contaminants in both animal and plant-based food such as nitrates, heavy metals and dioxins are established and regularly reviewed. Residues in foodstuffs might also originate from food-producing animals that have been treated with veterinary medicines or exposed to pesticides or biocidal products. Maximum residue limits are set and updated periodically. No foodstuffs containing unacceptable quantities of contaminant substances may be marketed in the EU.

Moreover, there are rules pertaining to food contact materials such as materials for transporting or processing food, as well as packaging materials and kitchen or tableware. A framework regulation, amended in 2019, lays down the general requirements for all relevant materials and articles, ensuring that these materials do not transfer their components into food at levels harmful to human health. Specific EU measures containing more detailed provisions may be adopted for the 17 food contact materials (all materials and articles intended to come into contact with food) and articles listed in Annex I thereto. Regulation (EC) No 2023/2006 outlines the good manufacturing practice standards for materials and articles intended to come in contact with food. In relation to plastics, for example, restrictions on the use of Bisphenol A have been introduced for use in plastic infant feeding bottles. In 2011, the EU consolidated its regulations on plastics used in food contact materials into a unified document (Regulation (EU) No 10/2011). In September 2022, the Commission adopted new rules on the safety of recycled plastic materials and articles intended to come into contact with food.

D. Food labelling

The legal framework on the labelling of foodstuffs is designed to guarantee consumers access to clear, comprehensible and reliable information on the content and composition of products in order to protect their health and best interests. For instance, allergens, such as soya, gluten or lactose, must be clearly indicated on the packaging. The main novelty of the new regulation on the provision of food information to consumers, applicable since December 2016, is the requirement for producers to indicate the presence of allergens in non-packaged foods, e.g. in restaurants and canteens. Producers must also indicate the origin of unprocessed meat (for certain types of meat other than beef, which already has to be labelled for origin) and the presence of food imitations, such as vegetable products replacing cheese or meat. Specific provisions on origin labelling set out the details, requiring (with some exceptions) the indication of the place of rearing and place of slaughter of pre-packaged fresh, chilled and frozen meat of swine, sheep, goats and poultry.

The labelling, presentation or advertising of food must not mislead consumers. There are clear rules for authorised nutrition and health claims (such as 'low fat' or 'high fibre' or statements about a relationship between food and health) established by Regulation (EC) No 1924/2006. Such claims must be based on scientific evidence and can be found in a public EU Register of Health Claims.

A 2013 regulation on food for specific groups, updated in 2021 and in March 2023, abolishes the concept of a broad category of 'dietetic' food in favour of rules for specific vulnerable groups of consumers such as infants and young children, people with special medical conditions and those on energy-restricted diets for weight control.

E. Substances added to food

Food additives, food enzymes or food flavourings – also known as 'food improvement agents' – are substances added intentionally to foodstuffs to perform certain technological functions such as colouring, sweetening or preservation. Rules are in place governing the authorisation procedure, conditions of use and labelling of these substances. In accordance with EU laws, food additives must receive authorisation before being used in food products. After receiving approval, these substances are listed in the EU register of allowed food additives outlined in Regulation (EC) No 1333/2008 regarding food additives, which also outlines the conditions under which they can be used. This Regulation also created a comprehensive list of approved food additives for the Union, which was fully disclosed in Regulation (EU) No 1129/2011. The same is true for food supplements such as vitamins and minerals, which may be added to food in order to enrich it or emphasise its particular nutritional character, provided that they figure on specific lists of permitted substances and their permitted sources.

F. Animal and plant health

EU rules include general provisions on the surveillance, notification and treatment of infectious diseases and their vectors in order to ensure the safety of the food chain. The original legislative framework for the organisation of official controls was established to ensure the verification of compliance with feed and food law and animal health and welfare rules. In May 2013, the Commission presented a legislative package including proposals on animal health, plant health, plant reproductive material and official controls. The package provided a more risk-based approach to the protection of animal health, aiming to increase the efficiency of official controls in order to avoid food

crises and cases of fraud as much as possible. The resulting new EU Animal Health Law (regulation on transmissible animal diseases), adopted in March 2016 and applicable from April 2021, focuses on the prevention and eradication of animal diseases by clarifying responsibilities and ensuring early detection and control. Regulation (EU) 2016/429 consolidates numerous legal provisions on animal health into a unified legislation. It establishes guidelines for preventing and managing diseases that can be transmitted between animals or from animals to humans.

The new plant health regime (regulation on protective measures against plant pests – Plant Health Law) aims to protect crops, fruits, vegetables and forests against the entry or spread of plant pests or diseases. It also aims to enhance import checks for plants from non-EU countries and standardise plant passports, while expanding the range of plants requiring passports for planting. It became applicable for the most part from December 2019, together with the new regulation on official controls, which also covers plant health and animal by-products.

G. Legislation on animal feed and feed labelling

Feed business operators have to make sure that all stages of production, processing and distribution under their control are in line with the EU rules for animal feed hygiene and have to guarantee full traceability. This includes imports and exports of feed from and to third countries. Farmers are required to keep the risk of biological, chemical and physical contamination of feed, animals and animal products as low as reasonably achievable when feeding food-producing animals. A specific directive sets maximum limits for undesirable substances in animal feed, including heavy metals, and prohibits the dilution of contaminated feed materials. Rules on the labelling and marketing of feed are laid down to ensure a high level of feed safety and, ultimately, of public health protection and to provide adequate information for users and consumers. Provisions on veterinary medicines and medicated feed have been updated by Regulation (EU) 2019/6 and Regulation (EU) 2019/4 respectively.

H. Novel foods

Novel foods, i.e. foods not consumed within the EU to a significant degree before May 1997 (e.g. alternative proteins, food supplements, etc.), have to undergo a safety assessment before being marketed in the EU. Since 2018, a new regulation has applied allowing easier access to innovative foods while maintaining a high level of food safety. It introduces a simplified, centralised EU-wide online authorisation procedure for novel foods and traditional foods from third countries (which are considered novel foods in the EU). Before being authorised by the Commission, EFSA carries out a centralised scientific safety evaluation, defining the conditions for use, their designation as food and the labelling requirements. All authorised novel foods will figure on a positive list. Until specific legislation on food from cloned animals enters into force, such food falls under the scope of this regulation and should therefore be labelled appropriately.

I. Genetically modified organisms (GMOs)

A GMO is 'an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/ or natural recombination'[1]. Plants may be modified with modern biotechnology, for example, to make them resistant to diseases or to increase their yield. Following

[1]Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, OJ L 106, 17.4.2001, p. 1.

the precautionary principle, the EU has set up a strict legal framework for the cultivation or commercialisation of GMOs that are used in food or feed (Regulation (EC) No 1829/2003, Regulation (EC) No 1830/2003, Regulation (EC) No 65/2004, Regulation (EC) No 641/2004). Before any GMO can be put on the market, EFSA, together with the Member States' scientific bodies, carries out a scientific risk assessment to exclude any danger to either human or animal health and the environment. Upon receiving EFSA's opinion, the Commission (which may diverge from the opinion) prepares a draft decision granting or refusing authorisation to be voted by qualified majority by an expert committee made up of Member States' representatives. In case of a 'no-opinion', i.e. if there is no qualified majority either for or against authorisation, the final decision lies with the Commission. Any authorised food or feed made from or containing GMOs has to be traceable and clearly labelled as such so that consumers can make informed choices. Member States are allowed to restrict or ban the cultivation of crops containing GMOs on their own territory, even if this is allowed at EU level.

On 5 July 2023, the Commission published a proposal for regulating plants created through specific genomic methods for food and feed purposes. This comes after a process initiated in 2018 when the Court of Justice of the EU ruled that organisms developed through these techniques should be regulated as 'GMOs' under Directive 2001/18/EC, the EU's existing GMO Directive.

ROLE OF THE EUROPEAN PARLIAMENT

In the wake of the horsemeat scandal and other food fraud cases, Parliament called for the mandatory indication of the origin of, in particular, meat used as an ingredient in processed foods. Parliament and the Council agreed on new rules to tighten up official food inspections aimed at improving food traceability and combating fraud. During the negotiations, Parliament managed to strengthen enforcement in relation to fraudulent or deceptive practices. Parliament is also particularly vigilant with regard to threats to consumer health related to cloned animals and nanomaterials or GMOs. It frequently scrutinises and regularly opposes draft proposals for the authorisation or renewal of new genetically modified plants such as maize or soya beans.

Following concerns being raised about the risks posed by the use of the herbicide substance glyphosate in agriculture, in 2018 Parliament set up a special committee to examine the EU's authorisation procedure for pesticides. During the revision of the general food law aimed at greater transparency throughout the food chain, Parliament fought to ensure that safety studies are published before a product is authorised to be put on the market.

Among other recommendations in its resolution on the 'Farm to Fork' strategy of October 2021, Parliament recalled the role of European food legislation in setting global standards for food safety.

In 2022, Parliament commissioned a study on the 'Independence and transparency policies of the European Food Safety Authority (EFSA)'.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Maria-Mirela Curmei / Christian Kurrer

10/2023

2.3. SOCIAL AND EMPLOYMENT POLICY

2.3.1. SOCIAL AND EMPLOYMENT POLICY: GENERAL PRINCIPLES

European integration has led to significant social developments over the years. An important milestone came in 2017, when Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights and reaffirmed their commitment to ensuring better living and working conditions throughout the EU. The related action plan of 2021 set out concrete initiatives to turn this commitment into reality.

LEGAL BASIS

Article 3 of the Treaty on European Union (TEU), and Articles 9, 10, 19, 45-48 and 145-161 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Article 3 TEU lays down that the Union has the duty to aim at full employment and social progress. The promotion of employment, improved living and working conditions, proper social protection, dialogue between management and other members of staff, the development of human resources with a view to ensuring lasting high employment and the combating of exclusion are the common objectives of the EU and its Member States in the social and employment field, as described in Article 151 TFEU.

ACHIEVEMENTS

A. From the Treaty of Rome to the Maastricht Treaty

In order to allow workers and their families to take full advantage of the right to move and seek employment freely throughout the common market, the Treaty of Rome (EEC Treaty, 1957) provided for the coordination of the Member States' social security systems. It enshrined the principle of equal pay for men and women, which the European Court of Justice recognised as being directly applicable, and provided for the establishment of the European Social Fund (ESF) (2.3.2).

The Single European Act (SEA, 1986) introduced new policy areas with qualified majority voting, including health and safety at work, social dialogue between employers' organisations and trade unions and economic and social cohesion.

A consensus grew around the need to pay more attention to the social factors connected with the completion of the internal market. Following long debates, the Community Charter of the Fundamental Social Rights of Workers (Social Charter) was adopted at the Strasbourg Summit in December 1989 by the Heads of State or Government of 11 Member States, with the United Kingdom opting out.

B. From the Amsterdam Treaty to the Treaty of Lisbon

The inconvenience of having a double legal basis, created by the UK opt-out, was finally overcome with the signing of the Amsterdam Treaty (1997), when all the Member States, including the UK, agreed to incorporate the Agreement on Social Policy into what would later become the TFEU (Articles 151-161). In Article 153, the

co-decision procedure replaced cooperation and was extended to provisions relating to the ESF (2.3.2), the free movement of workers and social security for Community migrant workers (2.3.4). The new Article 19 conferred on the Council the ability to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. On this basis, two directives were adopted shortly afterwards: Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC on a general framework for equal treatment in employment and occupation.

The Amsterdam Treaty also included the promotion of a high level of employment among the EU objectives and conferred on the Community a responsibility to support and complement the activities of the Member States in this area, including by developing a 'coordinated strategy', namely the European employment strategy (EES) (Articles 145-150 TFEU), based on an open method of coordination (2.3.3).

The year 2000 saw the adoption, at the Nice Summit, of the Charter of Fundamental Rights of the EU. An **Employment Committee** operating within the policy framework of the EES and a Social Protection Committee were created to promote cooperation between the Member States and the Commission (Article 160 TFEU) on employment and social protection policies, but all proposals to expand the co-decision procedure were rejected.

In the light of the mid-term review of the Lisbon strategy in 2005, the employment guidelines adopted as part of the EES were incorporated into the integrated guidelines for growth and jobs.

In 2007, the European Globalisation Adjustment Fund was created to provide support for workers made redundant as a result of changing global trade patterns (2.3.2).

The 2007 Treaty of Lisbon allowed for further progress in consolidating the social dimension of European integration. The TEU now emphasises the EU's social objectives, including full employment and solidarity between generations (Article 3). Article 6 recognises the Charter of Fundamental Rights as having the same binding force as the Treaties. The Charter itself recognises so-called solidarity rights, such as the right of workers to information and consultation, as well as collective bargaining, fair and just working conditions, social security and social assistance. A horizontal social clause was introduced into the TFEU, requiring the EU to fulfil the above-mentioned social objectives when defining and implementing its other policies and activities (Article 9).

C. Developments since the Lisbon Treaty

Adopted in 2010 against the background of the financial and economic crisis, the Europe 2020 strategy established inclusive growth – fostering a high-employment economy that delivers social and territorial cohesion – as one of its priority areas. The strategy also set five headline targets, including a landmark social objective (reducing the risk of poverty for at least 20 million people by 2020), and a renewed commitment to employment (a target of 75% employment for the 20-64 age group). Seven flagship initiatives were set up to help achieve those targets, including an agenda for new skills and jobs, which focused on revamping flexicurity policies, and the European platform against poverty and social exclusion (2.3.9). The progress of these initiatives was monitored within the annual cycle of EU economic governance: the European Semester. In response to increasing poverty levels, the Fund for European Aid to the

Most Deprived was established in 2014. It provides food and basic material assistance, together with social inclusion activities.

On 26 April 2017, the Commission presented the European Pillar of Social Rights (EPSR), which sets out 20 key principles and rights to support a renewed process of convergence towards better living and working conditions. These are divided into three categories: (i) equal opportunities and access to the labour market, (ii) fair working conditions, and (iii) social protection and inclusion. At the Social Summit in Gothenburg in November 2017, Parliament, the Council and the Commission highlighted their shared commitment by adopting a common proclamation on the EPSR. The EPSR is accompanied by a 'social scoreboard' to monitor progress (2.3.9).

In 2019, the European Labour Authority was established, with its seat in Bratislava. Its main purpose is to help the Member States and the Commission to ensure that EU rules on labour mobility and social security coordination are enforced in a fair, simple and effective way.

In the same year, several important acts were adopted. Directive (EU) 2019/1158 on work-life balance for parents and carers aims to improve access to family leave and flexible work arrangements, further enhancing equality between men and women in the labour market. Directive (EU) 2019/1152 on transparent and predictable working conditions aims to provide workers with an additional set of basic rights, such as the right to more specific information on the essential aspects of their work, setting a limit on the length of probationary periods, increasing opportunities to seek additional employment by banning exclusivity clauses, advance notification of the reference hours and the provision of free mandatory training. The Council recommendation on access to social protection for workers and the self-employed aims to close formal coverage gaps.

After the outbreak of the COVID-19 pandemic, several measures were adopted to address the employment and social consequences of the crisis, such as the Coronavirus Response Investment Initiatives (CRII and CRII+) and the temporary Support to mitigate Unemployment Risks in an Emergency (SURE). Furthermore, the Cohesion's Action for Refugees in Europe (CARE) was launched and pre-financing using resources from the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) programme was increased to support the Member States and regions in providing emergency assistance to people fleeing Ukraine following Russia's invasion.

On 3 March 2021, the Commission issued an EPSR action plan setting out concrete initiatives that it is committed to undertaking during the current mandate (until the end of 2024). It also proposed headline targets for 2030, namely bringing the proportion of people aged 20 to 64 in employment up to at least 78%, increasing the percentage of adults who participate in training every year to at least 60%, and reducing the number of people at risk of poverty or social exclusion by at least 15 million. On 7 and 8 May 2021, leaders at the Porto Social Summit reaffirmed their commitment to those headline targets. This involved the adoption of the Porto Social Commitment by various institutions and organisations, including Parliament, and of the Porto declaration by EU Heads of State or Government. The related national targets were presented in June 2022. The implementation of these targets will be facilitated by the revised social scoreboard, funding via the 2021-2027 multiannual financial framework and

NextGenerationEU, in particular the Recovery and Resilience Facility, and monitoring under the European Semester.

In the same year, the Council recommendation on establishing a European Child Guarantee was adopted to prevent and combat social exclusion by guaranteeing the access of children in need to early-childhood education and care, education, healthcare, nutrition and housing. Within the European Social Fund Plus (ESF +) 2021-2027, all Member States have to allocate an appropriate amount to combating child poverty, while Member States that have a rate of children at risk of poverty or social exclusion higher than the EU average are required to earmark 5% of the ESF + for this purpose.

As a tool to fight in-work poverty, Directive (EU) 2022/2041on adequate minimum wages in the EU establishes requirements to ensure that minimum wages as provided for by national law and/or collective agreements are sufficient, and enhances the effective access of workers to minimum wage protection. Setting a minimum wage remains a national competence but the Member States have to guarantee that their national minimum wages allow workers to lead a decent life.

The Council recommendation on minimum income ensuring active inclusion aims to combat poverty and social exclusion and to pursue high levels of employment by promoting adequate income support by means of minimum income, effective access to enabling and essential services for persons lacking sufficient resources and by fostering the integration into the labour market of those who can work.

ROLE OF THE EUROPEAN PARLIAMENT

Although Parliament's role has long been a purely consultative and supervisory one, it has always been active in the development of EU action in the field of employment and social policy. Since the early stages of European integration, Parliament has repeatedly called for a more active social policy, so as to reflect the EU's increasing importance on the economic stage, and has supported the Commission's different proposals in this area. Parliament's close involvement in the preparation of the Treaty of Amsterdam ensured the incorporation of the Agreement on Social Policy and the insertion of an employment chapter.

When the Lisbon strategy was being developed, Parliament insisted that employment and social considerations should play a role in the design of growth strategies and asserted that a high level of social protection should be central to the Lisbon strategy. It also took the view that the Lisbon strategy did not set sufficiently binding targets in the social sphere, and called on the Member States to closely monitor the employment and social impact of the reforms implemented as part of the Europe 2020 strategy. While debating the 2007-08 financial crisis, Parliament called for an EU commitment to preserving European social models and a strong social Europe.

Parliament has repeatedly insisted on incorporating the employment and social goals more effectively into the European Semester, namely by making social indicators binding and extending indicators to cover child poverty and decent work.

Parliament has been critical of measures, such as economic adjustment programmes, taken without its involvement. In March 2014, it stated that only genuinely democratic institutions should steer the political process of designing and implementing adjustment programmes for countries in severe financial difficulties.

Parliament has also confirmed its commitment to social values in deciding on the use of financial resources from the EU budget. It is thanks to Parliament that in the 2014-2020 programming period, the ESF (2.3.2) accounted for 23.1% of total EU cohesion funding, and 20% of each Member State's ESF allocation had to be spent on combating social exclusion. Similarly, for the 2021-2027 ESF+, Parliament introduced provisions to ring-fence more funding for food and material aid, adequate funding for capacity building for social partners, and safeguards to ensure that projects funded by the EU fully respect fundamental rights.

Parliament had a pivotal role in creating the European Child Guarantee. In 2015, it called for a guarantee that would help provide every child in Europe at risk of poverty or social exclusion with access to free healthcare, education, early-childhood education and care, decent housing and adequate nutrition. In 2017, Parliament requested the Commission to implement a preparatory action on establishing a possible child guarantee scheme, paving the way for this instrument.

In its resolution on the 2016 European Semester, Parliament called on the Commission and the Member States to take action to boost upward social convergence in the EU. It also called on the Commission to define and quantify its concept of social fairness. In its resolution on the employment and social priorities of the 2023 European Semester, Parliament called on the Commission to develop an economic governance architecture based on solidarity, integration, social justice and convergence, gender equality, high-quality public services, including a quality public education system for all, quality employment and sustainable development.

In its resolution on the EPSR, while fully embracing the Commission's initiative in this field, Parliament underlined the importance of enforcing a core set of rights for everyone and called on the social partners and the Commission to work together to present a proposal for a framework directive on decent working conditions.

On 4 July 2017, Parliament adopted a resolution on working conditions and precarious employment, recognising the growing popularity of non-standard, atypical forms of employment. It highlighted this issue again in its resolution of 22 October 2020, noting that workers in non-standard forms of employment bore the brunt of the fallout from the COVID-19 crisis, often slipping through the net of Member States' measures.

In 2020, Parliament set out its priorities for a strong social Europe for just transitions, including calling for the integration of the EPSR and of a social progress protocol into the Treaties, and calling on the Member States and the Commission to adopt an ambitious 'Porto 2030 agenda' with binding social targets.

In 2021, against the continued backdrop of the COVID-19 pandemic, Parliament called for an EU law granting workers the right to digitally disconnect from work outside their working hours. In the context of Russia's war of aggression against Ukraine, Parliament expressed concerns about the serious social and employment effects of the crisis, especially for young people. It also supported a shift towards a sustainable, inclusive and resilient growth model that supports upward social convergence and strengthens the sustainable development and resilience of the EU's economy and societies.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Monika Makay

10/2023

2.3.2. EUROPEAN SOCIAL FUND PLUS

The European Social Fund (ESF) was set up under the Treaty of Rome with a view to improving workers' mobility and employment opportunities. Its tasks and operational rules were subsequently revised to reflect developments in the economic and employment situation in the Member States, as well as the evolution of the political priorities defined at EU level.

LEGAL BASIS

Articles 46(d), 149, 153(2)(a), 164, 175(3) and 349 of the Treaty on the Functioning of the European Union.

OBJECTIVES

The aims of the European Social Fund Plus (ESF+) are to support Member States in tackling the crisis caused by the COVID-19 pandemic, to achieve high employment levels and fair social protection, and to develop a skilled and resilient workforce ready to transition to a green and digital economy. The ESF+ is the EU's main instrument dedicated to investing in people.

ACHIEVEMENTS

A. Previous programming periods

The ESF was the first structural fund. In the early years, up until 1970, it reimbursed Member States 50% of the costs of vocational training and resettlement allowances for workers affected by economic restructuring. In total, it assisted more than two million people during this period. In 1971, a Council decision substantially increased the fund's resources and in 1983, a new reform under Council Decision 83/516/EEC refocused the fund on fighting youth unemployment and helping those regions most in need. By incorporating into the Treaty establishing the European Community the objective of economic and social cohesion within the Community, the Single European Act (1986) set the scene for a comprehensive reform aimed essentially at introducing a coordinated approach to the programming and operation of the structural funds. The Treaty of Maastricht expanded the scope of ESF support to include 'adaptation to industrial changes and to changes in production systems'. For the next programming period (1994-1999), the level of funding allocated to economic and social cohesion was doubled.

As part of Agenda 2000, the overall framework of the structural funds was simplified for the 2000-2006 programming period. The ESF, with a budget of EUR 60 billion, was entrusted with the dual responsibility of contributing both to cohesion policy and to the implementation of the European employment strategy (2.3.3). It also co-funded the Community initiative, EQUAL, which focused on supporting innovative transnational projects tackling discrimination and disadvantages in the labour market.

For the 2007-2013 programming period, only three structural funds remained: the ESF, the European Regional Development Fund (ERDF) and the Cohesion Fund. Jointly they were to achieve the objectives of convergence (allocated 81.5% of resources),

regional competitiveness and employment (allocated 16% of resources), and territorial cooperation (2.5% of resources).

The structural funds' resources are allocated among the Member States in accordance with a formula which takes into account population (and its density), regional prosperity, unemployment and levels of education. It is negotiated by the Member States at the same time as the multiannual financial framework (MFF) for a given period. One main feature of the structural funds is the principle of additionality, according to which Member States cannot use structural funds to substitute domestic spending that they would have programmed anyway.

B. 2014-2020 programming period

1. Five structural funds governed by common rules

The five European structural and investment funds for the 2014-2020 programming period, i.e. the ERDF, the ESF, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, were governed by a set of common rules, laid down in Regulation (EU) No 1303/2013 of 17 December 2013. In addition, fund-specific regulations defined areas of intervention and other particularities. Regulation (EU) No 1304/2013 of 17 December 2013 established the missions of the ESF, the scope of its support, specific provisions and the types of expenditure eligible for assistance.

With an allocation of EUR 74 billion, the ESF co-financed national or regional operational programmes which ran for the seven-year duration of the 2014-2020 MFF and were proposed by the Member States and approved by a Commission decision.

It focused on the following four thematic objectives:

— Promoting sustainable and quality employment and supporting labour mobility;

— Promoting social inclusion and combating poverty and discrimination;

— Investing in education, training and vocational training for skills and lifelong learning;

— Enhancing the institutional capacity of public authorities and stakeholders and efficient public administration.

The role of the ESF was reinforced for the 2014-2020 period through the introduction of a legally binding minimum share of 23.1% of total cohesion funding. Every year, the fund helped some 10 million people to find work or to improve their skills to enable them to find work in future.

2. The European Social Fund and the Youth Employment Initiative

The ESF Regulation includes the Youth Employment Initiative (YEI), which had a total budget of EUR 8.8 billion for the 2014-2020 period. It is funded from three sources: ESF national allocations, a specific EU budget and national co-financing of the ESF part. It supports young people not in education, employment or training (NEETs) in regions experiencing youth unemployment rates above 25%.

3. COVID-19 and the invasion of Ukraine

In April 2020, the Commission launched two packages of measures: the Coronavirus Response Investment Initiative and the Coronavirus Response Investment Initiative Plus to mobilise EU structural funds to respond to the crisis. Parliament and the Council quickly adopted the two proposals. No new EU financial resources were provided, but

flexibility is allowed in using existing, unspent resources and re-directing them to where they are most needed. There was the possibility of increasing co-financing up to 100% for the 2020-2021 period. In May 2020, the Commission followed up on the proposal on REACT-EU (Recovery Assistance for Cohesion and the Territories of Europe), which provides EUR 50.6 billion in additional investment through the ERDF, ESF and the Fund for European Aid to the Most Deprived (FEAD), with EUR 19.45 billion allocated to the ESF. The Member States have until the end of 2023 to spend these resources. The ESF played a primary role in the immediate response to the COVID-19 crisis by supporting social services, maintaining employment in affected sectors, including through short-time work schemes, protecting vulnerable groups and funding wages for healthcare personnel, IT equipment and personal protective equipment.

The Cohesion's Action for Refugees in Europe (CARE, 6 April 2022) and CARE Plus (12 April 2022) packages amending the common rules and the FEAD Regulation added additional flexibility to the 2014-2020 cohesion policy, taking into account the urgency of addressing the migratory challenges resulting from the military invasion of Russia.

C. 2021-2027 programming period

1. 2021-2027 Common Provisions Regulation

On 29 May 2018, the Commission adopted the proposal for the Common Provisions Regulation (CPR) for the 2021-2027 period. The CPR proposal was amended through a new Commission proposal of 14 January 2020 to include the Just Transition Fund (JTF), and on 28 May 2020, following the COVID-19 outbreak, additional amendments were proposed. The CPR was adopted by Parliament at second reading on 23 June 2021. The final act was signed on 24 June (Regulation (EU) 2021/1060).

The CPR sets out the financial rules for eight funds that are under shared management, i.e. the ESF+, the ERDF, the Cohesion Fund, the JTF, the European Maritime, Fisheries and Aquaculture Fund (EMFAF), the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. It also lays down the common provisions applicable to the first five funds mentioned, including the ESF+. However, the CPR does not apply to the employment and social innovation strand of the ESF+, as it is under direct and indirect management.

2. ESF+

On 2 May 2018, the Commission presented its proposal for the 2021-2027 MFF. The proposal included a renewed ESF+ with a budget of EUR 101 billion. The ESF + was to merge the ESF, the YEI, the FEAD, the EU Programme for Employment and Social Innovation (EaSI) and the EU health programme. In the context of the COVID-19 crisis, the Commission announced that a separate health programme would be introduced in the next MFF: the EU4Health programme. On 28 May 2020, as part of the revised 2021-2027 MFF and the recovery package, the Commission released an amended proposal for the ESF+ Regulation that did not include the health programme in its scope. Parliament concluded its position at first reading on 4 April 2019 and adopted its position at second reading on 8 June 2021. The final act was signed on 24 June (Regulation (EU) 2021/1057). The total budget for the ESF+ amounts to almost EUR 99.3 billion.

The specific objectives of the ESF+ include:

— Supporting the policy areas of employment and labour mobility, education and social inclusion, namely by helping to eradicate poverty, and thereby contributing to the implementation of the European Pillar of Social Rights;

— Supporting the digital and green transitions, job creation through Skills for Smart Specialisation, and improvements to education and training systems;

— Supporting temporary measures in exceptional or unusual circumstances (e.g. financing short-time work schemes without requiring them to be combined with active measures, or providing access to healthcare, including for people who are not immediately socio-economically vulnerable).

The provisions of the ESF+ include the following:

— All Member States have to address youth unemployment in their spending programmes. In Member States where the number of NEETs is above the EU average, 12.5% of the fund will be spent on combating youth unemployment.

— At least 25% of the budget is to be spent on promoting social inclusion, including the integration of non-EU nationals.

— At least 3% of the budget is to be spent on food aid and basic material assistance for the most deprived.

— All Member States must allocate an appropriate amount of their ESF+ resources to the implementation of the Child Guarantee through targeted actions to combat child poverty. Member States with a level of child poverty above the EU average must use at least 5% of their ESF+ resources to address this issue.

— Adequate funding must be allocated to capacity-building for social partners and civil society in Member States, and at least 0.25% of the fund should be allocated when required by the country-specific recommendations.

— An article on respecting fundamental rights emphasises that all operations should be selected and implemented according to the Charter of Fundamental Rights of the European Union.

In order to benefit from cohesion policy funding, each Member State has to prepare a partnership agreement. This is a strategy document for programming investments setting out national authorities' plans for how to use the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFAF. It includes the indicative annual financial allocation for each programme.

3. Instruments for labour market integration complementing the ESF+

The European Globalisation Adjustment Fund (EGF) was created as an instrument of competitiveness – not cohesion – policy for the 2007-2013 MFF in order to support workers made redundant as a result of major structural changes in world trade caused by globalisation. While the ESF+ supports programmes aimed at achieving the long-term structural objectives of keeping people in work or reintegrating them into the labour market, the EGF responds to specific emergencies, such as mass redundancies resulting from globalisation, for a limited period of time.

In view of the economic and financial crisis, the EGF Regulation (Regulation (EC) No 1927/2006) was temporarily amended at the end of 2011 to cater for the resulting redundancies, providing co-financing rates ranging from 50% to 65%. This change was carried over into the EGF Regulation for the 2014-2020

period (Regulation (EU) No 1309/2013) and the EGF covered redundancies resulting from global financial and economic crises in addition to redundancies stemming from globalisation. For the 2014-2020 period, the scope was also extended to cover new categories of beneficiaries such as self-employed persons, temporary workers and fixed-term workers. In view of a possible hard Brexit, the EGF Regulation was amended in 2019 to help workers and self-employed persons in the remaining EU-27 who would lose their jobs if the UK withdrew without an agreement (Regulation (EU) 2019/1796).

On 30 May 2018, the Commission proposed a new, revised EGF for the post-2020 period with a maximum annual amount of EUR 200 million outside of the 2021-2027 MFF ceilings. The proposal extends coverage to workers who lose their jobs because of restructuring as a result of the transition to the low-carbon economy, automation or digitalisation, and lowers the threshold for the activation of the EGF from 500 to 250 redundancies. On 27 May 2020, in the framework of the Recovery Plan for Europe, the Commission suggested increasing the maximum annual amount. Parliament and Council agreed on the text at second reading, and the final act was signed on 28 April (Regulation (EU) 2021/691). The EGF has an annual budget of EUR 210 million for 2021 to 2027.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament's influence over the ESF has grown over the years. Under the Treaty of Maastricht, it had to give its assent to the general provisions governing the funds. Since the entry into force of the Lisbon Treaty, the adoption of general rules has been subject to the ordinary legislative procedure. Parliament regards the ESF as the EU's most important instrument for combating unemployment. It has therefore always advocated the efficient operation of the fund and called for simpler legislation and procedures, in order to improve the effectiveness and quality of ESF assistance.

Over the years, Parliament has expanded the scope of the ESF to include efforts to combat gender inequalities, discrimination and social exclusion by facilitating access to employment for vulnerable groups. It supported the Commission proposal on the ESF's contribution to tackling the economic crisis and in its resolution of 7 October 2010, Parliament called for the ESF to be strengthened as the main driver for implementing the Europe 2020 objectives.

Thanks to Parliament, in the 2014-2020 programming period, the ESF accounted for 23.1% of total EU cohesion funding, and 20% of each Member State's ESF allocation had to be spent on social inclusion.

Following the influx of refugees starting in 2014, Parliament, in its resolution of 5 July 2016, noted that professional integration is a stepping stone to social inclusion, and emphasised the availability of the ESF for measures to facilitate the integration of refugees into EU labour markets. The Commission took these concerns on board in its ESF+ proposal for 2021 to 2027 by adding a specific reference to migrants and their integration into labour markets to the ESF+ objectives.

In addition, for the 2021-2027 ESF+, amendments by Parliament include ring-fencing more funding for food and material aid, adequate funding for capacity-building for social partners and safeguards to ensure that projects funded by EU money fully respect fundamental rights.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Monika Makay
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2.3.3. EMPLOYMENT POLICY

The European employment strategy, dating back to 1997, established common objectives for employment policy and contributed to 'soft coordination' among the Member States. Creating more and better jobs was one of the main goals of the Europe 2020 strategy. Since the turn of the decade, the Commission has proposed new and more ambitious targets in employment policy. EU law is relevant in certain areas, even if the responsibility for employment policy lies primarily with national governments.

LEGAL BASIS

Article 3(3) of the Treaty on European Union (TEU) and Articles 8-10, 145-150, 156-159 and 162-164 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

According to Article 3 TEU, the Union has the duty to aim at full employment and social progress. The horizontal clause in Article 9 TFEU lays down that the objective of a high level of employment must be taken into consideration in the definition and implementation of EU policies and activities. Member States and the Union are tasked with working towards the development of a coordinated strategy for employment, particularly with regard to the promotion of a skilled, trained and adaptable workforce, and labour markets responsive to economic change, as described in Article 145 TFEU.

ACHIEVEMENTS

A. From the early stages (1950s to 1990s) to the post-2020 targets

As long ago as the 1950s, workers benefited from 'readaptation aid' in the European Coal and Steel Community. Aid was granted to workers in the coal and steel sectors whose jobs were threatened by industrial restructuring. The European Social Fund (ESF) (2.3.2 European Social Fund), created in 1957, was the principal tool for combating unemployment.

In the 1980s and early 1990s, action programmes on employment focused on specific target groups, and a number of observatory and documentation systems were established.

In a context of high unemployment in most EU countries, the White Paper on growth, competitiveness and employment (1993) launched a debate on the EU's economic and employment strategy by bringing the issue of employment to the top of the EU agenda for the first time.

The new chapter on employment in the Treaty of Amsterdam (1997) provided the basis for setting up the European employment strategy (EES) and the permanent Employment Committee with advisory status to promote the coordination of the Member States' employment and labour market policies. The competence for employment policy remains, however, primarily with the Member States. The inclusion

of a ‘social protocol’ in the Treaty enhanced the involvement of the social partners (2.3.7 Social dialogue).

The extraordinary Luxembourg Job Summit in November 1997 launched the **EES** together with the open method of coordination - the so-called Luxembourg process, which is an annual coordination and monitoring cycle for national employment policies based on the Member States’ commitment to establishing a set of common objectives and targets. The EES placed a high level of employment on the same footing as the macroeconomic objectives of growth and stability.

In 2000, the Lisbon European Council agreed on the new strategic goal of making the EU ‘the most competitive and dynamic knowledge-based economy in the world’, embracing full employment as an overarching objective of employment and social policy, and on concrete targets to be achieved by 2010 (the Lisbon strategy).

Following the 2007-08 financial crisis, the Europe 2020 strategy was adopted in 2010 and the European Semester was introduced as the mechanism for financial and economic policy coordination. This 10-year strategy for jobs and smart, sustainable and inclusive growth defined a number of headline targets for the first time, such as increasing the labour market participation of people aged 20 to 64 to 75% by 2020. All headline targets had to be translated into national targets by the Member States.

In 2017, the Commission presented the European Pillar of Social Rights (EPSR), which sets out 20 key principles and rights to support a renewed process of convergence towards better living and working conditions. It is accompanied by a ‘social scoreboard’ to monitor progress. At the Social Summit in Gothenburg in November 2017, Parliament, the Council and the Commission highlighted their shared commitment by adopting a common proclamation on the EPSR.

The 2021 action plan on the implementation of the EPSR set out three new EU headline targets to be achieved by the end of the decade, including the following:

— Employment: at least 78% of the population aged 20 to 64 should be in employment by 2030;

— Skills: at least 60% of all adults should participate in training every year.

B. Strengthening coordination and monitoring

The annual monitoring cycle for employment policies within the European Semester includes the following components:

— Employment guidelines, drawn up by the Commission and adopted by the Council after consulting Parliament;

— A joint employment report, published by the Commission and adopted by the Council;

— National reform programmes;

— Country reports and country-specific recommendations, drawn up by the Commission, with the latter being adopted by the Council.

The four employment guidelines (Article 148 TFEU) present strategic objectives for national employment policies and contain policy priorities in the fields of employment, education and social inclusion. The employment guidelines form part

of the eight integrated guidelines, which also feature four broad economic policy guidelines (Article 121 TFEU).

In recent years, the employment guidelines have been aligned with the principles of the EPSR (2.3.1 Social and employment policy: general principles) and have integrated elements relating to the consequences of the COVID-19 crisis, the green and digital transitions, fairness during the green transition, the UN Sustainable Development Goals and the Russian invasion of Ukraine.

As a key monitoring tool used in the European Semester, the Commission proposed a revised social scoreboard (annexed to the EPSR action plan). It consists of 17 headline indicators, endorsed by the Council, assessing the employment and social performance of Member States in three broad dimensions: (i) equal opportunities, (ii) fair working conditions, and (iii) social protection and inclusion.

C. Binding legal acts – EU law

Based on the provisions laid down in the TFEU relating to the fields of employment and social affairs, as well as to freedom of movement, a number of directives, regulations and decisions have been adopted to ensure minimum standards across the EU Member States in the following areas:

— Health and safety at work: general and specific rights and obligations, work equipment, specific risks, e.g. dangerous substances, carcinogens (2.3.5 Health and safety at work);

— Equal opportunities for women and men: equal treatment at work, pregnancy, maternity leave, parental leave (2.3.9 The fight against poverty, social exclusion and discrimination);

— Protection against discrimination based on sex, race, religion, age, disability and sexual orientation (2.3.9 The fight against poverty, social exclusion and discrimination);

— Working conditions: minimum wages, part-time work, fixed-term contracts, working hours, employment of young people, informing and consulting employees (2.3.6 Workers' right to information, consultation and participation; 2.3.7 Social dialogue);

— Supporting services: enhanced cooperation between public employment services.

— Free movement of workers: equal treatment, access to social benefits (2.1.5 Free movement of workers);

— Posting of workers: duration, pay, sectors covered (2.1.13 Posting of workers).

D. Coordination through recommendations and other policy initiatives

In addition to the 'hard law' listed above, further measures help to increase coordination among the EU Member States through 'soft law', including non-binding Council recommendations and other policy initiatives introduced by the Commission.

— The European Youth Guarantee aims to ensure that all people under the age of 30 receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship within four months of becoming unemployed or leaving formal education.

— A Council recommendation on the integration of the long-term unemployed into the labour market focuses on registration, individual in-depth assessments and job integration agreements to be offered to the registered long-term unemployed.

— The European Skills Agenda contains 12 actions focused on skills for jobs in order to ensure that the right to training and lifelong learning is fulfilled across Europe. The year spanning from 9 May 2023 until 8 May 2024 has been designated as the 'European Year of Skills' with the aim of addressing skills shortages in the EU and promoting a mindset of reskilling and upskilling to help people develop the right skills for quality jobs.

— A Commission recommendation on effective active support to employment following the COVID-19 crisis outlines a strategic approach to gradually transition between emergency measures taken to preserve jobs during the pandemic and new measures needed for a job-rich recovery.

— The 2021-2027 Strategic framework on health and safety at work includes key challenges, strategic objectives for health and safety at work and actions and instruments to address these.

— The European care strategy aims to ensure high-quality, affordable and accessible care services across the EU and improve the situation for both care receivers and the people caring for them, whether professionally or informally.

E. Supporting EU funding instruments

A number of EU funding programmes provide support in the area of employment.

— The European Social Fund Plus (ESF+) (2.3.2 European Social Fund) is the main EU instrument for investing in people and brings together a number of funds and programmes, notably the ESF, the Youth Employment Initiative, the Fund for European Aid to the Most Deprived and the Employment and Social Innovation programme.

— The European Globalisation Adjustment **Fund for Displaced Workers** supports people who have lost their jobs due to structural changes in world trade patterns, digitalisation, automation and the transition to a low-carbon economy.

— The Recovery and Resilience Facility, the centrepiece of NextGenerationEU, is a temporary instrument to support reforms and investments undertaken by the Member States between February 2020 and 31 December 2026. The aim is to mitigate the economic and social impact of the COVID-19 pandemic and make European economies and societies more sustainable and resilient, and better prepared for the challenges and opportunities presented by the green and digital transitions.

— REACT-EU (Recovery Assistance for Cohesion and the Territories of Europe) is a top-up to the 2014-2020 structural fund programmes and is additional to the 2021-2027 cohesion allocations. It prolongs and expands the crisis response and repair measures delivered through the Coronavirus Response Investment Initiative and the Coronavirus Response Investment Initiative Plus.

— SURE (Support to mitigate Unemployment Risks in an Emergency) provided financial assistance to the Member States during the COVID-19 crisis, enabling short-time work schemes or similar measures to protect jobs and workers.

— The Just Transition Fund aims to alleviate the social and economic costs resulting from the transition towards a climate-neutral economy by helping people adapt in a changing labour market. It is the first pillar of the Just Transition Mechanism, which is part of the European Green Deal.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament's role in this area has developed gradually. Since the Treaty of Amsterdam came into force, Parliament must be consulted on employment guidelines before they are adopted by the Council.

Parliament gave its strong backing to the Europe 2020 strategy. A number of the initiatives aimed at combating youth unemployment stem from Parliament proposals for concrete, practical actions, namely the EU Youth Guarantee and minimum standards on internships. In its resolution of 17 July 2014 on youth employment, Parliament called for an EU legal framework introducing minimum standards for the implementation of the Youth Guarantee, including the quality of apprenticeships and also covering people aged 25-30. In a resolution adopted in 2018 on the EU's next long-term budget, Parliament called for a significant increase in funding for the implementation of the Youth Employment Initiative. On 8 October 2020, Parliament adopted a resolution expressing concern about the voluntary nature of the Youth Guarantee (currently a Council recommendation) and called on the Commission to propose a binding instrument. Parliament also condemned unpaid internships and urged the Commission to review existing European instruments, such as the quality framework for traineeships and the European framework for quality and effective apprenticeships. Parliament insisted that quality criteria be incorporated into the offers made to young people, including the principle of fair remuneration for trainees and interns, access to social protection, sustainable employment and social rights.

Furthermore, Parliament supported the approach taken in the recommendation on long-term unemployment in its resolution of 29 October 2015. Parliament's intensive work on skills development had an impact on the European Skills Agenda. Parliament has highlighted the importance of lifelong learning and vocational education and training, including upskilling and reskilling. It has repeatedly called on the Commission and the Member States to establish a European Vocational Education and Training Area. It has also recognised the need for high-quality traineeships and called on the Commission to update and strengthen the related 2014 Council Recommendation and to turn it into a stronger legislative instrument.

Parliament's resolution of 13 March 2019 on the European Semester stressed that the EU's social goals and commitments are just as important as its economic goals. Following the outbreak of COVID-19, Parliament tried to mitigate the negative consequences of the crisis, particularly for the labour market. In a resolution adopted on 10 July 2020 on EU employment guidelines, MEPs called for radical measures to cushion the shock caused by the pandemic, in particular a revision of the forthcoming guidelines in light of the situation, and highlighted the need to tackle youth unemployment through an improved Youth Guarantee. Against the backdrop of the energy and cost-of-living crisis, Parliament called on the Member States and the Commission to prioritise the fight against unemployment and to reinforce the SURE instrument to support short-time work schemes, workers' income and workers that

would be temporarily laid off because of the increase in energy prices, among other causes, as well as to mitigate the effects of asymmetric shocks.

For more information on this topic, please visit the website of the Committee on Employment and Social Affairs.

Monika Makay
10/2023

2.3.4. SOCIAL SECURITY COVER IN OTHER EU MEMBER STATES

The coordination of social security facilitates the free movement of people within the EU. A fundamental reform of legislation in this area was carried out in 2010 and was supplemented by further legal acts improving the protection of mobile workers' rights. In 2016, the Commission included proposals in the Labour Mobility Package to further reform the system and adapt it to modern economic and social realities in the EU.

LEGAL BASIS

Articles 48 and 352 of the Treaty on the Functioning of the European Union.

OBJECTIVES

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to the free movement of persons between the Member States (2.1.5). To achieve this, social security measures must ensure that EU citizens working and residing in a Member State other than their own do not lose some or all of their social security rights.

ACHIEVEMENTS

In 1958, the Council adopted two regulations on social security for migrant workers, which were subsequently superseded by Regulation (EEC) No 1408/71. Nationals of Iceland, Liechtenstein and Norway are also covered by the European Economic Area (EEA) agreement, while Swiss nationals are covered by the EU–Switzerland agreement. Post Brexit, the rights of persons covered by the Withdrawal Agreement concluded between the EU and the United Kingdom continue to be protected. For persons not covered by the Withdrawal Agreement, social security coordination between the EU and the United Kingdom is regulated by the relevant Protocol to the Trade and Cooperation Agreement.

In 2004, Regulation (EC) No 883/2004 (the coordination regulation) repealed Regulation (EEC) No 1408/71, although the latter continues to have effects for certain Community acts and agreements to which the EU is still party. A major reform of the system was carried out in 2010 with the adoption of the 'modernised coordination package' – Regulation (EC) No 988/2009 and implementing Regulation (EC) No 987/2009.

A. The four main principles

Each Member State remains free to design its social security system independently, which means that national social security systems will not be replaced by a single European system. Generally, social security cover is provided by the country of employment or, in the absence of employment, by the country of residence. Where two or more countries are involved, the coordination regulation determines which country provides insurance coverage for an EU citizen. The regulation relies on four main principles:

1. Equal treatment (Articles 4, 5)

Workers and self-employed persons from other Member States have the same rights and obligations as the host state's own nationals. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State who has resided in the host state for a certain period of time.

2. Aggregation (Article 6)

This principle guarantees that previous periods of insurance, work or residence in other countries are taken into account in the calculation of benefits. If, for example, national legislation requires a worker to have been insured or employed for a certain period of time before they are entitled to certain benefits, the aggregation principle means that the competent Member State must take account of periods of insurance and employment completed in another Member State.

3. Principle of single applicable law (Articles 10, 11(1))

This principle prevents anyone from obtaining undue advantage from the right to free movement. Each beneficiary is covered by the legislation of one country only and pays contributions in that country only.

4. Exportability (Article 7)

This principle means that social security benefits can be paid throughout the EU and prohibits Member States from reserving payment for people resident in the country. However, this does not apply to all social security benefits, as special rules apply, for instance, to unemployment benefits.

B. Persons covered

Originally, Regulation (EEC) No 1408/71 only covered workers, but in 1982, its scope was expanded to include the self-employed. It also covered members of workers' and self-employed persons' families and their dependants, as well as stateless persons and refugees. The scope was progressively expanded in 1998 to put civil servants on an equal footing with the rest of the population as regards general statutory pension rights, in 1999 to include all insured persons, particularly students and persons not in gainful employment, and in 2003 to cover nationals from non-EU countries legally resident in the EU.

The most recent legal act, Regulation (EU) No 1231/2010, extended coverage to non-EU nationals who are legally resident in the EU and in a cross-border situation, and to their family members and survivors if they are also in the EU.

Cross-border workers who are employees or are self-employed in one Member State and reside in another Member State to which they return daily or at least once a week are also covered.

Posted workers are an exceptional case because they are sent on temporary assignment and remain covered by the social security system in their home Member State for a maximum duration of 24 months (2.1.13). Only healthcare benefits in kind can be drawn in the Member State of residence.

C. Benefits covered

Article 3 of Regulation (EC) No 883/2004 lists the social security benefits covered:

— Sickness;

— Maternity and equivalent paternity benefits;

— Invalidity benefits;

— Old-age benefits;

— Survivors' benefits;

— Benefits in respect of accidents at work and occupational diseases;

— Death grants;

— Unemployment benefits;

— Pre-retirement benefits;

— Family benefits;

— Certain special non-contributory cash benefits (Article 70).

D. The modernisation of the system

Since 1971, legislation on social security coordination has been amended numerous times to take account of developments at EU level, changes in legislation at national level and case-law of the Court of Justice of the European Union (CJEU).

1. European health insurance card

Since 2006, European citizens travelling within the EEA have been able to use the European health insurance card, issued by the health insurance services of their home country. This card facilitates access to medical care in the event of unanticipated health needs during a visit to another EEA country for personal or professional reasons. Access is granted on the same terms and at the same cost as for people insured in that country. Costs are reimbursed by the home social security system.

2. Supplementary pension rights

Alongside statutory pension schemes, supplementary pensions often play an important role in securing people's standard of living in old age. Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights addresses a number of obstacles to mobile workers taking their supplementary pension rights with them when moving to another Member State.

3. Role of the European Labour Authority

When the European Labour Authority (ELA) was established in July 2019, it took over the operational aspects of social security coordination. The ELA also provides mediation, through a dedicated Mediation Board, in cases of disputes.

4. Digitalisation of social security coordination

A process of moving from paper-based to electronic exchange of information started with the modernised coordination package and led to the establishment of the Electronic Exchange of Social Security Information (EESSI) system. The system now connects social security institutions in 32 countries – the 27 EU Member States plus Iceland, Liechtenstein, Norway, Switzerland and the United Kingdom.

The Commission's 2018 work programme mentioned a proposal for a European social security number to facilitate cross-border social security coordination, but a specific proposal was not presented. Instead, in the European Pillar of Social Rights

action plan, the Commission announced a pilot project to explore the feasibility of introducing a European social security pass (ESSPASS), underpinned by the single digital gateway, the EESSI and the proposed European digital identity framework. On 6 September 2023, the Commission presented a communication on digitalisation in social security coordination. The communication sets out the various projects being developed in the area of digitalisation, including the ESSPASS project. The ESSPASS project focuses on digitalising the process of requesting and receiving entitlement documents, and real-time verification to allow social security institutions, labour inspectorates, healthcare providers and other relevant entities to verify these documents instantly across Europe.

5. Ongoing reform

After a specific consultation on the coordination of long-term care benefits and unemployment benefits in 2013 and a general consultation on EU social security coordination in 2015, the Commission proposed a revision of Regulation (EC) No 883/2004 and implementing Regulation (EC) No 987/2009 as part of its Labour Mobility Package in December 2016.

The revision seeks to ensure fairness by more closely linking the payment of benefits to the Member State collecting the social security contributions. It also offers national authorities better tools to verify the social security status of posted workers in order to tackle unfair practices and abuse. The main changes include:

— Unemployment benefits: a qualifying period of three months will apply before insurance or employment periods can be aggregated, but workers can export their unemployment benefits for six months instead of three in order to look for work in another Member State;

— Long-term care benefits: the proposal defines long-term care benefits and the cases where mobile citizens can claim such benefits in a separate chapter;

— Family benefits intended to replace income during child-rearing periods are to be considered individual and personal rights, thereby permitting a secondary competent Member State the right to pay the benefit in full to the second parent. This removes potential financial disincentives for parents to take family leave at the same time.

— **Economically inactive citizens**: the proposal aims to align the legal rules in force with recent CJEU case law on access to social benefits (2.1.5).

The proposal was the subject of protracted interinstitutional negotiations and, in December 2021, the Council and Parliament reached a provisional agreement. However, this agreement was not confirmed and the file is now on hold.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always shown a keen interest in the problems of migrant workers, border workers, the self-employed and non-EU nationals working in Member States other than the one that admitted them. Parliament has, on several occasions, deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt proposals to bring early retirement pensions within the scope of social security coordination, to extend the right of unemployed persons to receive unemployment benefit in another Member State and to widen the scope of legislation to include all

insured persons. Most of these demands were met by the adoption of Regulation (EC) No 883/2004 or are included in the latest Commission proposals to revise this regulation.

In a number of its resolutions (of 14 January 2014 on social protection for all, of 14 September 2016 on social dumping and of 4 July 2017 on working conditions and precarious employment), Parliament has drawn attention to specific difficulties in this field, such as the case of the self-employed, workers on temporary or part-time contracts, workers in the digital economy and seasonal workers, and has called on the Commission to review legislation and monitor the implementation and coordination of social security systems so as to ensure that citizens' rights are respected and labour mobility in the EU can operate efficiently.

Following the outbreak of the COVID-19 pandemic and the serious impact observed on cross-border, frontier, posted and seasonal workers, on 19 June 2020 Parliament adopted a resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis. The resolution draws attention to the difficulties these workers faced: being unable to access adequate social protection and security entitlements due to coordination difficulties between the social security institutions of the Member States, not always being eligible for temporary support measures such as short-time work schemes, adjusted unemployment benefits and measures to facilitate working from home, and being left in legal uncertainty about applicable social security and tax regimes.

On 20 May 2021, Parliament adopted a resolution on the impact of EU rules on the free movement of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills. The resolution highlights that lack of access to social security systems is often a result of abusive forms of non-standard employment. It also stresses the need to fully digitalise procedures surrounding labour mobility and the posting of workers in order to improve the provision and exchange of information between national authorities and to enable the effective enforcement, portability and traceability of workers' rights.

In its resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility, Parliament again emphasised the need for an EU-wide digital instrument for mobile workers to make it easier for workers to track and claim their social security contributions and benefits, and at the same time improve enforcement of the EU rules on labour mobility and social security coordination.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Aoife Kennedy
10/2023

2.3.5. HEALTH AND SAFETY AT WORK

Improving health and safety at work has been an important issue for the EU since the 1980s. The introduction of legislation at European level set minimum standards for the protection of workers, while allowing Member States to maintain or introduce more stringent measures. Health and safety at work is a key component of the European Pillar of Social Rights Action Plan, which was adopted at the Lisbon Social Summit in 2021.

LEGAL BASIS

Articles 91, 114, 115, 151, 153 and 352 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

On the basis of Article 153 TFEU, the EU is able to adopt legislation (directives) on health and safety at work in order to support and complement the activities of the Member States. To this end, minimum requirements are laid down at EU level allowing Member States to introduce a higher level of protection at national level if they so wish. The Treaty also stipulates that the directives adopted must not impose administrative, financial or legal constraints that would hold back the creation and development of SMEs.

ACHIEVEMENTS

A. Institutional development

Under the auspices of the European Coal and Steel Community (ECSC), various research programmes were carried out in the field of occupational safety and health (OSH). The need for a global approach to the matter became manifest with the establishment of the European Economic Community (EEC) in 1957. The Advisory Committee on Safety, Hygiene and Health Protection at Work was set up in 1974 to assist the Commission (Council Decision 74/325/EEC). Minimum OSH requirements were needed in order to complete the European single market. A number of directives were therefore adopted, such as Directive 82/605/EEC (replaced by Directive 98/24/EC) on protection against the risks associated with metallic lead, Directive 83/477/EEC (last amended by Directive 2009/148/EC) on asbestos, and Directive 86/188/EEC (last amended by Directive 2003/10/EC) on noise.

1. Single European Act

The adoption of the Single European Act in 1987 brought health and safety at work into the EEC Treaty for the first time, in an article laying down minimum requirements and allowing the Council to adopt occupational health and safety directives by qualified majority. The aims were: to improve workers' health and safety at work; to harmonise conditions in the working environment; to prevent 'social dumping' as completion of the internal market progressed; and to prevent companies from moving to areas with a lower level of protection in order to gain a competitive edge.

2. Treaty of Amsterdam (1997)

The Amsterdam Treaty strengthened the status of employment issues by introducing the title on employment and the Social Agreement. For the first time, directives setting out minimum requirements in the field of health and safety at work and working conditions were adopted by both Parliament and the Council by means of the codecision procedure.

3. Contribution of the Lisbon Treaty (2007)

The Lisbon Treaty contains a 'social clause' under which social requirements must be taken into account in the EU's policies. Upon the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding on the Member States when they apply EU law.

4. European Pillar of Social Rights (2017)

The European Pillar of Social Rights, signed by the Council, the Commission and Parliament in November 2017, sets out 20 rights and principles, including the right, enshrined in Article 31 of the Charter of Fundamental Rights, to working conditions which respect workers' health, safety and dignity. According to principle 10 of the Pillar, workers have the right to a high level of protection of their health and safety at work, as well as the right to a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market. Though not legally binding in itself, the pillar is a package of legislative and soft-law measures that aims to drive upward convergence in living and working conditions in the EU.

B. Milestones: Directives and European Agency for Occupational Health and Safety

1. Framework Directive 89/391/EEC and individual directives

Article 137 of the Treaty of Nice (now Article 153 TFEU) formed the basis for EU efforts to improve the working environment with a view to protecting workers' health and safety. The adoption of Framework Directive 89/391/EEC, with its specific focus on the culture of prevention, was a milestone. It provided for preventive measures, information, consultation, balanced participation and training for workers and their representatives, in the public and the private sector. The framework directive forms the basis for 25 individual directives in different areas and for Council Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work. It has also had an impact on other legislative acts relating to temporary agency workers and aspects of working time in various directives.

The individual directives include the following:

— Health and safety requirements for the workplace (89/654/EEC) and the provision of safety and/or health signs at work (92/58/EEC);

— The use of work equipment (89/655/EEC amended by Directive 2001/45/EC and Directive 2009/104/EC); of personal protective equipment (89/656/EEC) and work with display screen equipment (90/270/EEC) and manual handling (90/269/EEC);

— Sectors: temporary or mobile construction sites (92/57/EEC); mineral-extracting industries (drilling) (92/91/EEC; 92/104/EEC) and fishing vessels (93/103/EC);

— Groups: pregnant workers (92/85/EEC) and protection of young people at work (94/33/EC);

— Agents: protection of workers from the risks related to exposure to carcinogens or mutagens at work (2004/37/EC), chemical agents at work (98/24/EC amended by Directive 2000/39/EC and Directive 2009/161/EU), asbestos at work (2009/148/EC) and biological agents at work (2000/54/EC); protection against ionising radiation (Directive 2013/59/Euratom repealing previous related directives); protection of workers potentially at risk from explosive atmospheres (99/92/EC); exposure of workers to the risks arising from physical agents (vibration) (2002/44/EC), noise (2003/10/EC), electromagnetic fields (2004/40/EC amended by Directive 2013/35/EU), and artificial optical radiation (2006/25/EC);

— Substances: alignment of several directives on classification, labelling and packing of substances and mixtures (Directive 2014/27/EU).

Updating Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work is an ongoing process which will continue in the future: a first batch of 13 substances was covered in a proposal in May 2016, adopted in December 2017 (Directive (EU) 2017/2398). A second proposal in January 2017 reviewing limits for a further seven substances was adopted in January 2019 as Directive (EU) 2019/130 after Parliament succeeded in getting an occupational exposure limit value for diesel engine exhaust included in the scope. A third proposal in April 2018, covering a further five substances used in metallurgy, electroplating, mining, recycling, laboratories and healthcare, was adopted in June 2019 as Directive (EU) 2019/983. A fourth revision of the directive, with new or revised limit values for three cancer-causing substances (acrylonitrile, nickel compounds and benzene) was adopted in March 2022 as Directive (EU) 2022/431. The directive is one of the first measures adopted under Europe's Beating Cancer Plan. The Commission has since put forward two more proposals in this connection. In August 2022, it presented a legislative proposal to amend Directive 2009/148/EC on the protection of workers from the risk related to exposure of asbestos at work in order to further reduce workers' exposure and protect them from the risk of cancer. Parliament adopted its first reading position on this proposal on 3 October 2023. Furthermore, in February 2023, the Commission presented a proposal to revise the Carcinogens, Mutagens and Reprotoxic Substances Directive (2004/37/EC) and the Chemical Agents Directive (98/24/EC) in order to lower the limit values for lead and add a limit value for diisocyanates to the Chemical Agents Directive. Both lead and diisocyanates are used during building renovations and in the production of batteries, wind turbines and electric vehicle lighters. By limiting exposure to these chemicals, the EU seeks to protect those working to ensure the green transition

Social partner agreements concluded within social dialogue are another way to initiate social legislation (2.3.7). In December 2016, the Council adopted Directive (EU) 2017/159, implementing the social partners' agreement on improving working conditions in the fisheries sector concluded in 2013. However, a similar agreement for the hairdressing sector was not adopted in the form of a directive.

2. European Agency for Safety and Health at Work (EU-OSHA)

The European Agency for Safety and Health at Work, a tripartite agency based in Bilbao, was set up in 1996. Its aim is to foster the sharing of knowledge and information in order to promote a culture of risk prevention. It has developed the web-based platform for Online interactive Risk Assessment (OiRA), which contains SME-friendly sectoral risk assessment tools in all languages, and the Dangerous Substances e-

tool, which provides company-specific advice on dangerous substances and chemical products and how to apply good practice and protective measures. Its European Risk Observatory monitors and forecasts new and emerging risks in order to enable preventive action. Furthermore, since 2000, the agency has run 'healthy workplaces' awareness-raising campaigns on various health and safety subjects. The 2023-2025 campaign seeks to raise awareness about the impact of new technologies on work and the associated challenges and opportunities around OSH.

C. Community action programmes and strategies on health and safety at work

Between 1951 and 1997, ECSC research programmes operated in the field of health and safety at work. The European Social Agenda, adopted in 2000, contributed to a more strategic approach to the matter at EU level. Subsequently, the 2002-2006 Community strategy on health and safety at work adopted a global approach to well-being in the workplace. The Community strategy for 2007-2012 focused on prevention. Its aim was to achieve a continuous reduction in occupational accidents and diseases in the EU. The EU Strategic Framework on Health and Safety at Work 2014-2020 aimed to tackle three major challenges: improving and simplifying existing rules, strengthening the prevention of work-related diseases, including new risks, and taking account of the ageing workforce. Particular attention was paid to the needs of micro- and small businesses.

As part of the European Pillar of Social Rights Action Plan, the Commission brought forward a new EU Strategic Framework on Health and Safety at Work for 2021-2027. It focuses on anticipating and managing change in the new world of work, improving the prevention of workplace accidents and illnesses, and increasing preparedness for any potential future health crises.

Following the outbreak of the COVID-19 pandemic, the Biological Agents Directive (2000/54/EC) was updated to include SARS-CoV-2 in the list of biological agents to account for the new risks in the workplace. The Commission encouraged employers to assess the risks and take preventive and protective measures to minimise harm, especially for those working in direct contact with the virus. In November 2022, the Commission adopted a recommendation suggesting that the Member States recognise COVID-19 as an occupational disease in certain cases.

In the light of the increasing use of digital technologies at work, the Commission incorporated OSH aspects into Regulation (EU) 2023/1230 on machinery (adopted in June 2023). OSH aspects are also addressed in the proposal for a regulation laying down harmonised rules on artificial intelligence (the Artificial Intelligence Act) and the proposal for a directive on improving working conditions in platform work, in the latter case focusing on preventing health and safety risks in algorithmic management. The Commission also intends to review the Workplace Directive and the Display Screen Equipment Directive.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has frequently emphasised the need for optimal protection of workers' health and safety. It has adopted resolutions calling for all aspects directly or indirectly affecting the physical or mental well-being of workers to be covered by EU legislation. It supports the Commission in its efforts to improve the provision of information to SMEs. It takes the view that work must be adapted to people's abilities and needs, and not

vice versa, and that working environments should take greater account of the special needs of vulnerable workers.

Parliament has urged the Commission to investigate emerging risks that are not covered by current legislation, e.g. exposure to nanoparticles, stress, burnout and violence and harassment in the workplace. In particular, Parliament was instrumental in the adoption of a framework agreement on prevention from sharp injuries in the hospital and healthcare sector signed by the EU social partners, which was implemented by Council Directive 2010/32/EU. It has also called for improvements to the existing legislation on the protection of pregnant workers and protection of workers from musculoskeletal disorders. Further key requests include establishing a directive laying down minimum standards for the recognition of occupational diseases, and extending the scope of Framework Directive 89/391/EEC.

In September 2018, Parliament adopted a resolution on pathways for the reintegration of workers recovering from injury and illness into quality employment, based on three pillars: prevention and early intervention, return to work, and changing attitudes towards the reintegration of workers. In October 2021, Parliament adopted a resolution with recommendations to the Commission on protecting workers from asbestos. It proposed developing a comprehensive European strategy for the removal of all asbestos in order to safely remove the substance from the built environment once and for all and thus better protect workers and citizens. It also proposed updating Directive 2009/148/EC on asbestos. A legislative proposal has since been tabled by the Commission and Parliament has adopted its first reading position on this proposal, endorsing an agreement reached with the Council in trilogue.

Beyond amending proposed legislation and monitoring and encouraging the Commission's other work in the field of health and safety, Parliament also approaches the subject in a forward-looking manner, looking into new risks. On 10 March 2022, Parliament adopted a resolution on a new EU strategic framework on health and safety at work post 2020. In the resolution, it makes a series of demands, including for more ambitious action on work-related cancer, a broader and more comprehensive directive on musculoskeletal disorders and rheumatic diseases, and for the gender dimension to be mainstreamed in all occupational health and safety measures. It also calls for the right to disconnect to be included in the strategic framework and for a directive to be proposed on the prevention of psychosocial risks. On 5 July 2022, Parliament adopted a resolution on mental health in the digital world of work, recognising the impact of the COVID-19 pandemic on the organisation of work and the mental health of workers. In the resolution, Parliament calls on the Commission to propose legislative initiatives on the management of psychosocial risks and well-being at work and to put forward an EU mental health strategy and a European care strategy.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Aoife Kennedy
10/2023

2.3.6. WORKERS' RIGHT TO INFORMATION, CONSULTATION AND PARTICIPATION

The European Union complements the Member States' activities with regard to the right of workers to information and consultation by adopting minimum requirements by means of directives or through measures designed to encourage cooperation between the Member States. A number of EU directives protect the rights of workers to information and consultation at company level by establishing rules for both the national and transnational levels.

LEGAL BASIS

Articles 5, 114, 115, 151 and 153 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The EU supports and complements the Member States' activities relating to employee involvement with a view to achieving the core objectives of European social policy (Article 151 TFEU), which include improved living and working conditions, proper social protection, lasting high employment and combating exclusion.

ACHIEVEMENTS

A. Background

The right of workers to information, consultation and participation has been a key theme in European debate since the first Social Action Programme was adopted in 1974. The 1989 Community Charter of the Fundamental Social Rights of Workers (retained in Article 151 TFEU) stressed the desirability of promoting employee participation. However, the Commission's proposals in this area often encounter resistance. A proper legal basis for Community legislation did not exist until the Agreement on Social Policy was incorporated into the Treaty of Amsterdam in 1997. In 2009, the Charter of Fundamental Rights of the European Union was incorporated into Article 6(1) TEU. Article 27 of the Charter recognises workers' right to information and consultation.

As regards employee involvement, Article 153 TFEU entrusts Parliament and the Council with the power to adopt:

— Measures designed to encourage cooperation between Member States;

— Directives setting out minimum requirements for gradual implementation.

The ordinary legislative procedure applies, with prior consultation of the European Economic and Social Committee and the European Committee of the Regions.

B. Legislation in force

A first group of directives deals with the right of workers to be informed of conditions applicable to the contract or employment relationship and the right to be informed and consulted on redundancies or transfers:

— Council Directive 75/129/EEC on collective redundancies, as amended by Council Directives 92/56/EEC and 98/59/EC, requires employers to enter into negotiations with workers in the event of mass redundancy;

— Council Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings stipulates that workers must be informed of the reasons for any transfer and its consequences;

— Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community lays down minimum procedural standards;

— Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union. This directive establishes new rights (e.g. advance information on work schedules) for all workers in all forms of work, including those in non-standard and new forms of work such as platform work.

The Commission carried out a fitness check in 2013, which concluded that the directives are broadly fit for purpose and their benefits outweigh the costs, but that some gaps remain – notably their application to public service workers, seafarers and SMEs. A recast of the information and consultation directives was contemplated in 2015 and the Commission launched a public consultation, but there has been no follow-up since.

In January 2018, a Council directive transposing an agreement between social partners in the maritime transport sector was adopted, putting an end to the exclusion of seafaring workers from the directives on information and consultation of workers.

As regards public sector workers, none of the directives concerning the right of workers to be informed and consulted applies to public administrations (see Court of Justice of the European Union Cases C-583/10, Nolan and C-108/10, Scattolon). In December 2015, the Sectoral Social Dialogue Committee for Central Government Administrations signed a sectoral agreement on common minimum standards of information and consultation rights for central administration workers and requested implementation by way of a Council directive. On 5 March 2018, the Commission informed the social partners that it would not propose this agreement to Council for implementation. Following legal action by the European Public Service Union (EPSU), the Court of Justice of the European Union ruled on 24 October 2019 that the Commission's right of initiative entitled it to decide whether or not to make social partner agreements legally binding in all EU Member States.

A second group of directives encompasses the rights of workers to be informed and consulted in situations with a transnational component:

— Council Directive 94/45/EC, as revised by Directive 2009/38/EC on the introduction of European Works Councils (EWCs). EWCs bring together central management and employee representatives across Europe to discuss matters such as a company's performance, prospects and employment, restructuring and human resources policies. EWC legislation covers multinational companies with at least 1 000 workers in the EU/EEA and at least 150 staff in two or more Member States. A dedicated database, maintained by the European Trade Union Institute (ETUI), provides data on EWCs;

— Directive 2004/25/EC on takeover bids, under which the employees of the companies concerned, or their representatives, should be given an opportunity to

state their views on the foreseeable effects of such a bid on employment; the usual rules on informing and consulting employees also apply;

— Directive (EU) 2017/1132 on certain aspects of company law, amended by Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions. The amended directive strengthens the position of employees and their representatives in terms of information, consultation and rights to participation prior to a cross-border conversion. It places a duty on management to respond to and consult trade unions and workers' organisations on the effect of the planned conversion.

In 2018, the Commission published a REFIT evaluation of the European Works Council Directive, which concluded that information for workers has improved in terms of quality and scope, but that the directive had not increased the number of new EWCs. In April 2023, the Commission launched consultations with the European social partners with a view to revising the European Works Councils Directive.

A third group of directives aims to lay down rules applicable to situations with a transnational component, granting partial rights to participation in decision-making:

— Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees establishes rules on worker participation in decisions on the strategic development of the company;

— Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees ensures that employee representatives can exercise influence over the running of European Cooperative Societies;

— Directive (EU) 2019/2121 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions requires the rules of the destination state to be applied to employee participation, i.e. the company resulting from the cross-border merger is subject to the rules in force on employee participation, if any, in the Member State where it has its registered office.

The fourth group consists of: two cross-sectoral agreements between social partners (implemented by Council Directive 97/81/EC on part-time work and Council Directive 1999/70/EC on fixed-term work), Directive 2008/104/EC on temporary agency work, the Framework Agreement on Digitalisation (2020), and several health and safety directives, all of which contain implicit information and consultation provisions. The Commission's proposal for a directive on improving working conditions in platform work gives platform workers the right to be informed and consulted about algorithmic management. It also requires digital labour platforms to make it possible for people working through digital platforms to contact and communicate with each other and with their representatives.

C. Other initiatives

Companies and workers' representatives may also conclude transnational company agreements (TCAs), a form of social dialogue in multinational companies. TCAs take various forms and are drawn up jointly for application in more than one Member State by company representatives and workers' organisations. However, this kind of practice can raise legal and political issues regarding the relationship between the different vertical levels of social dialogue (international, European and national) and the horizontal spheres of application (cross-sectoral, sector-specific and company-level).

Furthermore, TCAs may clash with national norms and references, and few dispute resolution mechanisms are in place.

The Commission maintains a database on transnational company agreements.

On 25 January 2023, the Commission presented a communication and proposed a Council recommendation on strengthening social dialogue in the European Union. The recommendation stresses the importance of 'access to relevant information to participate in social dialogue' as one of the enabling factors for well-functioning social dialogue.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has adopted a number of resolutions calling for workers to have the right to be involved in company decision-making and for this right to apply in both national and transnational companies, irrespective of their legal status. Back in 2009, Parliament called in its resolution of 19 February on the implementation of Directive 2002/14/EC for public-sector workers to be included in the scope of the information and consultation directives.

In its resolution of 17 December 2020 on a strong social Europe for Just Transitions, Parliament called on the Commission to introduce a new framework directive on workers' information, consultation and participation for European company forms, including subcontracting chains and franchises. It also called for the revision of the European Works Council Directive.

In its resolution of 17 December 2020 on sustainable corporate governance, Parliament underlined the need for greater employee involvement in company decision-making processes in order to better integrate long-term objectives and impacts. It invited the Commission to consider revising the European Works Council Directive and to establish a new framework for informing, consulting and involving employees in European companies. In another resolution of 10 March 2021 on corporate due diligence and corporate accountability, Parliament called for the information and consultation directives to be used to guarantee rights for trade unions and workers' representatives to be involved in establishing and implementing due diligence strategies in their companies.

In its resolution of 16 December 2021 on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive, Parliament highlighted the importance of workers' participation and insisted that before management decisions are made, workers' representatives should have access to adequate information in order to assess the implications of such decisions. Parliament also called for the introduction of a new framework directive on workers' information, consultation and participation for European companies in their various forms.

In its resolution of 2 February 2023 on the revision of the European Works Council Directive, Parliament repeated its call for a revision of the Directive. The revision should clarify the objectives, definitions and procedures, and strengthen the right of employee representatives to information and consultation, particularly during restructuring processes.

In response to the Commission's communication and proposal for a Council recommendation on strengthening social dialogue in the European Union, Parliament

adopted its resolution of 1 June 2023 on strengthening social dialogue, which called on the Commission to analyse any labour reforms, in particular those related to working conditions and information and consultation of workers in the Member States' national recovery and resilience plans. The Commission was called on to engage with national authorities on these issues in order to help them address any possible shortcomings. The resolution also calls on the Commission, as part of its forthcoming evaluation of Directive (EU) 2019/2121, to take account of existing good practices and studies and assessments of the positive socioeconomic effects and consequences of employee representation in corporate bodies. The resolution also urges the Commission and the Member States to take urgent and decisive action to ensure that Union-scale undertakings respect workers' information, consultation and participation rights. Given the increasing digitalisation of workplaces, the resolution underlined the need for timely and meaningful information and the consultation of workers' representatives, including trade unions.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Aoife Kennedy
10/2023

2.3.7. SOCIAL DIALOGUE

Social dialogue is a fundamental component of the European social model. It enables the social partners (representatives of management and labour) to contribute actively, including through agreements, to designing European social and employment policy.

LEGAL BASIS

Articles 151-156 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Under Article 151 TFEU, the promotion of dialogue between management and labour is recognised as a common objective of the EU and the Member States. The aim of social dialogue is to improve European governance through the involvement of the social partners in decision-making and implementation.

ACHIEVEMENTS

A. Development of (bipartite) social dialogue at EU level

According to the 1957 Treaty of Rome, one of the Commission's tasks is to promote close cooperation between Member States on the right of association and collective bargaining between employers and workers. It took many years, however, for this provision to be implemented.

The Val Duchesse social dialogue process, initiated in 1985 by Commission President Jacques Delors, aimed to involve the social partners, represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Public Enterprises (CEEP), in the internal market process. A number of joint statements on employment, education, training and other social issues resulted from this process.

In 1986, the Single European Act (Article 118b) created a legal basis for the development of 'Community-wide social dialogue' and European social dialogue began to take shape, firstly with the establishment of a steering committee, which in 1992 became the Social Dialogue Committee (SDC) – the main forum for bipartite social dialogue at European level. The SDC meets three to four times a year.

In 1991, the UNICE (now BusinessEurope), ETUC and CEEP (now SGI Europe) adopted a joint agreement calling for mandatory consultation of the social partners on legislation in the area of social affairs and for a possibility for the social partners to negotiate framework agreements at European level. This request was acknowledged in the Agreement on Social Policy annexed to the Maastricht Protocol on Social Policy, which provided for a constitutionally recognised role for the social partners in the European legislative process. At national level, the social partners were given the opportunity to implement directives by way of collective agreement.

The Treaty of Amsterdam (1997) incorporated the Agreement on Social Policy, finally establishing a single framework for social dialogue in the EU. Cross-industry results of

this process were the framework agreements on parental leave (1995), part-time work (1997) and fixed-term work (1999), all of which were implemented by Council directives.

The Lisbon Treaty (2009) further underlined the role of the social partners (Article 152 TFEU), emphasising the need to facilitate dialogue while respecting their autonomy and diversity.

In the aftermath of the 2008 economic and financial crisis, social dialogue came under increased pressure and, at the same time, was weakened by its decentralisation, a decline in bargaining coverage, and state intervention in wage policy. The Juncker Commission took measures to counter this decline, including the announcement of a 'new start for social dialogue' at a high-level conference in March 2015 and a quadripartite agreement, signed in June 2016 by the social partners, the Commission and the presidency of the Council of the European Union. This agreement reaffirms the fundamental role of European social dialogue in the EU's policymaking process, including in the European Semester.

The 2017 European Pillar of Social Rights (EPSR) also provides for respect for the autonomy and the right to collective action of social partners and recognises their right to be involved in designing and implementing employment and social policies, including by means of collective agreements. The von der Leyen Commission has repeatedly reaffirmed this commitment to social dialogue in communications such as those on the European Green Deal and on a Strong Social Europe for Just Transitions, in the annual sustainable growth strategy and country-specific recommendations, and in the objectives for the Recovery and Resilience Facility. In May 2021, the Porto Social Commitment (signed by the Commission, Parliament and European social partners) and the European Council Porto Declaration both underlined the key role of social dialogue. The Commission published a report (the Nahles report) on strengthening social dialogue in February 2021, which fed into the action plan implementing the EPSR presented in March 2021. In line with the action plan, the Commission presented guidelines for solo self-employed persons to ensure that competition law does not stand in the way of collective agreements to improve their working conditions. Furthermore, the Commission proposed a Council recommendation setting out how EU countries can further strengthen social dialogue and collective bargaining at national level, and issued a communication on reinforcing and promoting social dialogue at EU level.

The directive on adequate minimum wages in the EU strengthens the use of collective bargaining in wage setting and requires Member States that have a collective bargaining coverage rate below 80% to establish an action plan to promote collective bargaining.

B. Achievements of social dialogue at EU level

Under Article 154 TFEU, **the** Commission must consult the social partners before taking any action in the field of social policy. The social partners may then choose to negotiate an agreement among themselves instead. They have nine months to negotiate, after which they may:

1. Conclude an agreement and jointly ask the Commission to propose a Council implementing decision; or
2. Conclude an agreement and implement it themselves, in accordance with their own specific procedures and practices and those of the Member States ('voluntary' or, later on, 'autonomous' agreements); or

3. Decide that they are unable to reach an agreement, in which case the Commission resumes work on the proposal in question.

Article 153 TFEU also gives Member States the possibility to entrust the social partners with the implementation of a Council decision on a collective agreement signed at European level.

From 1998, following Commission Decision 98/500/EC, sectoral social dialogue was also vigorously developed. Several committees were created in the main economic fields and produced valuable results. Three European agreements – on the organisation of working time for seafarers (1998), on the organisation of working time for mobile workers in civil aviation (2000) and on certain aspects of the working conditions of mobile workers in interoperable cross-border services in the railway sector (2005) – were concluded and implemented by means of Council decisions. The Agreement on Workers' Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it, signed in April 2006, was the first multi-sector agreement. Other sectoral agreements followed and were implemented by means of Council directives: an agreement on certain aspects of the organisation of working time in inland waterway transport (Council Directive 2014/112/EU); an agreement on the protection of health workers from injuries and infections caused by medical sharps (Council Directive 2010/32/EU); an agreement in the sea fisheries sector (Council Directive (EU) 2017/159); and an agreement between social partners in the maritime transport sector (Council Directive (EU) 2018/131).

However, for other agreements, the Commission decided not to propose a Council decision.

In April 2012, the social partners in the hairdressing sector concluded an agreement on health and safety guidance for hairdressers and requested a Council implementing decision. This was opposed by some Member States, however. In June 2016, the hairdressing sector signed a new European framework agreement on occupational health and safety, again requesting implementation by means of a Council decision. The Commission decided to conduct a proportionate impact assessment before proposing a Council decision. In an open letter to President Juncker, the social partners objected to the use of the impact assessment process to justify not referring the agreement to the Council. In early 2018, the Commission informed the social partners that it would not propose a Council decision and proposed instead to support the autonomous implementation of the agreement through an action plan. The social partners agreed and in December 2019, a set of activities to support the autonomous implementation of the agreement were agreed between the hairdressing social partners and the Commission.

On 5 March 2018, the Commission informed the central government social partners that it would not propose their 2015 agreement on information and consultation rights to the Council for implementation as a directive (2.3.6). Following legal action by the European Public Service Union (EPSU), the Court of Justice of the European Union ruled on 24 October 2019 that the Commission's right of initiative entitled it to decide whether or not to make social partner agreements legally binding in all EU Member States. The EPSU appealed but the appeal was dismissed in September 2021.

In line with the second option listed above, the agreement on teleworking (2002) was the first agreement to be implemented as an 'autonomous agreement'. It was followed by other autonomous agreements on work-related stress and the European licence

for drivers carrying out a cross-border interoperability service (both 2004), harassment and violence at work (2007), inclusive labour markets (2010), active ageing and an intergenerational approach (2017), and digitalisation (2020).

Thirdly, in a number of cases, the social partners were unable to reach an agreement. For example, negotiations on a framework agreement on temporary agency work ended in failure in May 2001. Thus, in March 2002, the Commission proposed a directive based on the consensus that had emerged among the social partners, and in 2008, the Temporary Agency Work Directive (Directive 2008/104/EC) was adopted. Similarly, after the social partners expressed their unwillingness to engage in negotiations, the Commission proposed a revision of the Working Time Directive (Directive 2003/88/EC) in 2004. Parliament, the Commission and the Council failed to reach an agreement in 2009 and a year-long negotiation process between the European social partners also broke down in December 2012 owing to major differences over the treatment of on-call time. In 2013, the Commission resumed the review and impact assessment process, with a public consultation in 2015 and an implementation report in 2017, as well as an interpretive communication. Some aspects relevant to working time have since been included in other legal acts, such as the Work-Life Balance Directive, the Transparent and Predictable Working Conditions Directive and the amended Driving Time Regulation.

C. Tripartite social dialogue

From the very start of European integration, it was deemed important to involve economic and social stakeholders in drawing up European legislation. The Consultative Committee for Coal and Steel and the European Economic and Social Committee bear witness to this. Since 2003, the Tripartite Social Summit for Growth and Employment has brought together high-level representatives of the incumbent EU Council presidency, the two upcoming presidencies, the Commission and the social partners with the aim of facilitating ongoing consultation. It meets at least twice a year, before the spring and autumn European Council summits.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has taken the view that social dialogue is an essential element in the traditions of the Member States. Parliament's Committee on Employment and Social Affairs has extended frequent invitations to the social partners at EU level to present their views. The Lisbon Treaty introduced the right for Parliament to be informed about the implementation of collective agreements concluded at Union level (Article 155 TFEU) and about Commission initiatives to foster cooperation between the Member States (Article 156 TFEU), including in matters relating to the right of association and collective bargaining.

In its resolution of 13 March 2014 on employment and social aspects of the role and operations of the Troika and again in its resolution of 15 February 2017 on single market governance within the European Semester 2017, Parliament called for the reinforcement of the role of social partners in the new economic governance process. In the same vein, in its resolution of 19 April 2018 on the proposal for a Council decision on guidelines for the employment policies of the Member States, Parliament called on the Commission and the Member States to step up concrete support for genuine social dialogue, going beyond mere consultation. On 16 April 2019, in its resolution on the directive on transparent and predictable working conditions and its resolution on the

proposal for the establishment of a European Labour Authority, Parliament reiterated that the autonomy of the social partners, their capacity to act as representatives of workers and employers and the diversity of national industrial relations systems should always be respected. The fundamental role of the social partners and social dialogue was also recalled by Parliament in its resolution on democracy at work of 16 December 2021. In this resolution, Parliament calls on the Commission and the Member States, together with the social partners, to commit to reaching a collective bargaining coverage rate of 90% by 2030.

Since the outbreak of the COVID-19 crisis, Parliament has stressed the need for proper social dialogue at all levels in order to successfully implement the EU recovery plan. This is exemplified by the resolution of 22 October 2020 on the employment and social policies of the euro area 2020 and the resolution of 11 March 2021 on the European Semester for economic policy coordination. These resolutions underline that social dialogue and collective bargaining are key instruments for employers and trade unions to establish fair wages and working conditions, and that strong collective bargaining systems increase Member States' resilience in times of economic crisis. Parliament also repeated earlier calls for support for capacity-building and greater involvement of the social partners in the European Semester, and called for the country-specific recommendations in the future to include an outcome regarding the involvement of social partners in wage-setting mechanisms. In its resolution on the European Semester, Parliament proposed that fairness conditions should be considered for companies accessing public funds, requiring them to respect collective bargaining and workers' participation or co-determination in company decision-making processes.

In its resolution of 2 February 2023 on European Works Councils (EWCs), Parliament stressed that it is essential to strengthen EWCs and their ability to exercise their information and consultation rights, as well as to increase their number. Furthermore, it reiterated its call on the Commission to bring forward a proposal for the revision of Directive 2009/38/EC on EWCs with a view to clarifying its objectives, definitions and procedures and strengthening the right of employee representatives to information and consultation, particularly during restructuring processes. In its resolution of 1 June 2023, Parliament called on the Member States to review and repeal any national legislation that prevents collective bargaining. It urged the Commission to enforce the social clause in the existing EU Public Procurement Directive. It also called on the Commission and Member States to consult the social partners on ecological matters and on the just transition as standard practice throughout the policymaking cycle.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Monika Makay
10/2023

2.3.8. EQUALITY BETWEEN MEN AND WOMEN

Equality between women and men is one of the objectives of the European Union. Over time, legislation, case law and changes to the Treaties have helped consolidate this principle and its implementation in the EU. The European Parliament has always been a fervent defender of the principle of equality between men and women.

LEGAL BASIS

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: Article 157 of the Treaty on the Functioning of the European Union (TFEU)). Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in employment matters and, within this framework, Article 157 TFEU authorises positive action to empower women. In addition, Article 19 TFEU provides for the adoption of legislation to combat all forms of discrimination, including on the basis of sex. Legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 TFEU. The Rights, Equality and Citizenship Programme finances, among others, measures contributing to the eradication of violence against women, based on Article 168 TFEU.

OBJECTIVES

The EU is founded on a set of values, including equality, and therefore promotes equality between men and women (Articles 2 and 3(3) of the Treaty on European Union). These objectives are also enshrined in Article 21 of the EU Charter of Fundamental Rights. In addition, Article 8 TFEU tasks the EU with eliminating inequalities and promoting equality between men and women in all of its activities (this concept is also known as 'gender mainstreaming'). In Declaration No 19, annexed to the Final Act of the intergovernmental conference which adopted the Treaty of Lisbon, the EU and the Member States made a commitment 'to combat all kinds of domestic violence […], to prevent and punish these criminal acts and to support and protect the victims'.

ACHIEVEMENTS

A. Main legislation

EU legislation, mostly adopted by the ordinary legislative procedure, includes:

— Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security;

— Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

— Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC;

— Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive), which prohibits discrimination on the grounds of racial or ethnic origin in a broad range of fields, including employment, social protection and social advantages, education, and goods and services available to the public, such as housing;

— Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

— Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

— Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;

— Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC;

— Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC;

— Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;

— Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 establishing the European protection order;

— Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA;

— Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU;

— Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures;

— Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

B. Progress through case-law of the Court of Justice of the European Union (CJEU)

The CJEU has played an important role in promoting equality between men and women. There have been a number of notable judgments in this regard.

— Defrenne II judgment of 8 April 1976 (Case 43/75): the CJEU recognised the direct effect of the principle of equal pay for men and women and ruled that the principle not only applied to the action of public authorities but also extended to all agreements which are intended to collectively regulate paid labour;

— Bilka judgment of 13 May 1986 (Case C-170/84): the CJEU ruled that a measure excluding part-time employees from an occupational pension scheme constituted 'indirect discrimination', and was therefore contrary to former Article 119 of the European Economic Community Treaty if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on the grounds of sex;

— Barber judgment of 17 May 1990 (Case C-262/88): the CJEU decided that all forms of occupational pension constituted pay for the purposes of former Article 119 and that the principle of equal treatment therefore applied to them. The CJEU ruled that men should be able to exercise their pension rights or survivor's pension rights at the same age as their female colleagues;

— Marschall judgment of 11 November 1997 (Case C-409/95): the CJEU declared that a national rule which required that priority be given to the promotion of female candidates in cases where there were fewer women than men in a sector ('positive discrimination') was not precluded by Community legislation, provided that the advantage was not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying;

— Test Achats judgment of 1 March 2011 (Case C-236/09): the CJEU declared Article 5(2) of Council Directive 2004/113/EC invalid on the grounds that it was contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. The same system of actuarial calculation has to be applied for men and women to determine premiums and benefits for the purposes of insurance;

— Korwin-Mikke judgment of 31 May 2018 (Cases T-770/16 and T-352/17): the CJEU ruled in favour of annulling the penalties imposed by Parliament on Polish far-right MEP Janusz Korwin-Mikke;

— Violeta Villar Láiz judgment of 8 May 2019 (C-161/18): the CJEU found that the Spanish legislation on the calculation of retirement pensions for part-time workers is contrary to EU law if it is found to be particularly disadvantageous to female workers;

— Praxair judgment of 8 May 2019 (C-486/18): the CJEU declared that the calculation of compensation payments for the dismissal and redeployment of an employee who is on part-time parental leave must be carried out on the basis of the full-time salary. Conflicting national law results in indirect discrimination on the grounds of sex;

— Safeway judgment of 7 October 2019 (C-171/18): the CJEU ruled on the equalisation of retirement pension benefits under an occupational pension scheme;

— Ortiz Mesonero judgment of 18 September 2019 (C-366/18): a father is refused permission to work fixed shifts in order to better care for his children. The CJEU ruled that the directives do not apply here and that they do not contain a provision

which would require Member States, in the context of a request for parental leave, to grant an employee the right to work for a fixed working time when their usual pattern of work is shift work with variable hours;

— Hakelbracht judgment of 20 June 2019 (C-404/18): the CJEU ruled that when a person who purports to be discriminated against based on their gender launches a complaint, employees other than the person discriminated against based on their gender should be protected as they may be disadvantaged by their employer for the support they have formally or informally given to the victim of the alleged discrimination;

— Tesco Stores judgment of 3 June 2021 (C-624/19): in the judgment, the CJEU first recalled its judgment in Praxair MRC (C-486/18), in which the prohibition of discrimination between male and female workers also applies to collective and individual agreements aiming at regulating pay, as well as its other settled case law allowing courts to appreciate other gender pay-based differences in treatment based on the litigious rule. The CJEU concluded that Article 157 TFEU must be interpreted as having direct horizontal effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for 'work of equal value' occurs;

— CJEU Opinion 1/19 of 6 October 2021 concerning the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The CJEU's opinion clarifies the modalities of EU accession to the Istanbul Convention and its legal basis.

C. Latest developments

Below is an overview of the most recent action taken by the EU in the field of equality between men and women.

On 21 March 2023, Members of the Committee on Women's Rights and Gender Equality had an exchange of views with Commissioner for Equality Helena Dalli as part of the structured dialogue between Parliament and the Commission. They covered gender equality topics pertaining to the Commissioner's remit, including an update on legislative initiatives that had recently been adopted by the Commission and those yet to be adopted.

During the second hour of the meeting, Commissioner Dalli focused on the proposal for a directive on strengthening the role and independence of equality bodies, which was adopted by the Commission in December 2022.

Meanwhile, on 12 April 2023, the Commission presented the progress report on the implementation of the 2020-2025 LGBTIQ equality strategy. The Commission has implemented over 90 measures under this strategy, ranging from communication campaigns to mainstreaming LGBTIQ equality into legislation and dedicated funding. In addition, the report mentions the recent infringement procedure against Hungary for its 'anti-LGBT propaganda' law, which was passed in 2021. The law prohibits the 'promotion' of homosexuality and trans identity among minors.

Commissioner Dalli highlighted three legislative proposals central to the defence of LGBTIQ rights in the EU:

— The first is the introduction of binding standards for equality bodies and the extension of their mandate to sexual orientation discrimination, especially in the field of employment;

— The second requires the Member States to work towards achieving the unanimity required to expand the list of EU crimes to include hate speech and hate crimes (Article 83 TFEU). This would allow the Commission to propose legislation criminalising, among other things, crimes motivated by the sexual orientation of the victim;

— The third is a European parenthood certificate, for which Commissioner Dalli stressed the importance of paving the way. The recognition of parenthood is particularly relevant for families with same-sex parents. The case of 'baby Sara' has been highlighted in the media. Bulgarian authorities have refused to issue a birth certificate to the child, as the country does not recognise the parenthood of both mothers, as established in Spain. In 2021, the CJEU ruled that Bulgaria must issue a passport to the child.

The Istanbul Convention

The Istanbul Convention is the first instrument in Europe to set legally binding standards specifically to prevent gender-based violence, protect victims of violence and punish perpetrators. Following the EU's signing of the Convention in June 2017, Parliament's consent is required for the EU's accession to it.

On 21 February 2023, the Council requested Parliament's consent to adopt the two decisions on the ratification of the Convention (for further information, please see below).

Equality bodies

On 8 December 2022, a proposal for a directive on standards for equality bodies was presented by the Commission.

It proposes a set of binding rules to strengthen the role and independence of equality bodies. The aim of the proposal is to establish standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, and equal treatment between women and men in matters of social security and in the access to and supply of goods and services.

Pay Transparency Directive

The Commission proposal for a directive on pay transparency, adopted on 4 March 2021, introduces measures to ensure that women and men in the EU receive equal pay for equal work.

On 30 March 2023, Parliament approved the Pay Transparency Directive. The new rules will provide for more transparency and effective enforcement of the equal pay principle between women and men and improve access to justice for victims of pay discrimination.

It will require vacancy notices and job titles to be gender neutral and recruitment processes to be led in a non-discriminatory manner.

The directive stipulates, among other things, that if pay reporting shows a gender pay gap of at least 5%, employers will have to conduct a joint pay assessment in cooperation with their workers' representatives. Member States will have to put in place effective, proportionate and dissuasive penalties, such as fines, for employers infringing these rules. Any worker who has suffered harm as a result of an infringement will have the right to claim compensation. For the first time, intersectional discrimination and the rights of non-binary persons have been included in the scope of the new rules.

THE EU'S 2021-2027 MULTIANNUAL FINANCIAL FRAMEWORK

After Parliament gave its consent, on 17 December 2020 the Council adopted the regulation laying down the EU's 2021-2027 multiannual financial framework (MFF). The new MFF gives greater priority to gender mainstreaming in the EU budget.

Together with the NextGenerationEU recovery instrument worth EUR 750 billion, the MFF will allow the EU to provide an unprecedented EUR 1.8 trillion over the coming years to support recovery from the COVID-19 pandemic and to fund the EU's long-term priorities across different policy areas. The next long-term budget will cover seven spending areas. It will provide the framework for the funding of almost 40 EU spending programmes in the next seven-year period. NextGenerationEU also pays specific attention to gender equality. In particular, national recovery and resilience plans should set out how the investments and reforms financed by the Recovery and Resilience Facility are expected to contribute to promoting gender equality and equal opportunities for all.

In April 2021, the Council and Parliament adopted the two programmes, which constitute the EU justice, rights and values fund as part of the MFF for 2021-2027. The programmes will help to further promote, strengthen and protect justice, rights and EU values. The 2021-2027 Citizens, Equality, Rights and Values Programme (CERV) specifically covers the allocation of funds to civil society organisations working to promote gender equality and combating violence against women and girls in the EU. CERV will have an overall budget of a maximum EUR 1.55 billion (a budget of EUR 641.7 million, with an additional allocation of a maximum of EUR 912 million). The Justice Programme will have a budget of EUR 305 million.

EU ACCESSION TO THE ISTANBUL CONVENTION

The Istanbul Convention, which came into force in 2014, is the first legally binding international instrument on preventing and combating violence against women and girls at an international level. It establishes a comprehensive framework of legal and policy measures for preventing such violence, supporting victims and punishing perpetrators.

The Council decided that the draft decision on the signature of the Convention should be divided into two separate decisions, one covering judicial cooperation in criminal matters and the other on asylum and non-refoulement. These two Council decisions were adopted in May 2017, and then the Commissioner for Justice, Consumers and Gender Equality signed the Istanbul Convention on behalf of the EU on 13 June 2017.

The signature is the first step in the process of the EU acceding to the Convention, which now requires the adoption of the Council decisions to conclude the process. In Council, legislative proposals in this field are discussed in the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons. Its discussions have focused

on a code of conduct defining how the EU and its Member States will cooperate on implementing the Convention.

In its resolution of 4 April 2019, Parliament sought an opinion from the CJEU on the compatibility of the proposals for the EU's accession to the Istanbul Convention with the Treaties and on the procedure for that accession. The CJEU's decision was that 'the Treaties do not prohibit the Council from waiting, before adopting the decision concluding the Istanbul Convention on behalf of the European Union, for the 'common accord' of the Member States'. It also concluded that 'the act concluding that convention may be divided into two separate decisions where an objective need to do so is established'.

On 21 February 2023, the Council decided to proceed with its request for Parliament's consent for EU accession to the Istanbul Convention. The Council is requesting that Parliament give its consent to two draft Council decisions on the conclusion of the above-mentioned Convention, as follows:

1. Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union;
2. Council decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement.

THE MOST RECENT ACTIONS OF PARLIAMENT AND THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

Legislative reports

In July 2023, Parliament agreed on its common position regarding a report prepared by the Committee on Women's Rights and Gender Equality (FEMM) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the proposal for a directive on combating violence against women and domestic violence. Parliament's common position included a consent-based definition of rape, tougher rules on cyber violence and better support for victims. However, the Council opened a legal battle of competences, which has delayed all attempts to agree on the directive. On 23 November 2023, in a debate to mark the international day for the elimination of violence against women, MEPs strongly urged Member States to work with Parliament to reach a deal on robust rules to combat violence against women that include a definition of rape based on a lack of consent.

The FEMM Committee also published a report on the proposal for a directive amending the Anti-trafficking Directive to strengthen the EU rules preventing and combating trafficking in human beings and protecting its victims. The report focuses on enhancing support and protection for victims.

The FEMM Committee published a report on the proposal for a directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. The committee also published a report on the proposal for a directive on standards for equality bodies in the field of equal treatment and equal opportunities between women

and men in matters of employment and occupation. Both reports stress the need for an intersectional perspective to address the multiple dimensions of discrimination.

Non-legislative reports

The non-legislative reports include reports on gender mainstreaming in Parliament (annual report 2020), on women's poverty in Europe, on the EU Gender Action Plan III, on a common European action on care, on ensuring European transportation works for women, on sexual harassment in the EU and MeToo evaluation, on reaching women's economic independence through entrepreneurship and self-employment, a report on the regulation of prostitution in the EU and a report on intersectional discrimination in the EU.

Legislative opinions

The FEMM Committee gave its opinion to the LIBE Committee on the proposal for a directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting. The FEMM Committee stressed the importance of ensuring that social sustainability and gender equality are adequately incorporated into the directive.

The FEMM Committee gave its opinion to the Committee on Industry, Research and Energy on the proposal for a directive on energy efficiency and stressed the importance of considering the unequal and gendered effects of climate change and climate-related policies.

The FEMM Committee gave its opinion to the LIBE Committee on the proposal for a regulation laying down rules to prevent and combat child sexual abuse. The Rapporteur highlighted that child sexual abuse is to a large extent an expression of gender-based violence. Therefore, combating the online aspects of this crime has to take into consideration gender-specific approaches. The Rapporteur suggested awareness-raising campaigns tailored specifically by age and gender. She also emphasised the need to provide specialised responses and support to victims and survivors with an integrated gender perspective. In addition, the Rapporteur would like to strengthen overall data collection disaggregated by age and gender, and proposed close collaboration on research and statistics between the EU Centre and the European Institute for Gender Equality.

The FEMM Committee gave its opinion to the Committee on Legal Affairs on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood. The FEMM Committee highlighted that the regulation must be used without prejudice and that the concept of 'public policy' must be interpreted restrictively if it is to justify a derogation from a fundamental freedom.

The FEMM Committee gave its opinion to the LIBE Committee regarding the extension of the list of EU crimes to hate speech and hate crime. Central to the Committee's concerns is the prevalence of hate- and gender-based violence, seen as an obstacle to achieving genuine gender equality in the EU. Gender-based hate speech and crimes disproportionately affect women, girls and the LGBTIQ+ community and exacerbate societal gender inequalities. The opinion stresses the need for a unified EU response to counter hate speech and hate crimes, emphasising the need for clear definitions, robust legislation, better data collection and strategies to address online and offline violence.

Non-legislative opinions

Besides multiple opinions in budgetary affairs, the FEMM Committee also gave its opinion in many other areas:

— Opinion on the implementation of the common security and defence policy – annual report 2022;

— Opinion on a long-term vision for the EU's rural areas – towards stronger, connected, resilient and prosperous rural areas by 2040;

— Opinion on the EU strategy for sustainable and circular textiles;

— Opinion to the Committee on Employment and Social Affairs on reducing inequalities and promoting social inclusion in times of crisis for children and their families;

— Opinion to the Committee on Foreign Affairs regarding human rights and democracy in the world and the European Union's policy on the matter – annual report 2023.

Missions

Since the beginning of 2022, there have been eight missions of the FEMM Committee and six reports for these missions are available. In 2022, the FEMM Committee sent MEPs on a virtual mission to the 66th session of the UN Commission on the Status of Women in New York, USA, from 14 to 25 March 2022 (Mission Report 30.5.2022). In May, a delegation was sent to The Hague, The Netherlands from 23 to 25 May 2022 (Mission Report 20.6.2022). From 20 to 22 September 2022, a delegation visited Ethiopia (Mission Report 21.4.2023). In Warsaw, Poland, MEPs went on a mission in November 2022, to hold meetings on women's rights, as well as sexual and reproductive health and rights (Mission Report 16.11.2022).

In 2023, the FEMM Committee sent MEPs to New York and Washington to take part in the 67th session of the UN Commission on the Status of Women from 6 to 10 March (Mission Report 22.5.2023). In May, a delegation was sent to Copenhagen, Denmark from 15 to 17 May 2022, to discuss 'women's entrepreneurship and to hold meetings with representatives of the public and private sector and NGOs' (Mission Report 12.9.2023).

Martina Schonard
12/2023

2.3.9. THE FIGHT AGAINST POVERTY, SOCIAL EXCLUSION AND DISCRIMINATION

By supporting Member States in the fight against poverty, social exclusion and discrimination, the European Union aims to reinforce the inclusiveness and cohesion of European society and to allow all people to enjoy equal access to opportunities and resources.

LEGAL BASIS

Article 3(3) of the Treaty on European Union, Articles 19, 145-161 of the Treaty on the Functioning of the European Union (TFEU) and Title III of the Charter of Fundamental Rights of the European Union (EUCFR).

OBJECTIVES

Combating poverty and social exclusion is one of the specific social policy goals of the EU and its Member States. In accordance with Article 153 TFEU, social inclusion is to be achieved solely on the basis of non-legislative cooperation – the open method of coordination (OMC) – while Article 19 TFEU allows the EU to take action to fight discrimination both by offering legal protection for potential victims and by establishing incentive measures.

ACHIEVEMENTS

A. Fight against poverty and social exclusion

Between 1975 and 1994, the European Economic Community conducted a number of pilot projects and programmes designed to combat poverty and exclusion. However, given the absence of a legal basis, Community action in this area was continually contested.

The situation changed with the entry into force, in 1999, of the Treaty of Amsterdam, which enshrined the eradication of social exclusion as an objective of Community social policy. In 2000, the Social Protection Committee was established to promote cooperation between the Member States and with the Commission (Article 160 TFEU).

The Lisbon strategy, launched in 2000, created a monitoring and coordination mechanism consisting of objective setting, poverty measurement based on a set of indicators and benchmarks, guidelines for the Member States and national action plans against poverty. It also established a new governance mechanism for cooperation between the Commission and the Member States: the OMC, a voluntary process for political cooperation based on agreed common objectives and common indicators. Stakeholders, including social partners and civil society, also cooperate in the process. Since 2006, a new policy framework, the open method of coordination for social protection and inclusion (social OMC) has regrouped and integrated three separate OMCs on social inclusion, health and long-term care and pensions.

In its October 2008 recommendation on the active inclusion of people excluded from the labour market, the Commission said that the ‘Member States should design and

implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services'.

The Europe 2020 strategy introduced a new common target in the fight against poverty and social exclusion: to reduce the number of Europeans living below the national poverty line by 25 % and to lift more than 20 million people out of poverty by 2020. This target was not achieved, and in March 2021, the Commission included a new headline target of reducing the number of people living in poverty by at least 15 million (including at least 5 million children) by 2030 in the European Pillar of Social Rights action plan. The related national targets were presented in June 2022.

In December 2010, the Commission launched the European platform against poverty and social exclusion as one of seven flagship initiatives of the Europe 2020 strategy, together with a list of key initiatives, such as an assessment of active inclusion strategies at national level and a white paper on pensions.

Following the establishment of the European Semester in 2010, the Commission presented a proposal in 2013 to strengthen the social dimension in the governance of the economic and monetary union, in response to calls from the European Council and Parliament. A key component is the social scoreboard, which is a set of indicators, including income inequality, household disposable income, the at-risk-of-poverty-or-social-exclusion rate, the rate of young people neither in employment nor in education or training and the impact of social transfers on poverty reduction.

In November 2017, all three of the main EU institutions expressed their commitment to the European Pillar of Social Rights (EPSR) in a joint proclamation. The EPSR establishes social protection and inclusion as one of three key areas (2.3.1 Social and employment policy: general principles). The EPSR has been used to launch a series of legislative and policy initiatives, such as Directive (EU) 2019/1152 on transparent and predictable working conditions, the social fairness package, which includes Regulation (EU) 2019/1149 establishing a European Labour Authority and the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, and Directive (EU) 2022/2041 on adequate minimum wages, which aims to fight in-work poverty.

The EPSR action plan of March 2021 contained a number of relevant initiatives: the EU strategy on the rights of the child, the Council recommendation establishing a European Child Guarantee, the European Platform on Combating Homelessness, the Council recommendation on adequate minimum income ensuring active inclusion, the European Care Strategy and a high-level group on the future of social protection and of the welfare state, which has presented 21 recommendations to improve social protection systems and welfare states. In June 2021, the EU Ministers for Employment and Social Affairs endorsed a revised list of social scoreboard headline indicators.

B. Anti-discrimination legislation

1997 can be regarded as a turning point, as a new article (now Article 19 TFEU) was introduced into the Treaty establishing the European Community, empowering the Council to take action to deal with discrimination on grounds of racial or ethnic origin, religion or belief, age, disability or sexual orientation. In 2003, this article was amended by the Treaty of Nice to allow the adoption of incentive measures. In 2009, the EUCFR entered into force, including several articles on equality and non-discrimination. In 2011, for the first time in history, the EU became a party to an international human rights treaty,

the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The 2017 EPSR reaffirmed the principles of gender equality and equal opportunities.

A number of directives have been adopted in this area:

— The Racial Equality Directive (2000/43/EC);

— The Employment Equality Directive (2000/78/EC);

— The Equal Treatment Directive (2006/54/EC), merging a number of previous directives dedicated to equal opportunities for men and women;

— Directive (EU) 2019/1158 on work-life balance for parents and carers, which takes a broader perspective on sharing care responsibilities between women and men;

— Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures.

A 2008 proposal for a directive on implementing the principle of equal treatment between persons outside the field of employment (the Horizontal Anti-Discrimination Directive) has still not achieved consensus in the Council. In December 2022, the Commission put forward two proposals for a directive establishing standards for equality bodies.

C. EU funding

The main funding instrument is the European Social Fund Plus (ESF+), which makes EU funding available to co-finance actions aimed at fighting poverty and exclusion, combating discrimination and helping the most disadvantaged gain access to the labour market (2.3.2 European Social Fund).

For the 2021-2027 period, the ESF+ has a total budget of almost EUR 99.3 billion. The ESF+ Regulation (EU) 2021/1057 requires 25% of the funds to be earmarked for social inclusion, at least 3% of the budget to be spent on food aid and basic material assistance for the most deprived and, in EU countries where the number of children at a high risk of poverty is above the EU average, a minimum of 5% of ESF+ resources must be spent on measures that contribute to children's equal access to free healthcare, education and childcare, decent housing and adequate nutrition.

The FEAD was set up in March 2014, by Regulation (EU) No 223/2014. The fund supports Member States' actions to provide material assistance, in combination with social inclusion measures, to the most deprived. In the current programming period, it is integrated into ESF+.

In September 2020, the European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE) was established to support Member States in their efforts to cope with the COVID-19 pandemic and to preserve jobs and incomes, especially through short-time work schemes. By its expiration date on 31 December 2022, it had provided EUR 98.4 billion in back-to-back loans to the Member States.

The Recovery and Resilience Facility (RRF) entered into force in February 2021 with the aim of providing up to EUR 723.8 billion in funding through the end of 2026 to mitigate the economic and social impact of the COVID-19 crisis. Two of the six pillars set out in the RRF contribute to tackling poverty and social exclusion.

In March 2022, in the context of the Russian invasion of Ukraine, the Commission put forward a proposal for Cohesion's Action for Refugees in Europe (CARE) to

introduce more flexibility in the 2014-2020 cohesion policy rules. Member States can use such resources to finance emergency measures and to provide immediate support in the areas of employment, education and social inclusion. The Flexible Assistance for Territories (FAST-CARE) Regulation extends the existing support provided under CARE.

In the context of the transition towards a climate-neutral economy, the European Union has adopted a series of measures to ensure that poverty and social inclusion do not worsen. Some examples are the Just Transition Mechanism, including the Just Transition Fund, and the Social Climate Fund.

D. EU strategies for specific groups

A new EU disability strategy for 2021-2030 was presented by the Commission in March 2021. Three of the seven flagship initiatives of the strategy have been delivered: the European resource centre AccessibleEU, the Disability Platform and a renewed human resources strategy for the Commission. Another flagship initiative, the European Disability Card proposal (6 September 2023) is awaiting Parliament's and the Council's position and agreement. The implementation of the strategy can be followed on the Commission monitoring framework website.

The von der Leyen Commission has made building a 'Union of Equality' one of its key priorities, resulting in a number of new initiatives:

— 2020-2025 gender equality strategy following on from the 2016-2019 strategic engagement for gender equality;

— Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms;

— 2020-2025 EU anti-racism action plan;

— EU Roma strategic framework for equality, inclusion and participation;

— Council recommendation on Roma equality, inclusion and participation;

— 2020-2025 EU LGBTIQ equality strategy;

— 2021-2027 action plan on integration and inclusion, which includes proposals in four areas (education, employment, housing and health), with the aim of promoting the integration and social inclusion of migrants and people with a migrant background;

— 2021-2030 EU strategy on combating antisemitism and fostering Jewish life.

EU measures have often focused on young people. In 2012, faced with a high number of jobless young people, the Commission proposed a Youth Employment Package, which was followed by the Youth Guarantee in 2013. Another initiative to create new opportunities for young people was the European Solidarity Corps, launched by the Commission in December 2016. In response to the COVID-19 pandemic and its disproportionate impact on young people, the Commission proposed the Youth Employment Support package, including a Council recommendation on a reinforced Youth Guarantee (A Bridge to Jobs). The Commission launched a new work placement initiative under the ESF+ called ALMA (Aim, Learn, Master, Achieve) to reach vulnerable young Europeans who are not in any kind of employment, education

or training, with the aim of helping them find a place in the labour market. The previously mentioned EU strategy on the rights of the child includes actions to tackle poverty, racism and discrimination affecting children and the European Child Guarantee aims to prevent and combat social exclusion by guaranteeing that children in need have access to a set of key services.

Those facing long-term unemployment have also been a policy focus with the adoption, in February 2016, of the Council recommendation on the integration of the long-term unemployed into the labour market.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has repeatedly adopted resolutions with the goal of strengthening EU action to reduce poverty and improve the conditions and prospects of the socially disadvantaged, e.g. its resolution of 22 October 2020, in which it expressed concern about the devastating social effects of the COVID-19 crisis, and its resolution of 11 March 2021. In these resolutions, Parliament called for robust social welfare systems and for a European unemployment reinsurance scheme to be established. In February 2021, Parliament repeated this latter demand in a resolution on reducing inequalities with a special focus on in-work poverty, in which it also called for an overarching European anti-poverty strategy and for the Commission to present an EU framework on minimum income. Demands first put forward by Parliament in 2015 for a European Child Guarantee have now been put into action with the Council recommendation adopted in June 2021.

The Treaty of Lisbon (Article 19(1) TFEU) gave Parliament the power of consent in relation to the adoption of non-discrimination legislation. Parliament was an active player in the debate that led to the inclusion of this article, and it has often called on the Commission and the Member States to ensure the full and timely implementation of the anti-discrimination directives. In its resolution of 7 February 2018, Parliament expressed regret at the lack of progress on the Horizontal Anti-Discrimination Directive and asked the Commission and the Council to re-launch negotiations. It reiterated these demands in a number of subsequent resolutions and held a plenary debate on the subject in October 2019.

Parliament has also called for the mainstreaming of gender equality in budgets and policymaking and for gender impact assessments to be carried out when establishing any new policy. Resolutions have also expressed concern about the gender dimension of poverty and the gender pension gap (e.g. the resolutions of 14 June 2018 and 16 November 2017). Its resolution of 17 April 2018 focuses on empowering women and girls through the digital sector. In its resolution of 5 July 2022 on women's poverty in Europe, Parliament recognised that major means of eliminating poverty among women are gender equality in the labour market, removal of existing barriers in the labour market, as well as of barriers to access to affordable services such as childcare and long-term care services.

Parliament has been particularly vocal on improving the rights of persons with disabilities, including by requesting an ambitious post-2020 European disability strategy and calling on the other EU institutions and the Member States to reaffirm their commitment to achieving inclusive equality for persons with disabilities and to fully implement the UNCRPD.

Parliament has also drawn attention to the plight of specific groups during the pandemic and called for a comprehensive anti-poverty strategy. On 8 July 2020, Parliament adopted a resolution on the rights of persons with intellectual disabilities in the COVID-19 crisis. On 17 September 2020, it called on the Member States to do more to combat social exclusion and anti-Gypsyism, to improve the lives of Roma people and to protect their health amid the COVID-19 crisis. Rising homelessness rates across the EU and the lack of affordable housing have become subjects of growing concern for Parliament, as shown in its resolutions of 24 November 2020 and 21 January 2021. In these, Parliament called on the Commission and the Member States to ensure that the right to adequate housing is recognised and enforceable as a fundamental human right in EU and national legislation.

On 5 October 2022, against the backdrop of the energy and cost of living crisis, Parliament adopted a resolution on the EU's response to the increase in energy prices in Europe urging the Member States to avoid people being obliged to choose between eating or heating and to avoid home evictions for vulnerable households. It highlighted that many people were already in vulnerable situations before the crisis and warned that inflation may make the situation unbearable for low-income households, with the middle class also being increasingly affected. It encouraged Member States to make full use of the existing options to cut taxes on energy products and called on the Commission to consider giving Member States space to introduce further temporary exemptions or reductions on excise duties and energy taxes.

For more information on this topic, please see the website of the Committee on Employment and Social Affairs.

Monika Makay
10/2023

2.4. INDUSTRIAL, ENERGY AND RESEARCH POLICIES

2.4.1. GENERAL PRINCIPLES OF EU INDUSTRIAL POLICY

The EU's industrial policy aims to make European industry more competitive so that it can maintain its role as a driver of sustainable growth and employment in Europe. The digital transition and the transition toward a carbon-neutral economy have led to the adoption of various strategies to ensure better framework conditions for EU industry. The impact of the COVID-19 pandemic and the war in Ukraine have sparked new reflections on economic recovery, reconstruction and building resilience.

LEGAL BASIS

Article 173 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Industrial policy is cross-cutting in nature and aims to secure framework conditions favourable to industrial competitiveness. It is well integrated into a number of other EU policies such as those relating to trade, the internal market, research and innovation, employment, environmental protection, defence and public health. EU industrial policy is specifically aimed at: (1) 'speeding up the adjustment of industry to structural changes'; (2) 'encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings'; (3) 'encouraging an environment favourable to cooperation between undertakings'; and (4) 'fostering better exploitation of the industrial potential of policies of innovation, research and technological development' (Article 173 TFEU).

ACHIEVEMENTS

A. Introduction

The instruments of the EU's industrial policy aim to create the general conditions in which entrepreneurs and businesses can take initiatives and exploit their ideas and opportunities. Nonetheless, industrial policy should take into account the specific needs and characteristics of individual sectors. The annual European Competitiveness Reports analyse the strengths and weaknesses of the EU's economy in general and its industry in particular, and may trigger cross-sectoral or sectoral policy initiatives.

B. Towards an integrated industrial policy

While in the 1980s and 90s the EU institutions focused mainly on the creation of a single market, the formation of Economic and Monetary Union and EU enlargement shifted attention towards industrial policy. In October 2005, a Commission communication entitled 'Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing – towards a more integrated approach for industrial policy' (COM(2005)0474) set out the EU's first ever integrated approach to industrial policy on the basis of a concrete work programme of cross-sectoral and sectoral initiatives.

In the years that followed, the main actions taken focused on, among other things, ensuring the sustainability of consumption and production (COM(2008)0397), fostering

access to non-energy critical raw materials (COM(2008)0699), and deploying key enabling technologies (KETs) within its policy framework (COM(2009)0512).

C. From the Europe 2020 strategy to the New Industrial Strategy

In 2010, the Lisbon Strategy was replaced by the Europe 2020 strategy for smart, sustainable and inclusive growth (COM(2010)2020). The new strategy put forward seven flagship initiatives, four of which focus on making the EU's industry more competitive: 'Innovation Union' (COM(2010)0546); 'A digital agenda for Europe' (COM(2010)0245); 'An integrated industrial policy for the globalisation era' (COM(2010)0614); and 'New Skills for New Jobs' (COM(2008)0868). The Commission communication entitled 'Industrial Policy: Reinforcing competitiveness' (COM(2011)0642), adopted in 2011, called for deep structural reforms as well as coherent and coordinated policies across the Member States to enhance the EU's economic and industrial competitiveness and foster long-term sustainable growth.

In 2012, the Commission issued a communication entitled 'A Stronger European Industry for Growth and Economic Recovery – Industrial Policy Communication Update' (COM(2012)0582), which aimed to support investment in innovation, with a focus on six priority areas with great potential: advanced manufacturing technologies for clean production; key enabling technologies; bio-based products; sustainable industrial and construction policy and raw materials; clean vehicles and vessels; and smart grids.

In 2014, the Commission adopted the communication 'For a European Industrial Renaissance' (COM(2014)0014). This communication focused on reversing industrial decline and reaching the target of 20% of GDP for manufacturing activities by 2020. This policy was complemented in 2016 by the communication entitled 'Digitising European Industry – Reaping the full benefits of a Digital Single Market' (COM(2016)0180), which focused on digital transformation and addressed related challenges such as funding, ICT standardisation, big data and skills. Moreover, the Start-up and Scale-up Initiative (COM(2016)0733), launched in 2016, aimed to give Europe's many innovative entrepreneurs every opportunity to build world-leading companies.

Industries such as ICT, steel, cement, textiles and chemicals were included in the wide-ranging roadmap of key actions introduced in 2019 with the Commission communication entitled 'The European Green Deal' (COM(2019)0640), which aimed to mobilise industry for a clean and circular economy. In its communication of January 2020 on the inaugural annual work programme (COM(2020)0037), the Commission emphasised that the EU's position as a digital leader would be bolstered by a European Data Strategy and a White Paper on Artificial Intelligence. In March 2020, the Commission presented the communication 'A New Industrial Strategy for Europe' (COM(2020)0102) to help Europe's industry lead the twin transitions towards climate neutrality and digital leadership and to strengthen Europe's competitiveness and strategic autonomy.

However, the launch of this strategy coincided with the outbreak of the COVID-19 pandemic and came before the NextGenerationEU plan was set up. Consequently, the authors of the strategy were unable to take into account the impact of the pandemic on EU industries. In response to the COVID-19 pandemic's impacts on industrial supply chains and on EU competitiveness, Parliament adopted its resolution of April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences.

In November 2020, MEPs called on the Commission to present a revised industrial strategy.

The Commission updated the European Industrial Strategy (COM(2021)0350) in May 2021, with a focus on the resilience of the EU single market, the EU's dependencies in key strategic areas and support for small and medium-sized enterprises (SMEs) and start-ups, as well as on accelerating the green and digital transitions. In September 2020, the Commission had already adopted an Action Plan on Critical Raw Materials, which included a foresight study on critical raw materials for strategic technologies and sectors by 2030 and 2050.

In February 2021, the Commission presented an Action Plan on Synergies between civil, defence and space industries (COM(2021)0070) to further enhance Europe's technological edge and support its industrial base. It aimed to reinforce European innovation by exploring the disruptive potential of technologies at the interface between defence, space and civil uses, such as the cloud, processors, cyber work, quantum technologies and artificial intelligence.

D. The net-zero age

The new 'Green Deal industrial plan for the net-zero age' (COM(2023)0062) was presented by the Commission on 1 February 2023, setting out a European approach to boost the EU's net-zero industry, by means of:

1. Measures to improve the competitiveness of the EU's net-zero industry.

These measures encompass the following three legislative proposals, put forward by the Commission on 14 March 2023:

i. The 'net-zero industry act' of 16 March 2023 (COM(2023)0161), which aims to simplify the regulatory framework for production of key technologies, set targets for EU industrial capacity in 2030, fast track permitting processes, promote the development of European standards for key technologies and encourage public authorities to buy more clean technologies through public procurement.

ii. The 'critical raw materials act' of 16 March 2023 (COM(2023)0160), which aims to improve the security of supply for the raw materials needed to ensure the net-zero transition.

iii. A reform of electricity market design, to make the market more resilient, reduce the impact of gas prices on electricity bills and support the energy transition.

2. Measures to increase and speed-up access to national/EU public funding, and private funding.

The new Temporary Crisis and Transition Framework for State aid aims to simplify the granting of State aid for renewable energy deployments and decarbonisation of industrial processes, giving Member States the option of granting higher levels of aid for production of strategic net-zero technologies to match the aid received by competitors located in non-EU countries. The Commission also endorsed an amendment to the General Block Exemption Regulation (GBER), giving Member States more flexibility to design and implement support measures in key sectors for net-zero industry, without the Commission's prior approval.

The net-zero age approach also includes measures to develop a suitably skilled workforce and measures concerning global cooperation and international trade.

E. EU support programmes

A large number of policies, programmes and initiatives, covering a wide variety of fields, currently contribute to EU industrial policy. Examples of initiatives with a budget envelope include: cohesion policy, Horizon Europe (2021-2027), the Connecting Europe Facility and the EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME). In addition, the Investment Plan for Europe and the European Fund for Strategic Investments (EFSI) aimed to mobilise at least EUR 500 billion in private and public investment by 2020. Two recurring priorities across these programmes and initiatives are SMEs and innovation.

ROLE OF THE EUROPEAN PARLIAMENT

The Maastricht changes to the EC Treaty incorporated issues of industrial policy for the first time – an achievement that can be attributed to initiatives by Parliament, which helped stimulate the reorganisation of the steel sector and called for a more dynamic industrial policy. Since then, Parliament has adopted numerous resolutions, which have further strengthened the EU's industrial policy. Some of the more recent ones are listed below:

— Its resolution of 9 March 2011 on an Industrial Policy for the Globalised Era, urging the Commission to place greater emphasis on industrial renewal, competitiveness and sustainability, and to develop an ambitious, eco-efficient and green EU industrial strategy;

— Its resolution of 26 October 2011 on the Agenda for New Skills and Jobs, underlining the importance of developing closer cooperation between research institutes and industry;

— Its resolution of 4 February 2014 on the Action Plan for a competitive and sustainable steel industry in Europe;

— Its resolution of 9 June 2016 on the competitiveness of the European rail supply industry;

— Its resolution of 12 September 2017 on a Space Strategy for Europe;

— Its resolution of 12 February 2019 on a comprehensive European industrial policy on artificial intelligence and robotics;

— Its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences;

— Its decision of 18 June 2020 on setting up a special committee on artificial intelligence in a digital age, and defining its responsibilities, numerical strength and term of office;

— Its resolution of 25 November 2020 on a New Industrial Strategy for Europe;

— Its resolution of 15 September 2022 on the implementation of the Updated New Industrial Strategy for Europe: aligning spending to policy;

— Its resolution of 18 January 2023 on the implementation of the common security and defence policy – annual report 2022, welcoming the Commission's announcement that it will present a space strategy for security and defence;

— Its resolution of 16 February 2023 on an EU strategy to boost industrial competitiveness, trade and quality jobs, stating that the European industrial strategy should be designed both to secure European leadership in clean energy technologies and to improve the existing industrial base to provide high-quality jobs and economic growth for all Europeans in order to achieve the objectives of the Green Deal;

— Its position of 14 September 2023, adopting amendments to the proposed regulation on a framework for ensuring a secure and sustainable supply of critical raw materials.

For more information on this topic, please see the website of the Committee on Industry, Research and Energy.

Corinne Cordina
10/2023

2.4.2. SMALL AND MEDIUM-SIZED ENTERPRISES

Micro, small and medium-sized enterprises (SMEs) constitute 99% of companies in the EU. Various action programmes adopted aim to increase the competitiveness of SMEs through research and innovation, and to provide better access to finance. Strategies to ensure better conditions for SMEs have also taken into account carbon neutrality and the digital transition. Also, recent geopolitical developments have stimulated new thinking about economic recovery, reconstruction and building SME resilience.

LEGAL BASIS

SMEs operate mainly at national level, as relatively few are engaged in cross-border business within the EU. However, SMEs are affected by EU legislation in various fields, such as taxation (Articles 110 to 113 of the Treaty on the Functioning of the European Union (TFEU)), competition (Articles 101 to 109 TFEU) and company law (right of establishment – Articles 49 to 54 TFEU). The Commission's definition of SMEs can be found in Recommendation 2003/361/EC.

OBJECTIVES

SMEs employ approximately 100 million people, constituting an essential source of entrepreneurship and innovation, which are crucial for the competitiveness of EU companies. EU policy for SMEs aims to ensure that Union policies and actions are small business friendly and contribute to making Europe a more attractive place to set up a company and do business.

ACHIEVEMENTS

A. Small Business Act (SBA)

A comprehensive initiative on SMEs was put forward by the Commission in June 2008, in the form of a Communication on the Small Business Act (SBA). It aimed at creating a new policy framework integrating the existing instruments and building on the European Charter for Small Enterprises and the Modern SME Policy for Growth and Employment. It took a 'political partnership approach with Member States' rather than proposing a fully fledged Community approach.

1. Smart regulation

Cutting red tape and bureaucracy is a high priority for the Commission in the SBA. The amendment to the Late Payment Directive (requiring public authorities to make payments within 30 days, which serves as a security guarantee for SMEs) and the Directive on e-invoicing (giving e-invoices equal status to paper ones) were particularly helpful to small businesses. Furthermore, the modernisation of EU public procurement policy means that SMEs experience a lighter administrative burden when accessing public procurement and have better opportunities for joint bidding. The same approach has been found to simplify financial reporting obligations and to reduce administrative burdens for SMEs through the modernisation of both public procurement in the EU and the Accounting Directive (now Directive 2013/34/EU).

In its Communication on 'Better Regulation: Joining forces to make better laws' of April 2021, the Commission introduced the 'one in, one out' approach for policymaking at EU level, focusing the attention of policymakers more closely on the implications and costs of applying legislation, particularly for SMEs. The aim of this approach was to offset new administrative burdens resulting from the Commission's legislative proposals by reducing an equivalent amount of existing burdens.

2. Access to finance

Financial markets have often failed to provide SMEs with the finance they need. Some progress has been made in improving the availability of finance and credit for SMEs through the provision of loans, guarantees and venture capital. The European financial institutions – the European Investment Bank (EIB) and the European Investment Fund (EIF) – have stepped up their SME-related operations.

In November 2011, the Commission proposed an 'Action Plan to improve access to finance for SMEs'. Among other things, the action plan included policy initiatives to ease access to venture capital markets for SMEs.

3. SMEs in the single market

The SBA and the Commission communications entitled 'Towards a Single Market Act – For a highly competitive social market economy', and the 'Single Market Act II 'stressed the need for the continuous improvement of the framework conditions for businesses in the single market'. Various initiatives and measures exist or have been planned in order to facilitate the establishment and operation of SMEs in the internal market. SMEs have been granted derogations in many areas, such as competition rules, taxation and company law.

4. Competition policy

The EU's State aid policy has treated SMEs favourably for a long time, recognising the special difficulties they face. In 2014, the Commission adopted a revised General Block Exemption Regulation for State Aid (Regulation (EU) No 651/2014). One of the components of state aid modernisation was the increased flexibility given to Member States to grant state aid to SMEs without prior notification and approval by the Commission, upon certain conditions. On the basis of this regulation, SMEs have been able to benefit from public support of up to EUR 7.5 million.

B. EU networks for SMEs

Examples of networks aimed at SMEs include, firstly, general support services for SMEs in the EU, such as the 'Enterprise Europe Network', 'SOLVIT', 'Your Europe – Business', 'SMEs and the Environment' and 'Dealing with Chemicals: National REACH Helpdesks'. Secondly, support for innovation and research, including the 'IPR Helpdesk', 'SME Techweb', 'China IPR Helpdesk for SMEs', 'European Business and Innovation Centres (BIC) Network (EBN)', 'European Workplace Innovation Network' and 'Gate2Growth'.

C. SMEs and research

Research and innovation are crucial to the sustainable success and growth of SMEs in the EU. The Horizon 2020 programme for the 2014-2020 period aimed at creating a better and more comprehensive support environment for the research and innovation activities of SMEs. As part of this approach, SMEs were encouraged to participate

through a new 'specific SME instrument', which aimed to fill gaps in funding for early-stage, high-risk research and innovation by SMEs.

In addition, improving the competitiveness of SMEs was one of the 11 thematic objectives for cohesion policy in 2014-2020. Additional investments in SMEs were also made under other thematic objectives, particularly research and innovation, the low-carbon economy and information and communication technologies.

Horizon Europe, the EU's research and innovation funding programme that runs until 2027, contains a new element that its predecessor did not have – the European Innovation Council, with a budget of EUR 10.1 billion to support game-changing innovations throughout the life cycle from early stage research to the financing and scaling up of start-ups and SMEs.

D. Programme for the Competitiveness of Enterprises and SMEs (COSME)

Regulation (EU) No 1287/2013 establishing a Programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME) for the period 2014-2020 was adopted in December 2013. With a budget of EUR 2.3 billion over the period 2014-2020, COSME pursued the following general objectives:

— To improve access to finance for SMEs in the form of equity and debt: an equity facility for growth-phase investment, and a loan guarantee facility provided SMEs with direct or other risk-sharing arrangements with financial intermediaries to cover loans; EUR 1.3 billion of the COSME budget was allocated to financial instruments;

— To improve market access both inside the Union and globally: growth-oriented business support services were provided via the Enterprise Europe Network in order to facilitate business expansion;

— To promote entrepreneurship: including developing entrepreneurial skills and attitudes, especially among new entrepreneurs, young people and women.

E. Latest initiatives

The Commission communications of March 2020 'A New Industrial Strategy for Europe' and 'An SME Strategy for a sustainable and digital Europe' included proposals to help SMEs operate, scale up and expand. Parliament reacted to the impact of the COVID-19 pandemic on industrial supply chains and SMEs by adopting a resolution 2020/2616(RSP) on EU coordinated action to support economic recovery measures in April 2020. In November 2020, MEPs adopted a resolution 2020/2076(INI) calling on the European Commission to present a revised industrial strategy.

As highlighted in the SME Strategy, small businesses struggle more to obtain finance. In December 2022, the Commission published a proposal amending Directive 2014/65/EU to make public capital markets in the EU more attractive for companies and to facilitate access to capital for SMEs.

Taking into account the strong detrimental effect of inflation and uncertainty caused by the sharp rise in energy and raw materials costs, the Commission adopted a communication on an SME Relief Package in September 2023. It includes proposals for a regulation on combating late payment in commercial transactions (COM(2023)0533) and for a directive establishing a Head Office Tax system for micro- and SMEs (COM(2023)0528). It also details a set of measures to improve access to finance and skilled workers, and to support SMEs throughout their business life cycle.

ROLE OF THE EUROPEAN PARLIAMENT

In 1983 Parliament declared a 'Year of Small and Medium-sized Enterprises and the Craft Industry' and launched a series of initiatives to encourage their development. Since then, Parliament has consistently demonstrated its commitment to encouraging the development of European SMEs. For example:

— In June 2010, Parliament adopted a resolution on Community innovation policy in a changing world. It called for the development of SME financing tools, such as microcredit, venture capital for people seeking to invest in innovative enterprises and 'business angels' to sponsor business projects by young researchers. It also called for Member States and the Commission to create tax, financial, business and administrative incentives for investment.

— In May 2011, Parliament adopted a resolution on the Small Business Act review. Parliament stressed its concern that the SME test has not been applied properly and consistently in all new legislative proposals, particularly at national level. In addition, it warns Member States about 'gold-plating' by exceeding the requirements of EU legislation when transposing directives into national law.

— In October 2012, Parliament adopted a resolution entitled 'Small and medium-sized enterprises (SMEs): competitiveness and business opportunities'. It focused on a number of areas, including the reduction of administrative burdens, support for competitiveness and job creation, the launching of start-ups and access to information and financing.

— In January 2014, Parliament adopted a resolution on reindustrialising Europe to promote competitiveness and sustainability, stressing the importance of SMEs in the EU economy and calling for specific support and assistance for SMEs.

— In September 2016, Parliament adopted a resolution on access to finance for SMEs and increasing the diversity of SME funding in a Capital Markets Union.

— In July 2017, Parliament adopted a resolution on building an ambitious EU industrial strategy as a strategic priority for growth, employment and innovation in Europe.

— In February 2019, Parliament adopted a resolution on a comprehensive European industrial policy on artificial intelligence (AI) and robotics.

— In April 2020, Parliament adopted a resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences.

— In November 2020, Parliament adopted a resolution on a New Industrial Strategy for Europe, calling for an industrial strategy that involves all industrial ecosystems, including SMEs.

— In its resolution of July 2022 on Better regulation: Joining forces to make better laws, Parliament called on the Commission to make its 'one in, one out' calculator public. It underlined that in applying the 'one in, one out' approach, all compliance costs, both administrative and adjustment costs, should be considered, and stressed the need to ensure that this approach is applied by the Member States and by local and regional authorities.

— Parliament held a debate on the State of the SME Union on 15 September 2022.

— In its resolution of July 2023 on the state of the SME Union, Parliament called on the Commission to carry out an overall assessment of the cumulative effect of EU legislation on SMEs in the EU, and to propose simplifications where needed. It also called for the urgent adoption of a revised Late Payments Directive, and to assess a possible revision of the state aid rules in order to evaluate how the interests of SMEs are safeguarded. The Commission was called on to increase its efforts on the capital markets union (CMU) and to unlock funding for Europe's growth.

For more information on this topic, please see the websites of the Committee on Economic and Monetary Affairs and of the Committee on Industry, Research and Energy.

Corinne Cordina
10/2023

2.4.3. DIGITAL AGENDA FOR EUROPE

Digital service platforms and emerging technologies like artificial intelligence (AI) profoundly influence our societal landscape. These innovations have redefined how we communicate, shop and access information online, making them daily essentials. The European digital agenda for 2020-2030 addresses these shifts. It prioritises establishing secure digital spaces, ensuring fair competition in digital markets and enhancing Europe's digital sovereignty, all while aiming for climate neutrality by 2050.

LEGAL BASIS

While the Treaties do not specify provisions for information communication technologies (ICTs), the EU can act within policy areas such as: industry (Article 173 of the Treaty in the Functioning of the European Union (TFEU)), competition (Articles 101 and 109 TFEU), trade (Articles 206 and 207 TFEU), trans-European networks (Articles 170 and 172 TFEU), research (Articles 179 and 190 TFEU), energy (Article 194 TFEU), single market establishment (Article 114 TFEU), the free movement of goods (Articles 26 and 28-37 TFEU), the movement of people and services (Articles 45 and 66 TFEU), education (Articles 165 and 166 TFEU), and culture (Article 167 TFEU).

OBJECTIVES

Following the Lisbon strategy, the 2010 digital agenda for Europe underscored ICTs as pivotal for the EU's objectives. In 2015, the digital single market strategy further developed the digital agenda with three pillars: 1) ensuring better access to digital goods and services across Europe; 2) fostering optimal conditions for digital networks and services; and 3) amplifying the digital economy's growth potential.

The 2020 strategy, which aimed to shape Europe's digital future, targeted technologies that benefited people, a competitive economy and an open, democratic society. In 2021, this strategy was enriched by the digital compass for 2030, which details the EU's digital goals for the decade.

ACHIEVEMENTS

A. The first digital agenda for Europe: 2010-2020

The first digital agenda:

— reduced electronic communication prices (Regulation (EU) 2022/612) and terminated roaming charges on 14 June 2017 ('Roam Like At Home');

— improved internet connectivity with comprehensive basic broadband, by leveraging mobile and satellite technologies;

— strengthened consumer protection in telecommunications through privacy (Directive 2009/136/EC) and data protection regulations, which were later enhanced by a new data protection framework (Regulation (EU) 2016/679 and Directive (EU) 2016/680).

To encourage the development of digital networks and services, Parliament bolstered the Body of European Regulators for Electronic Communications. This body

fosters cooperation between national regulators and the Commission, encourages best practices and works to harmonise communication regulations (Regulation (EU) 2018/1971). The first digital agenda emphasised digital growth by promoting digital skills, high-performance computing, industry digitisation, AI development and public service modernisation. Additionally, the EU established rules on geo-blocking (Regulation (EU) 2018/302) and digital service portability (Regulation (EU) 2017/1128), enabling consumers to access online content across the Member States.

In addition to the new regulatory frameworks on data protection mentioned above, the EU has passed a number of laws to facilitate the development of a data-agile economy, such as:

— the Regulation on the free flow of non-personal data (Regulation (EU) 2018/1807), which allows companies and public administrations to store and process non-personal data wherever they choose;

— the Cybersecurity Act (Regulation (EU) 2019/881), which strengthens the EU Agency for Cybersecurity and establishes a cybersecurity certification framework for products and services;

— the Open Data Directive (Directive (EU) 2019/1024), which provides common rules for a European market for government-held data.

B. The second digital agenda for Europe: 2020-2030

The second digital agenda addressed the changes brought about by digital technologies and the vital role of digital services and markets, emphasising the EU's technological and geopolitical goals. In its communications on shaping Europe's digital future and on Europe's digital decade, the Commission detailed actions for secure digital services and markets. It prioritised quantum computing, blockchain strategies, AI, semiconductors (European Chips Act), digital sovereignty, cybersecurity, 5G/6G, European data spaces and global tech standards. On 9 March 2021, the EU introduced a digital compass outlining four targets for 2030:

— Skills: At least 80% of all adults should have basic digital skills and there should be 20 million ICT specialists employed in the EU, with more women taking up such jobs;

— Businesses: 75% of companies should use cloud-computing services, big data and AI; more than 90% of small and medium-sized enterprises in the EU should reach at least a basic level of digital intensity; and the number of EU unicorns should double;

— Infrastructure: All EU households should have gigabit connectivity and all populated areas should be covered by 5G; the production of cutting-edge and sustainable semiconductors in Europe should make up 20% of worldwide production; 10 000 climate-neutral highly secure edge nodes should be deployed in the EU; and Europe should have its first quantum computer;

— Public services: All key public services should be available online; all citizens should have access to their e-medical records; and 80% of citizens should use an electronic identity solution.

The digital Europe programme, introduced by Regulation (EU) 2021/694, is an EU initiative that allocates EUR 7.5 billion (2021-2027) to digital technology projects in areas like supercomputing, AI, cybersecurity, advanced digital skills and digital tech

integration, supported by digital innovation hubs. This will align with other EU funds, such as Horizon Europe, the Connecting Europe Facility for digital infrastructure and the Recovery and Resilience Facility. During the COVID-19 recovery, the Member States are mandated to direct at least 20% of their recovery funds to digitalisation projects (Regulation EU 2021/694).

The White Paper on AI from February 2020 highlighted AI's crucial role and anticipated societal and economic benefits across sectors. In October 2020, Parliament adopted three resolutions on AI addressing ethics, civil liability and intellectual property. The resolutions called on the Commission to craft a European legal framework for the ethical development and use of AI. On 21 April 2021, the Commission proposed an AI Act, which would offer a tech-neutral AI definition and rules based on risk. Parliament adopted its position on the proposal in June 2023 with substantial amendments to the Commission's text, in view of final negotiations with the Council. In September 2022, the Commission introduced a proposal for a directive on AI liability, which would ensure equal protection for those harmed by AI. Additionally, a proposal for a new product liability directive was unveiled to address digital products like AI.

Data sharing is central to Europe's digital vision. While the EU promotes data-driven innovation, it seeks to maintain a balance with privacy, security, ethics and safety, while looking into the use and sharing of non-personal data for new technologies and business paradigms. In February 2020, the EU launched the White Paper on AI data strategy. Its first component, the European Data Governance Act (Regulation (EU) 2022/868), published on 3 June 2022, became effective in September 2023 and emphasises data availability and trust. On 23 February 2022, the Commission introduced the strategy's second component, the proposed data act, which addresses business and consumer data access. Interinstitutional talks concluded in June 2023. The Council, Parliament and the Commission issued a declaration on European digital rights on 26 January 2022, underscoring a values-based digital shift. Data are pivotal for societal progress, economic expansion and innovation. The European Data Space, the strategy's third element, covers nine sectors and is a focus for the Commission for 2019-2025. Additionally, the EU is launching a European cloud, via NextGenerationEU, grounded in the Gaia-X ecosystem, to endorse data and service fluidity.

A cornerstone of the digital strategy is forging a safer, more open digital single market that emphasises user rights and fair business competition. This involves two legislative pillars: the Digital Services Act (DSA) and the Digital Markets Act (DMA), both of which modernise EU digital service regulations. Adopted by Parliament and the Council in October and September 2022 respectively, they offer a unified set of rules for the entire EU. The DSA delineates responsibilities for intermediary services, especially online platforms. Large platforms are subject to specific guidelines due to the risks they present regarding the dissemination of illegal and harmful content. The DMA outlines rules for companies with a 'gatekeeper' status, targeting those most susceptible to unfair practices. This encompasses services like online intermediation, social networks and cloud computing.

Building on the DSA, in November 2022, the Commission proposed measures to streamline data collection and sharing for short-term accommodation rentals. Parliament's Committee on Internal Market and Consumer Protection (IMCO) is reviewing this proposal, and since 15 November 2023, trilogues have been ongoing.

The digital agenda emphasises e-government and cross-border public sector cooperation. On 18 November 2022, the Commission proposed an interoperable Europe act to enhance public services in the EU. This will establish an interoperable Europe board with representatives from the Member States, the Commission and other EU bodies. The COVID-19 pandemic accelerated European interoperability developments, particularly highlighted by the EU Digital COVID Certificate. This was underscored by a Commission communication emphasising improved cross-border cooperation.

On 10 November 2022, responding to Russian aggression against Ukraine, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy introduced an EU cyber defence policy and an action plan on military mobility 2.0. The cyber defence policy and the action plan on military mobility 2.0 aim to increase cyber defence investments, enhance cooperation between military and civilian cyber sectors, ensure efficient cyber crisis management and bolster the EU's position in critical cyber technologies, thereby reinforcing the European Defence Technological Industrial Base.

Building trust online is crucial for societal and economic growth. The Regulation on electronic identification (Regulation (EU) No 910/2014) provides a framework for secure digital interactions among citizens, businesses and authorities. To work towards these objectives, the Commission proposed an amendment to the Digital Identity Regulation that aims to allow 80% of EU citizens to access vital public services securely with a digital identity by 2030.

Beyond regulation, the EU emphasises digital education. The digital education action plan (2021-2027) helps the Member States to adapt their education systems to the digital era. It prioritises creating a robust digital education ecosystem and enhancing skills for digital transformation.

In December 2020, a Commission communication laid out a plan for the recovery and transformation of Europe's media sector, including by addressing issues like market fragmentation. It emphasised the need for more national support through approved recovery plans and highlighted global online platforms' disruptive influence on media, specifically their dominance over data and advertising markets.

The European democracy action plan complements the media plan and focuses on the sector's recovery and digital adaptation. It also discusses the decline in media freedom owing to increasing threats against journalists. The digital economy and society index (DESI) tracks EU countries' digital advancement towards a unified digital market. Annual DESI profiles help the Member States to pinpoint areas for improvement, and the indicators now take into account the Recovery and Resilience Facility and the digital compass.

ROLE OF THE EUROPEAN PARLIAMENT

In its resolution of 12 March 2019, Parliament urged the Commission to reassess the Network and Information Security (NIS) Directive's scope to include other vital sectors not addressed through specific legislation and to address digitalisation threats. The resolution called for alignment with an enhanced European cybersecurity policy and a bigger role for the EU Agency for Cybersecurity. In December 2022, the NIS2 Directive (Directive (EU) 2022/2555) replaced its predecessor, broadening its reach

to cover more sectors and entities. In September 2022, the Commission introduced a proposal for a cyber-resilience act to target enhanced security for various tech products. Parliament and the Council started negotiations on the act in June 2023.

Under the European action plan for democracy, the Commission introduced a proposal for a media freedom act on 16 September 2022 to bolster media pluralism and freedom in the EU. This act would aim to address issues in the media services market and reinforce media independence. In response, the Committee on Civil Liberties, Justice and Home Affairs (LIBE), alongside the Committee on Culture and Education (CULT), and the IMCO Committee held hearings on 31 January and 6 February 2023 to discuss the proposal. Interinstitutional negotiations are currently ongoing and aim to conclude before the end of the legislative term. Additionally, for transparency in democratic processes, regulating political advertising, especially clear labelling, is crucial. The Commission presented a proposal on this issue on 25 November 2021. The IMCO Committee hosted a hearing on 11 July 2022, focusing on transparency in political advertising, both offline and online. On 26 January 2023, the IMCO Committee, together with the CULT and LIBE Committees, adopted a report on this proposal. This formed the basis for the interinstitutional negotiations and a political agreement was reached on 7 November 2023. Parliament's focus on digital transformation has been consistently backed by its Policy Department for Economic, Scientific and Quality of Life Policies through studies and a workshop that addressed challenges and opportunities. During the legislative process for the DSA and DMA, a study examined the impacts of targeted advertising. A workshop on the implications of the proposals and a hearing with Facebook whistleblower Frances Haugen prompted further insights. In February 2022, a study addressed the impacts that influencers have on advertising and consumer safety in the single market. In August 2022, a report from the same department discussed leveraging new technologies for enhanced product safety and outlined potential pros and cons.

Following the March 2022 joint public hearing, the IMCO and LIBE Committees, as well as Parliament as a whole, have collaboratively advanced the AI Act by adopting a report with key amendments, introducing further amendments and agreeing on a draft negotiating mandate in June 2023 to establish harmonised rules on AI in the EU.

On 25 October 2023, MEPs made calls for a ban on addictive techniques, such as endless scrolling or automatic play. Some MEPs also want to introduce a digital 'right to not be disturbed' along with a list of good design practices.

For more information on this topic, please see the websites of the Committee on Internal Market and Consumer Protection and the Committee on Industry, Research and Energy.

Kristi Polluveer / Christina Ratcliff / Barbara Martinello / Jordan De Bono
12/2023

2.4.4. DEFENCE INDUSTRY

The EU defence industry is characterised by economic and technological components that are important factors for Europe's industrial competitiveness. The European Defence Agency supports Member States in improving their defence capabilities and contributes to the development of their defence industry. The sector has recently decided to address some of its main challenges, including market fragmentation and low spending levels, by reinforcing common procurement and enhancing defence expenditure.

LEGAL BASIS

EU action in this field must be based on Article 352 of the Treaty on the Functioning of the European Union (TFEU). While Article 173 TFEU provides a legal basis for EU industrial policy, progress towards applying internal market rules on the defence equipment market has been restrained by Article 346(1) TFEU, which states that 'any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material'.

OBJECTIVES

The defence industry has been important for the EU because of its technological and economic policy aspects. The competitiveness of the European defence industry is vital to the credibility of the common security and defence policy (CSDP). It is important that Member States cooperate with one another in order to put an end to policies and practices that prevent European defence companies from working together more efficiently.

ACHIEVEMENTS

Like all other industrial activities, the EU defence industry is required to deliver increased efficiency in order to provide value for money for its customers and, at the same time, protect its shareholders' interests.

A. Background issues

1. Research and development policy

EU research funding is mainly aimed at civilian objectives. However, some of the technological areas covered – e.g. materials or information and communication technologies – can contribute to the improvement of the defence technological base and the competitiveness of the industry. Defence industry needs should therefore be reflected in the implementation of EU research policy where possible. At its December 2013 meeting, the European Council invited the Member States to increase investment in cooperative research programmes, also calling on the Commission, together with the European Defence Agency (EDA), to develop proposals to further stimulate dual-use (civil and military) research. In 2015, the Member States decided to move from research exclusively focused on civilian and dual use towards a single dedicated European defence research programme.

2. Exports

In 2008, the Council adopted Common Position 2008/944/CFSP (the CP), which defines common rules governing the control of exports of military technology and equipment. With this CP, the EU is the only regional organisation to have established a legally binding arrangement on conventional arms exports. Its aim was to enhance the convergence of the Member States' arms export control policies, with arms exports ultimately remaining a matter of national competence. The EU export control regime itself is governed by Regulation (EC) No 428/2009, which details common EU control rules and a common EU list of dual-use items and provides for coordination and cooperation to support consistent implementation and enforcement throughout the EU. In September 2016, the Commission adopted a proposal to modernise the existing Regulation (EC) No 428/2009 and strengthen controls on exports of dual-use items.

B. EU defence industry policy

1. Towards a European defence equipment market

In September 2004, the Commission presented a Green Paper on defence procurement (COM(2004)0608), with the objective of contributing to 'the gradual creation of a European defence equipment market' between the Member States. The green paper formed part of the 2003 strategy 'Towards a European Union defence equipment policy' . The aim was to improve the efficiency of the use of resources in the area of defence and raise the competitiveness of the industry in Europe, as well as to help bring about improvements in military equipment within the context of European security and defence policy.

In 2007, the Member States agreed to enhance the development of the European defence technological and industrial base with the help of a dedicated strategy. July 2006 saw the launch of the Intergovernmental Regime to encourage competition in the European defence equipment market. This voluntary intergovernmental regime is operated on the basis of the Code of Conduct on Defence Procurement of November 2005, which is supported by a reporting and monitoring system to help ensure transparency and accountability between the Member States. Another important element is the Code of Best Practice in the Supply Chain of May 2005.

The standardisation of defence equipment is important for integrating national markets. Steps were taken with the launch of a European Defence Standards Reference System (EDSTAR) portal in 2012. EDSTAR followed the establishment of the European Defence Standards Information System (EDSIS), which is a portal for wider-ranging European defence materiel standardisation aiming at advertising materiel standards that are to be developed or are to undergo substantive modification.

In July 2013, the Commission adopted a communication including an action plan to enhance the efficiency and competitiveness of the European defence industry (COM(2013)0542). The communication announced the establishment of a market monitoring mechanism for defence procurement.

2. Defence procurement and intra-EU transfers of defence products

Through Directive 2009/43/EC on intra-EU transfers of defence-related products and Directive 2009/81/EC on defence and security procurement, the EU has set up relevant guidelines in order to establish an EU framework in this area.

Directive 2009/43/EC simplified and harmonised the conditions and procedures for transfers of such products throughout the EU. It created a uniform and transparent system of licences (general, global and individual) and allowed companies that are considered trustworthy to undertake transfers under general licences. The intention was for individual licensing to become an exception and be limited to clearly justifiable cases.

Directive 2009/81/EC introduced rules for defence procurement, which aimed to make it easier for defence companies to access other Member States' defence markets. It provides for a negotiated procedure with prior publication as the standard procedure, allowing more flexibility, specific rules on the security of sensitive information, clauses on the security of supply and specific rules on subcontracting. However, the Member States can exempt defence and security contracts if this is necessary for the protection of their essential security interests (Article 346 TFEU).

In June 2021, the EU launched an analysis of the future of European security and defence. This process led to the creation of the Strategic Compass, a policy document that lays down the EU's security and defence strategy for the next 5-10 years.

Russia's invasion of Ukraine had significant implications for European defence. In February 2022, the Commission published a roadmap on critical technologies for security and defence (COM(2022)0061). In March 2022, the Council significantly revised the Strategic Compass to take into account the destabilisation of the European security order and the subsequent change of EU stance, ambition and tools in the realm of defence. (See 5.1.2)

The Commission published a proposal for a regulation on establishing the European Defence Industry Reinforcement through common Procurement Act (EDIRPA) (COM(2022)0349) in July 2022. This is a short-term financial instrument to incentivise, for the first time, joint defence procurement among the Member States.

3. The European Defence Agency

The European Defence Agency (EDA) was established in July 2004 under a joint action of the Council of Ministers to develop defence capabilities, promote and enhance European armaments cooperation, strengthen the European defence technological and industrial base, create an internationally competitive European defence equipment market, and enhance the effectiveness of European defence research and technology. The 2004 joint action was first replaced by a Council decision in July 2011 and then revised in October 2015 by Council Decision (CFSP) 2015/1835 on the statute, seat and operational rules of the EDA.

4. The European defence research programme

Despite the efforts to create a common framework for European defence policy, European defence research as a whole has declined sharply since 2006. In 2015, the Member States agreed to progressively move from research focused exclusively on civilian and dual use in Horizon 2020 towards a dedicated European defence research programme, funded by the EU budget from 2021, as part of the European Defence Fund (EDF).

In November 2016, the Commission published the European defence action plan (COM(2016)0950), in which it proposed the establishment of the EDF and other actions to improve the efficiency of the Member States' spending on joint defence capabilities and foster a competitive and innovative industrial base. The EDF was

anticipated by the Preparatory Action on Defence Research (PADR), with a budget of EUR 90 million for 2017-2019, and the European Defence Industrial Development Programme (EDIDP), with a budget of EUR 500 million for 2019-2020. The EDF became operational on 1 January 2021 with a total agreed budget of almost EUR 8 billion for the 2021-2027 period (Regulation (EU) 2021/697).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has adopted various resolutions touching on the defence industry.

Parliament called for the creation of a European armaments agency and for standardisation in defence in its resolution of 10 April 2002. Its resolution of 17 November 2005 on the Green Paper on defence procurement encouraged the Commission's efforts to contribute to the gradual creation of a European defence equipment market.

In its resolution of 22 November 2012 on the implementation of the CSDP, Parliament insisted on the fact that the strengthening of European capabilities should also result in the consolidation of the industrial and technological base of Europe's defence industry.

Parliament called for the reinforcement of European industrial cooperation, and stressed the need to support CSDP missions through European research and development using the Horizon 2020 research programme in its resolution of 21 November 2013 on the European defence technological and industrial base.

In two resolutions adopted in May 2015 and April 2016, Parliament called for an effective and ambitious European foreign and security policy and urged the Member States to define policy objectives based on common interests. Parliament proposed that a European Defence Union be launched as a matter of urgency in its resolution of 22 November 2016.

In its resolution of 25 March 2021 on procurement in the fields of defence and security and the transfer of defence-related products, Parliament invited the Commission to improve SMEs' access to finance. It also called on the Member States to strengthen intra-EU defence procurement and research and development cooperation and to boost interoperability between their militaries.

Parliament called for increased contributions towards strengthening Ukraine's defence capabilities in its resolution of 1 March 2022 on the Russian aggression against Ukraine. The Member States were asked to accelerate the provision of defensive weapons to Ukraine in response to clearly identified needs.

In its resolution of 18 January 2023 on the implementation of the CSDP – annual report 2022, Parliament welcomed new EU defence initiatives, including the EDIRPA. In September 2023, Parliament adopted a position on the proposed regulation on EDIRPA. The co-legislators agreed, among other things, that the instrument would end in December 2025 rather than in 2024 and would have a budget of EUR 300 million.

In its resolution of 9 May 2023 on critical technologies for security and defence, Parliament welcomed the Commission's establishment of an observatory of critical technologies and underlined the need to reduce dependencies as regards the supply of critical materials, to foster investments for innovation and development, to give priority to joint EU-funded and co-financed projects and to increase funding.

For more information on this topic, please see the websites of the Subcommittee on Security and Defence and of the Committee on Industry, Research and Energy.

Corinne Cordina
10/2023

2.4.5. POLICY FOR RESEARCH AND TECHNOLOGICAL DEVELOPMENT

EU policy for research and technological development (RTD) has been an important area of European legislation since the start, and was extended in the 1980s with a European framework programme for research. In 2014, most EU research funding came under the umbrella of Horizon 2020, which covered the period 2014-2020 and aimed at ensuring the EU's global competitiveness. Its successor Horizon Europe, the current EU research and innovation programme, was launched in 2021 for the period 2021-2027.

LEGAL BASIS

Articles 179 to 190 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Since the Single European Act, the aim of the EU's RTD policy has been to support making EU industry more competitive at international level. Article 179 of the TFEU states that 'the Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely'.

ACHIEVEMENTS

A. Research framework programmes

The first framework programme (FP) was established in 1983, for a four-year period. During the subsequent decades, successive FPs have provided financial support for the implementation of EU research and innovation (R&I) policies. Their objective has evolved from supporting cross-border collaboration in research and technology to encouraging truly European coordination of activities and policies. Today, Horizon Europe, the ninth FP, is the biggest and most ambitious, with a budget of EUR 95.5 billion. In addition, cohesion policy and other EU programmes offer research-related opportunities, among them the European Structural and Investment funds, COSME, Erasmus+, the LIFE programme, the Connecting Europe Facility and the EU's health programmes.

B. (International) coordination and collaboration

The European Research Area Net (ERA-NET) scheme was launched in 2002 with a view to supporting coordination and collaboration among national and regional research programmes and stepping up the coordination of programmes carried out in the Member States and associated countries through networking, including through the 'mutual opening' of programmes and the implementation of joint activities. In this same spirit of coordination and cooperation, Horizon 2020 covered the operational costs of COST, an intergovernmental framework for European Cooperation in Science and Technology designed to help coordinate nationally funded research at EU level. Horizon 2020 also coordinated its activities with the intergovernmental EUREKA initiative to promote international, market-oriented R&I. Horizon Europe is the key tool

for Europe's 2021 global approach to research and innovation, which aims for an R&I environment based on rules and values, and to ensure reciprocity and a level playing field. As part of the global approach, in 2022, the Commission published a toolkit for tackling foreign interference in R&I.

C. European Institute of Innovation and Technology

The European Institute of Innovation and Technology (EIT) was created in 2008 with a view to stimulating and delivering world-leading innovation through the creation of highly integrated Knowledge and Innovation Communities (KICs). The KICs bring together higher education, research, business and entrepreneurship in order to produce new innovations and new innovation models that can inspire others to follow suit.

PARTICIPATION

A typical EU-funded project involves legal entities, i.e. universities, research centres, businesses (including small and medium-sized enterprises (SMEs)), and individual researchers from several Member States and from associated and non-EU countries. The EU has several means at its disposal to achieve its RTD objectives within specific programmes:

— Direct actions carried out by the Joint Research Centre (JRC) and entirely financed by the EU;

— Indirect actions, which may be: (i) collaborative research projects carried out by consortia of legal entities in Member States and associated and third countries; (ii) networks of excellence – a joint programme of activities implemented by a number of research organisations, integrating their activities in a given field; (iii) coordination and support actions; (iv) individual projects (support for 'frontier' research); or (v) support for the training and career development of researchers, mainly for the implementation of Marie Skłodowska-Curie Actions (MSCA).

THE HORIZON 2020 PROGRAMME

In November 2011, the Commission brought forward its legislative package for Horizon 2020, the EU's FP for 2014-2020. Horizon 2020 was the first EU programme to integrate R&I, with strengthened support for public-private partnerships (PPPs), innovative SMEs and the use of financial instruments.

By introducing a single set of rules, Horizon 2020 simplified matters significantly and addressed challenges in society by helping to bridge the gap between research and the market, for example by helping innovative enterprises to develop their technological breakthroughs into viable products with real commercial potential. This market-driven approach included creating partnerships with the private sector and Member States to harness the resources needed.

In addition, attention was paid to broadening participation in EU programmes on the part of SMEs and industry, female researchers, newer Member States and non-EU countries.

Horizon 2020 was focused on three main pillars:

— Excellent science: supporting the EU's position as a world leader in science with a dedicated budget of EUR 24.4 billion, including an increase in funding of 77% for the European Research Council (ERC);

— Industrial leadership: aiming to help secure industrial leadership in innovation with a budget of EUR 17.01 billion. This included an investment of EUR 13.5 billion in key technologies, as well as greater access to capital and support for SMEs;

— Societal challenges: setting aside EUR 29.68 billion to address seven European societal challenges, namely health, demographic change and well-being; food security, sustainable agriculture, marine, maritime and inland water research, and the bioeconomy; secure, clean and efficient energy; smart, green and integrated transport; climate action, resource efficiency and raw materials; Europe in a changing world – inclusive, innovative and reflective societies; and secure societies – protecting the freedom and security of Europe and its citizens.

A number of priorities were addressed across and within all three pillars of Horizon 2020. These included gender equality and the gender dimension in research; social and economic sciences and humanities; international cooperation; and fostering the functioning and achievements of the European Research Area and the Innovation Union, as well as contributing to other Europe 2020 flagship initiatives (e.g. the Digital Agenda).

In order to encourage SMEs to get involved, the Commission had a dedicated financial instrument providing grants for research and development and assisting with commercialisation, through access to equity (finance for early and growth-stage investment) and debt facilities (e.g. loans and guarantees).

In November 2013, Parliament adopted the multiannual financial framework (MFF), allocating Horizon 2020 a budget of EUR 77 billion (in 2013 prices). However, in June 2015 the adoption of the European Fund for Strategic Investments (EFSI) reduced the amount to EUR 74.8 billion.

THE HORIZON EUROPE PROGRAMME

A. Horizon Europe 2021-2027

Horizon Europe will boost the EU's competitiveness and help it to deliver on its strategic priorities.

— Open Science: The continuation of the Horizon 2020 excellent science pillar with a budget of EUR 22 billion.

— Global Challenges and Industrial Competitiveness: addresses European industrial competitiveness and implements EU-wide research-driven missions to tackle specific societal challenges with a budget of EUR 47.6 billion.

— Open Innovation: aims at making Europe a frontrunner in market-creating innovations, developing an innovation ecosystem and strengthening the European Institute of Innovation and Technology (EIT) to foster the integration of business, research, higher education and entrepreneurship with a budget of EUR 12 billion.

In March 2021, the Commission published the Horizon Europe strategic plan 2021-2024, which set out four key strategic orientations for investments, including in key technologies, sectors and value chains, as well as in a resilient European society. In May 2022, the Commission amended the Horizon Europe Work

Programme 2021-2022, increasing the budget, including for WomenTechEU, to support women-led deep-tech start-ups.

B. UK participation and Horizon Europe

The Trade and Cooperation Agreement reached by the EU and the United Kingdom explicitly gives the UK access to five EU funding programmes, including Horizon Europe[1]. The UK will pay for the 'Associate Country' status which was granted to the 16 non-EU countries formerly associated with Horizon 2020. The UK's association with Horizon Europe was stalled since 2021 due to negotiations over the implementation of the Northern Ireland protocol, until a political agreement was reached on 7 September 2023. This agreement envisages access to Horizon Europe funding for researchers and organisations in the UK as of 1 January 2024.

ROLE OF THE EUROPEAN PARLIAMENT

For more than 20 years, Parliament has been calling for an increasingly ambitious EU RTD policy and a substantial increase in total research spending in the Member States to maintain and strengthen the EU's international competitiveness. Parliament has also advocated more collaboration with non-EU partners, the close integration of activities between the Structural Funds and the FPs, and a targeted approach to optimise the involvement of SMEs and facilitate the participation of promising weaker actors. Parliament has furthermore insisted on simplifying procedures and building more flexibility into FPs to make it possible to shift resources to more promising areas and to react to changing circumstances and newly emerging research priorities.

In the trilogue negotiations on the Horizon 2020 package, which resulted in an agreement with the Council in June 2013, MEPs succeeded in securing a number of changes to the proposal, in particular the insertion of two new objectives with separate structures and budget lines:

— Stepping up cooperation and dialogue between the scientific community and society and increasing the attractiveness of research and development careers for young people;

— Widening the range of participants in the programme by teaming up institutions, pairing research staff and exchanging best practices.

In addition, SMEs were to receive at least 20 % of the combined budget of the 'industrial leadership' and 'societal challenges' pillars.

On 27 April 2021, Parliament approved a Horizon Europe programme with a budget of EUR 95.5 billion, which includes EUR 5.4 billion from the European recovery plan NextGenerationEU, as well as an additional investment of EUR 4 billion from the EU (MFF). The programme was already provisionally put in place by the Commission from 1 January 2021. Finally, in the 2021-2027 period, Horizon Europe will have a total budget allocation of EUR 95.517 billion in 2021 prices.

In its resolution of 8 July 2021 on a new ERA for Research and Innovation, Parliament acknowledged that the completion of the European research area by achieving the free movement of researchers and free circulation of scientific knowledge and technology is a key priority for the EU. It underlined the importance of creating synergies between higher education, research institutions and civil society organisations, as well as

[1]Article 719 and 720 of the Trade and Cooperation Agreement.

industrial alliances. Parliament also pointed to the important role played by R&I during the COVID-19 pandemic in coming up with multi-sectoral and transdisciplinary solutions to overcome the crisis.

In its resolution of 6 April 2022 on a global approach to research and innovation: Europe's strategy for international cooperation in a changing world, Parliament recalled the need for continuous investment in researchers' skills and careers. It also emphasised the need for rules-based multilateral cooperation and stressed that association agreements under Horizon Europe can only be signed with countries that are committed to a rules-based open market economy, including fair and equitable dealing with intellectual property rights and respect for human rights, backed by democratic institutions.

In its resolution of 1 March 2022 on the Russian aggression against Ukraine, Parliament called for funding for all R&I cooperation programmes with Russia supported with EU funds to be immediately blocked or withdrawn and for interregional programmes to be suspended.

In its resolution of 4 October 2023 on EU-Switzerland relations, Parliament, noting that Switzerland is currently a non-associated third country in Erasmus+ and Horizon Europe, underlined the importance of EU-Switzerland cooperation in research, innovation and development and called for the parties to find a common approach for Switzerland's participation. Parliament highlighted the significance of joint EU-Swiss efforts in addressing global challenges, such as climate change, health and energy security, through research and development.

For more information on this topic, please see the Committee on Industry, Research and Energy (ITRE) website.

Kristi Polluveer
11/2023

2.4.6. INNOVATION POLICY

Innovation plays an increasingly important role in our economy. As well as benefiting the EU's consumers and workers, it is essential to creating better jobs, building a greener society, and improving our quality of life. It is also key to maintaining the EU's competitiveness on global markets. Innovation policy is the interface between research and technological development policy and industrial policy and aims to create a framework conducive to bringing ideas to market.

LEGAL BASIS

Article 173 of the Treaty on the Functioning of the European Union (TFEU), which states that 'the Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist'.

Articles 179 to 190 of the TFEU regulate the Union's research and technological development (RTD) and space policy. The main instrument of RTD policy is the multiannual framework programme, which defines the objectives, priorities and financial support package. The RTD framework programmes are adopted by the European Parliament and the Council, following the ordinary legislative procedures, with prior consultation of the European Economic and Social Committee.

OBJECTIVES

The importance of innovation policy is widely recognised and it is closely linked to other EU policies, such as those on employment, competitiveness, the climate and environment, industry and energy. The role of innovation is to turn research results into new and better services and products in order to remain competitive in the global marketplace and improve people's quality of life.

The EU spends a smaller percentage of annual GDP (2.3 % in 2020) than the United States (3.45 % in 2020) and Japan (3.26 % in 2020) on research and development (R&D). In addition, there is a brain drain effect, as many of the EU's best researchers and innovators move to countries where conditions are more favourable. The EU market remains fragmented and is not sufficiently innovation friendly. To reverse these trends, the EU developed the concept of an 'Innovation Union', which aimed to:

— Make the EU a world-class science performer;

— Remove obstacles to innovation – like expensive patenting, market fragmentation, slow standard-setting and skills shortages – which prevent ideas getting to market quickly;

— Revolutionise the way the public and private sectors work together, notably through the implementation of European innovation partnerships between the EU institutions, national and regional authorities and business.

ACHIEVEMENTS

A. Innovation Union

The Innovation Union was one of the seven flagship initiatives of the Europe 2020 strategy for a smart, sustainable and inclusive economy. Launched by the Commission in 2010, it aimed to improve conditions and access to finance for research and innovation in the EU so that innovative ideas could be turned into products and services that drive growth and create jobs. The Innovation Union aimed to create a genuine single European market for innovation, which would attract innovative companies and businesses. To achieve this, various measures were proposed in the fields of patent protection, standardisation, public procurement and smart regulation. Several instruments have been introduced to measure and monitor the situation across the EU and the progress being made, including:

— A comprehensive scoreboard for innovation in the EU based on 32 indicators and a European knowledge market for patents and licensing. The European Innovation Scoreboard (EIS) is a Commission instrument developed under the Lisbon Strategy to provide a comparative assessment of the innovation performance of EU Member States, other European countries, and regional neighbours;

— A regional innovation scoreboard, which classifies the EU's regions into four innovation performance groups: 'innovation leaders', 'strong innovators', 'moderate innovators' and 'emerging innovators'. This provides a more detailed mapping of innovation at local level.

The Innovation Union also proposed measures to complete the European Research Area to ensure better consistency between EU and national research policies, and to remove obstacles to researchers' mobility. In education, the Commission supports projects to develop new curricula addressing innovation skills gaps.

B. Horizon 2020 and Horizon Europe

As a Europe 2020 flagship initiative aimed at securing the EU's global competitiveness, Horizon 2020 was the financial instrument supporting the implementation of the Innovation Union. Although it was the EU's eighth framework programme (2014-2020) for research, Horizon 2020 was the first programme to integrate research and innovation, and it enacted many of the specific Innovation Union commitments. In 2013, Parliament adopted the multiannual financial framework (MFF), allocating Horizon 2020 a budget of EUR 77 billion (at 2013 prices). However, the adoption of the European Fund for Strategic Investments (EFSI) in 2015 meant that this amount was cut to EUR 74.8 billion.

An interim evaluation of Horizon 2020 was performed in 2018 and the results were used to lay the foundations for the structure and content of the Horizon Europe programme, for which a proposal was published in 2018.

In response to the COVID-19 pandemic, the Commission presented amended proposals for both legal acts in June 2020 to allow additional funding for Horizon Europe to be provided by the NextGenerationEU (NGEU) recovery instrument. In July 2020, the European Council agreed on the recovery plan for Europe, which combines the MFF for the years 2021-2027 and the funds to be made available through the NGEU. The Horizon Europe programme was established by Regulation (EU) 2021/695, which lays down the objectives of the programme, the budget for the period 2021 to 2027,

the forms of Union funding and the rules for providing such funding. Regarding Horizon Europe, a budget allocation of EUR 5.4 billion from the NGEU instrument, particularly to support the green and digital recovery from the COVID-19 crisis, was eventually agreed. This forms part of the total Horizon Europe budget of EUR 95.5 billion for the period from 2021-2027. In 2022, the Commission amended the Horizon Europe work programme 2021-2022, increasing the budget, including the budget for WomenTechEU, which supports women-led deep-tech start-ups, and launched other actions to boost Europe's innovation potential.

C. Cohesion policy

Cohesion policy also focuses on research and innovation. In more developed regions, at least 85% of resources from the European Regional Development Fund at national level are allocated to objectives related to innovation, with the 2021-2027 priorities being investments in a smarter, greener, more connected and more social Europe that is closer to its citizens.

D. Financial instruments

The Innovation Union also aimed to stimulate private-sector investment. Therefore, among other things, it proposed an increase in EU venture capital investments. In order to improve access to loans for R&D projects and launch demonstration projects, the Commission, in cooperation with the European Investment Bank Group (the European Investment Bank (EIB) and the European Investment Fund), launched a joint initiative under Horizon 2020. This initiative, 'InnovFin – EU Finance for Innovators', consisted of a series of integrated and complementary financing tools and advisory services offered by the EIB Group, covering the entire value chain of research and innovation in order to support investments from the smallest to the largest enterprises.

In addition, in 2014 the Commission proposed its 'Investment Plan for Europe' to unlock public and private investments in the 'real economy' to the sum of at least EUR 315 billion over a three-year fiscal period. EFSI was one of the three pillars of the 'Investment Plan for Europe' and aimed to overcome market failures by addressing market gaps and mobilising private investment. It helped to finance strategic investments in key areas such as infrastructure, research and innovation, education, renewable energy and energy efficiency, as well as risk financing for small and medium-sized enterprises (SMEs) (2.4.2).

Furthermore, a programme for the Competitiveness of Enterprises and SMEs (COSME) has also been introduced, to focus on financial instruments and provide support for the internationalisation of SMEs.

E. The European Institute of Innovation and Technology

The European Institute of Innovation and Technology (EIT) was established in 2008 by Regulation (EC) No 294/2008, as last amended by Regulation (EU) 2021/819. Its overall mission is to increase Europe's competitiveness, its sustainable economic growth and job creation by promoting and strengthening cooperation among leading business, education and research organisations. It also aims to power innovation and entrepreneurship in Europe by fostering environments for creative and innovative ideas to thrive. The EIT achieves these objectives mainly through its Innovation Communities, which bring together more than 1 200 partners from business, research and education (the 'knowledge triangle').

F. Innovation Council

In 2017, the Commission created a fifteen-member High-Level Group of Innovators that helped shape the design of the European Innovation Council (EIC) in the framework of the Commission's proposals for the successor programme to Horizon 2020, Horizon Europe. The EIC is the EU's flagship innovation programme to identify, develop and scale up breakthrough, and in particular deep-tech, innovations, and it has a budget of EUR 10.1 billion to support them throughout the life cycle from early stage research, to proof of concept, technology transfer, and the financing and scale up of start-ups and SMEs. In 2021, the Commission signed a Memorandum of Understanding between the EIC and the EIT to strengthen their cooperation to support the best European entrepreneurs. In response to the Russian war of aggression in Ukraine, the Commission set aside EUR 20 million to support Ukrainian start-ups through a targeted amendment of the 2022 EIC work programme.

G. European innovation agenda

In 2022, the Commission adopted a New European Innovation Agenda, proposing 25 specific actions in five flagship areas: funding scale-ups; enabling innovation through experimentation spaces and public procurement; accelerating and strengthening innovation in European innovation ecosystems across the EU; fostering, attracting and retaining deep-tech talents; and improving policymaking tools. Its aim is to place Europe in the lead of the new wave of deep-tech innovation, which requires breakthrough R&D combined with substantial capital investment in order to address pressing societal challenges. In order to continuously develop the strategic aspects of the European Innovation Agenda, the European Sounding Board on Innovation was created as a platform for advice and for discussions of emerging issues with high-level representatives from European academia and industry.

The Commission's 2022 edition of the Science, Research and Innovation Performance (SRIP) report also focuses on the EU's innovation performance in a global context and suggests measures to address issues such as the difficulty of attracting and retaining talent.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has adopted a number of resolutions to bolster the EU's innovation policy, including the following:

— Resolution of 16 June 2010 on the EU 2020 strategy. This resolution strongly supported a policy covering the industrial sector in its entirety and aimed to create the best environment to maintain and develop a strong, competitive and diversified industrial base in the EU, while enabling the transition to a sustainable, energy-efficient economy;

— Resolution of 12 May 2011 entitled 'Innovation Union: transforming Europe for a post-crisis world';

— Resolution of 26 October 2011 on the Agenda for New Skills and Jobs. This resolution underlined the importance of developing closer cooperation between research institutes and industry and encouraging and providing support for industrial companies to invest in R&D;

— Resolution of 6 July 2016 on synergies for innovation: the European Structural and Investment Funds, Horizon 2020 and other European innovation funds and EU programmes';

— Resolution of 25 November 2020 on a New Industrial Strategy for Europe, where Parliament underlined that securing the EU's sovereignty and strategic autonomy requires a competitive industrial base and huge investment in research and innovation (R&I) in key enabling technologies, innovative solutions, and key value chains;

— Resolution of 6 April 2022 on a global approach to research and innovation: Europe's strategy for international cooperation in a changing world, which welcomed the Commission communication on the issue and emphasised the need for the Union to develop rules-based multilateral cooperation to address key global economic, societal and environmental challenges, in which R&I should play a pivotal role;

— Resolution of 22 November 2022 on the implementation of the European Innovation Council, in which Parliament called on the Commission to re-assess its implementation of the EIC Fund under the Horizon Europe programme and made recommendations for more effective support of breakthrough innovation in Europe.

For more information on this topic, please see the Committee on Industry, Research and Energy (ITRE) website.

Kristi Polluveer
11/2023

2.4.7. ENERGY POLICY: GENERAL PRINCIPLES

Challenges facing the EU in the field of energy include issues such as import dependency, limited diversification, high and volatile energy prices, growing energy demand, security risks in producing and transit countries, growing threats of climate change, decarbonisation, slow progress in energy efficiency, challenges posed by the increasing share of renewables, and the need for more transparent, integrated and interconnected energy markets. A variety of measures aiming to achieve a complete Energy Union is at the core of the EU's energy policy.

LEGAL BASIS

Article 194 of the Treaty on the Functioning of the European Union (TFEU).

Specific provisions:

— Security of supply: Article 122 of the TFEU;

— Energy networks: Articles 170-172 of the TFEU;

— Coal: Protocol 37 clarifies the financial consequences resulting from the expiry of the Treaty establishing the European Coal and Steel Community in 2002;

— Nuclear energy: the Treaty establishing the European Atomic Energy Community (Euratom Treaty) serves as the legal basis for most EU actions in the field of nuclear energy.

Other provisions affecting energy policy:

— Internal energy market: Article 114 of the TFEU;

— External energy policy: Articles 216-218 of the TFEU.

OBJECTIVES

According to the Energy Union (2015), the five main aims of the EU's energy policy are to:

— Diversify Europe's sources of energy, ensuring energy security through solidarity and cooperation between EU countries;

— Ensure the functioning of a fully integrated internal energy market, enabling the free flow of energy through the EU through adequate infrastructure and without technical or regulatory barriers;

— Improve energy efficiency and reduce dependence on energy imports, cut emissions, and drive jobs and growth;

— Decarbonise the economy and move towards a low-carbon economy in line with the Paris Agreement;

— Promote research in low-carbon and clean energy technologies, and prioritise research and innovation to drive the energy transition and improve competitiveness.

Article 194 of the TFEU makes some areas of energy policy a shared competence, signalling a move towards a common energy policy. Nevertheless, each Member State maintains its right to 'determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply' (Article 194(2)).

ACHIEVEMENTS

A. General policy framework

The current European energy policy is based on the Energy Union strategy published in February 2015, which aimed at building an energy union to give EU households and businesses a secure, sustainable, competitive and affordable energy supply. The current EU energy targets for 2030 include:

— An increase in the share of renewable energies in final energy consumption to 42.5%, with the aim of achieving 45%;

— An 11.7% reduction in primary (indicative) and final energy consumption compared to 2020 projections, equivalent to no more than 992.5 and 763 million tonnes of oil equivalent (Mtoe) respectively;

— The interconnection of at least 15% of the EU's electricity systems.

The current European regulatory framework for energy was built on the EU's substantial 'Fit For 55' package, which was initially aimed at aligning all climate and energy targets. This was successively modified by the REPowerEU plan, whose aim was to rapidly and completely phase out dependency on Russian fossil fuels.

The framework is composed of several provisions covering the promotion of renewable energy (Directive (EU) 2018/2001), energy efficiency (Directive (EU) 2018/2002), governance and electricity interconnectivity (Regulation (EU) 2018/1999), electricity market design (Directive (EU) 2019/944 and Regulation (EU) 2019/943), risk-preparedness (Regulation (EU) 2019/941), the energy performance of buildings (Directive (EU) 2018/844), decarbonised gas and hydrogen markets (Directive 2009/73/EC and Regulation (EC) No 715/2009), energy taxation (Directive 2003/96/EC), trans-European energy infrastructures (Regulation (EU) 2022/869), the cooperation of energy regulators (Regulation (EU) 2019/942), batteries (Regulation (EU) 2023/1542), changes following the withdrawal of the United Kingdom from the EU (Decision (EU) 2019/504), and air and maritime transport initiatives (Regulation (EU) 2023/2405 and Regulation (EU) 2023/1805). Under the current framework, EU countries need to establish 10-year integrated national energy and climate plans (NECPs) for the period from 2021 to 2030, submit a progress report every two years and develop consistent national long-term strategies to meet the agreed energy targets and the goals of the Paris Agreement.

As a result of the REPowerEU modifications, the energy framework was extended to include rules for minimum gas storage filling levels of 90% ahead of winter (Regulation (EU) 2022/1032), voluntary gas demand reduction targets for Member States of 15% (Regulation (EU) 2022/1369; extended to March 2024), voluntary demand aggregation of gas (Regulation (EU) 2022/2576; EU Energy Platform), electricity demand reduction targets of 10% and 5% during peak hours and time-limited emergency interventions to

address high energy prices (Regulation (EU) 2022/1854). The current policy agenda is still driven by energy security and price affordability concerns.

B. Completing the internal energy market

A fully integrated and properly functioning internal energy market ensures affordable energy prices, gives the necessary price signals for investments in green energy, secures energy supplies and opens up the least costly path to climate neutrality.

The internal energy market legislation, first introduced in the Third Energy Package (2009-2014), was based on the principles of cross-border cooperation and fair retail markets. The packages that followed focused on risk-preparedness, coordination, incentives for consumers, decarbonisation and security of energy supply. Institutional negotiations between the co-legislators on reforming the design of the electricity market are ongoing (see fact sheet 2.1.9 on the internal energy market).

C. Energy Efficiency

The cornerstone of the EU's energy efficiency policy is the new Energy Efficiency Directive (Directive (EU) 2023/1791 (EED)), which is based on the 'energy efficiency first' principle and established, as the EU's energy efficiency target for 2030, an 11.7% reduction in the EU's primary (indicative) and final energy consumption, compared to 2020 projections. This is equivalent to no more than 992.5 and 763 Mtoe respectively. The 'energy efficiency first' principle sets an obligation for EU countries to ensure that energy efficiency solutions are considered in planning, policy and investment decisions in both the energy and non-energy sectors (see fact sheet 2.4.8 on energy efficiency).

D. Renewable Energy

Solar power, wind, ocean and hydropower, biomass and biofuels are all renewable energy sources. Energy markets alone cannot deliver the desired level of renewables in the EU, meaning that national support schemes and EU financing schemes may be needed. The principles of the EU's renewable energy policy include the diversification of its energy supply, the development of local energy resources in order to ensure security of supply and the reduction of its external energy dependency. The cornerstone of EU renewable energy policy is the new Renewable Energy Directive (EU) 2023/2413, which established a 42.5% target for the share of renewable energies in the final energy consumption of the EU by 2030, with the aim of achieving 45%. A special role is played by hydrogen, which is a decarbonised energy carrier. Several strategies and plans exist for different sources of renewable energy (see fact sheet 2.4.9 on renewable energy).

E. Strengthening external energy relations

Following the decision to phase out Russian energy imports, the current EU external energy policy is driven by the diversification of its energy supply. In March 2022, the REPowerEU communication proposed massive and fast reductions in EU fossil gas use of at least 155 bcm, equivalent to the volume imported from Russia in 2021, two thirds of which is to be achieved within a year. In May 2022, in line with the REPowerEU plan, the EU worked with international partners to diversify supplies, secure liquefied natural gas (LNG) imports and increase new pipeline gas deliveries. It created the EU Energy Platform, a voluntary coordination mechanism supporting the joint EU purchase of gas and hydrogen, and published the EU External Energy Strategy supporting Ukraine, Moldova, the Western Balkans and the Eastern Partnership countries.

F. Improving security of energy supply

The current EU energy security policy includes coordination measures to secure energy supplies and rules to prevent and respond to accidents on offshore installations and potential disruptions to energy supply and emergency oil and gas stocks, including exploration and production licences. After the Russian invasion of Ukraine in February 2022, security of energy supply became the main energy priority.

The EU's trans-European energy infrastructure policy is covered by the TEN-E regulations. Adopted in June 2022, TEN-E Regulation (EU) 2022/869 identifies eleven priority corridors in different geographic regions for electricity, offshore grid and hydrogen infrastructure. It defines EU Projects of Common Interest (PCIs) within EU countries and projects of mutual interest (PMIs) between the EU and non-EU countries, ends support for new natural gas and oil projects and introduces mandatory sustainability criteria for all projects. TEN-E Regulation (EU) 2022/869 is funded by the Connecting Europe Facility 2021-2027, established by Regulation (EU) 2021/1153.

As part of the European Green Deal, the Just Transition Fund is the main cohesion instrument supporting coal and carbon-intensive regions in their transition to low-carbon energy sources.

G. Research, development and demonstration projects

Horizon Europe is the framework programme running from 2021 to 2027 and the main EU tool for promoting energy research, with a budget of EUR 95.5 billion (in 2018 prices), including EUR 5.4 billion from the NextGenerationEU programme.

The European Strategic Energy Technology (SET) plan accelerated the market introduction and take-up of a climate neutral energy system through the adoption of low-carbon technologies. It identified 10 technologies and actions for research and innovation covering the whole innovation chain, including financing and the regulatory framework.

Owing to the major role of electricity in decarbonisation, batteries as electricity storage devices were identified as key enabler technologies of a low-carbon economy. The strategic action plan on batteries aims at building a globally integrated, sustainable and competitive industrial base for batteries.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always expressed its strong support for a common energy policy addressing decarbonisation, competitiveness, security and sustainability issues. It has called numerous times for coherence, determination, cooperation and solidarity between Member States in facing current and future challenges in the internal market and for the political commitment of all Member States.

Parliament's latest resolutions on energy have seen an increase in the relevance and ambition of all climate and environmental objectives underpinning EU energy policy. In November 2019, Parliament declared the climate and environmental emergency in Europe. In October 2020, it called for an EU target reduction in all EU greenhouse gas emissions of 60% by 2030 and for a phase-out of all fossil fuel subsidies by 2025 at the latest. As a reaction to the COVID-19 pandemic, it reaffirmed the green and digital strategies as the cornerstones of the EU Energy Union. In September 2022, it supported more ambitious energy efficiency and renewable energy targets.

On 1 March 2022, Parliament condemned Russia's illegal, unprovoked and unjustified military invasion of Ukraine. In April 2022, it called for an immediate full embargo on Russian imports of oil, coal, nuclear fuel and gas. In October 2022, it called on EU countries to avoid cutting off energy supplies and evictions for vulnerable households and expressed regret that the Commission tabled many of its proposals in the form of a Council regulation instead of a co-decision procedure. It also adopted several other resolutions on specific aspects of the conflict: welcoming the granting of EU candidate status to Ukraine and Moldova and a European perspective for Georgia; enhancing the EU's protection of children and young people fleeing the war in Ukraine; and highlighting the impact of the war on women.

Parliament also supports the diversification of energy sources and routes of supply. It has stressed the importance of the gas and electricity interconnections through central and south-eastern Europe along a north-south axis for creating more interconnections, diversifying LNG terminals and developing pipelines, thereby opening up the internal market. In highlighting the significant role of research in ensuring a sustainable energy supply, Parliament stressed the need for common efforts in the field of new energy technologies, as well as for additional public and private funding.

For more information on this topic, please see the website of the Committee on Industry, Research and Energy.

Matteo Ciucci
11/2023

2.4.8. ENERGY EFFICIENCY

Energy efficiency is a strategic priority of the Energy Union, which is built on the 'energy efficiency first' principle. Energy efficiency measures are recognised as means for achieving a sustainable energy supply, cutting greenhouse gas emissions, improving security of supply, reducing import bills and promoting European competitiveness. EU legislation on energy efficiency has evolved significantly over the past 15 years. In 2023, the co-legislators increased the energy efficiency target, i.e. the target for reducing the EU's final energy consumption, to 11.7% by 2030.

LEGAL BASIS

Article 194 of the Treaty on the Functioning of the European Union.

ACHIEVEMENTS

A. The Energy Efficiency Directive

1. The Energy Efficiency Directive: towards 2020

The original Energy Efficiency Directive (Directive (2012/27/EU)), which entered into force in December 2012, required Member States to set indicative national energy-efficiency targets in order to ensure that the EU reached its headline target of reducing energy consumption by 20% by 2020. In absolute terms, the EU's energy consumption by 2020 had to be no more than 1 474 and 1 078 million tonnes of oil equivalent (Mtoe) for primary and final energy respectively. Member States were free to make these minimum requirements more stringent as they strove to save energy. The directive also introduced a binding set of measures to help Member States achieve this target and set legally binding rules for end users and energy suppliers. The Member States were required to publish their three-year national energy efficiency action plans.

2. The revised Energy Efficiency Directive: towards 2030

In November 2018, as part of the 'clean energy for all Europeans' package, the Commission proposed a revision of the Energy Efficiency Directive, increasing the EU primary and final energy consumption reduction targets to 32.5% by 2030, compared with energy consumption forecasts for 2030 made in 2007. In absolute terms, the EU's energy consumption by 2030 would be no more than 1 128 and 846 Mtoe for primary and final energy respectively. The directive also required Member States to put in place measures to reduce their annual energy consumption by an average of 4.4% by 2030. In accordance with Regulation (EU) 2018/1999, the Member States had to propose national energy targets and establish 10-year national energy and climate plans (NECPs) for the 2021-2030 period. They must also submit progress reports every two years, which are monitored and assessed by the Commission, which can take measures at EU level to ensure their consistency with the overall EU targets. The new directive entered into force in December 2018 and was transposed by the Member States into national law by 25 June 2020.

In July 2021, as part of the 'Fit for 55' package, the Commission proposed a first revision of the Energy Efficiency Directive to align its energy efficiency targets with the EU's new climate ambition and embedded in legislation the energy efficiency first principle

as a pillar of the Energy Union. In accordance with this principle, Member States must ensure that energy efficiency solutions, including demand-side resources and system flexibilities, are assessed in planning, policy and major investment decisions. The Commission proposed to increase the EU's binding annual energy efficiency target to at least 9% by 2030, measured against updated forecasts for 2030 made in 2020 (equivalent to energy efficiency targets for primary and final energy consumption respectively to 39% and 36% by 2030, measured against old forecasts for 2030, made in 2007). In absolute terms, the EU's energy consumption by 2030 under the proposal would be no more than 1 023 and 787 Mtoe for primary and final energy respectively by 2030.

The proposal asked Member States to set indicative national energy reduction targets, provided a formula to Member States to calculate their contributions, introduced enhanced automatic gap-filling mechanisms and doubled Member States' obligation to make new annual energy savings to 1.5% of their final energy consumption between 2024 and 2030. It also introduced exemplary requirements for public buildings, such as an annual target for reducing energy consumption of 1.7% for the public sector and a renovation target of at least 3% of the total floor area of public administration buildings. It also proposed to alleviate energy poverty by prioritising vulnerable customers and introduced audit obligations and technical competence requirements, especially for large energy consumers.

In May 2022, as part of its REPowerEU plan following the Russian aggression against Ukraine, the Commission proposed a second revision of the Energy Efficiency Directive, further increasing the binding energy efficiency target from 9% to 13%. In absolute terms, the EU's energy consumption by 2030 under the proposal would be no more than 980 and 750 Mtoe for primary and final energy respectively by 2030.

The proposal detailed short-term behavioural changes to cut gas and oil demand by 5% and encouraged Member States to start specific communication campaigns targeting households and industry and to use fiscal measures to favour energy savings, such as reduced value added tax rates on energy efficient heating systems, building insulation and appliances and products. It also set out contingency measures in case of severe supply disruption and announced guidance on prioritisation criteria for customers and the facilitation of a coordinated EU demand reduction plan. Between July and December 2022, the directive was complemented by the introduction of new demand reduction targets in the internal energy market (2.1.9), including a voluntary gas reduction target of 15% (or 45 billion cubic metres) between August 2022 and March 2023, a voluntary gross electricity reduction target of 10% between December 2022 and March 2023 and a mandatory electricity reduction target of 5% during peak hours.

The new Energy Efficiency Directive (Directive (EU) 2023/1791), in force since 10 October 2023, sets the EU energy efficiency targets, i.e. the reduction of primary and final energy consumption at EU level, to 11.7% by 2030, compared with the 2030 energy consumption forecasts made in 2020. In absolute terms, the EU's energy consumption by 2030 will be no more than 992.5 and 763 Mtoe for primary and final energy respectively by 2030. Each Member State will set an indicative national energy efficiency contribution based on final energy consumption to meet the Union's binding final energy consumption target. Member States will achieve cumulative end-use energy savings by 2030 equivalent to new annual savings of at least 0.8% of final energy consumption up to 31 December 2023, 1.3% from 1 January 2024, 1.5% from

1 January 2026 and 1.9% from 1 January 2028. The directive introduced the obligation for the public sector to play an exemplary role: the EU's public bodies must reduce their combined total final energy consumption by at least 1.9% each year compared with 2021, and must renovate at least 3% of the total floor area of their heated and/or cooled buildings each year. It also established reporting obligations for data centres, dedicated one-stop shops for small and medium-sized enterprises, households and public bodies, and obligations for heating and cooling planning in municipalities with a population of more than 45 000.

B. General framework

1. Energy performance of buildings

a. The Energy Performance of Buildings Directive

The Energy Performance of Buildings Directive (Directive 2010/31/EU), amended in 2018, is meant to ensure that each Member State has a highly energy-efficient and decarbonised building stock by 2050. The Energy Performance of Buildings Directive introduces mandatory long-term renovation strategies for Member States in order to support the renovation of the national stock of both public and private buildings into a highly energy-efficient and decarbonised building stock by 2050. It also accelerates the transformation of existing buildings into 'nearly zero-energy buildings' by 2050, requiring all new buildings to be nearly zero-energy from 2021 onwards, and supports the modernisation of all buildings with smart technologies.

On 15 December 2021, the Commission proposed a revision of the Energy Performance of Buildings Directive to align it with its climate-neutral ambitions. The revision sets the vision and outlines the tools for achieving a zero-emission building stock by 2050, introduces a new definition of zero-emission buildings and refines existing definitions, such as 'nearly-zero energy building' and 'deep renovation'. It replaces long-term renovation strategies with national building renovation plans, which are more operational and subject to better monitoring, to be submitted by 30 June 2024. It increases minimum energy standards by requiring all new EU buildings to be zero-emission as of 2030 and all new public buildings as of 2027, all non-residential buildings in energy performance class G to be renovated to at least class F by 2027 and class E by 2030, and all residential buildings to reach at least class F by 2030 and class E by 2033. The revision ensures comparable national standards for energy performance certificates by 2025, introduces voluntary renovation passports by 2024 and a smart readiness indicator by 2026 and provides financial support to alleviate energy poverty.

On 18 May 2022, after the Russian invasion of Ukraine and in line with the REPowerEU plan, the Commission amended the Energy Performance of Buildings Directive by enhancing support for solar energy in buildings, including a selected phased-in compulsory installation of rooftop solar energy (solar rooftop initiative) and energy demand reduction measures.

b. The renovation wave strategy

In October 2020, the Commission published the renovation wave strategy to boost renovation, aiming to at least double renovation rates over the next 10 years and make sure that renovations lead to greater energy and resource efficiency. The renovation wave initiative builds on measures agreed on under the 'clean energy for all Europeans' package, notably the requirement for each Member State to publish a long-term building

renovation strategy, and the building-related aspects of each Member State's national energy and climate plans.

2. Cogeneration

In the framework of the Energy Union package, the Commission launched an EU strategy on heating and cooling in 2016 to boost the energy efficiency of buildings and improve linkages between electricity systems and district heating systems, which would increase the use of renewable energy and encourage the reuse of waste heat and cold generated by industry. Legislative provisions for this strategy were included in the 'clean energy for all Europeans' package.

The 2018 revision of the Energy Efficiency Directive required Member States to assess and notify the Commission of the potential for high-efficiency cogeneration and district heating and cooling on their territory and to conduct a cost-benefit analysis based on climate conditions, economic feasibility and technical suitability (with some exemptions).

The Commission's proposed revision of the Energy Efficiency Directive in July 2021 introduced stricter planning and follow-up of comprehensive assessments, revised definitions of efficient district heating and cooling and additional criteria for specific emissions in high-efficiency cogeneration (270g CO_2/kWh). In May 2022, an amendment on the energy performance of buildings introduced obligations on Member States to promote the deployment of solar installations on buildings.

3. Energy efficiency of products

The EU introduced several measures concerning the energy efficiency of products, including ecodesign requirements for energy-related products (Directive 2009/125/EC) and setting a framework for energy labelling (Regulation (EU) 2017/1369). The new framework for labelling the energy efficiency of products eliminates A+, A++ or A+++ ratings and returns to a simpler A-G scale. Between 2021 and 2023, the Commission adopted several regulations on ecodesign and energy labelling with regard to ecodesign requirements for different types of products.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has continuously called for more ambitious energy efficiency targets and stricter regulations.

On 17 January 2018, Parliament adopted first reading amendments calling for a minimum 35% target on energy efficiency in the EU by 2030, higher than the 30% proposed by the Commission.

On 15 January 2020, Parliament adopted a resolution on the European Green Deal calling for the Energy Efficiency Directive and Energy Efficiency of Buildings Directive to be revised in line with the EU's increased climate ambition. On 17 September 2020, it adopted a resolution in favour of maximising the energy efficiency potential of the EU building stock, calling on the Commission to develop consistent measures to stimulate faster and deeper renovation of buildings.

On 14 September 2022, Parliament adopted an amendment raising the EU energy efficiency target proposed by the Commission as part of its REPowerEU plan to at least 13% of final energy consumption by 2030, compared to 2020 projections. This is

equivalent to final and primary energy consumption limits of 740 Mtoe and 960 Mtoe respectively.

On 14 March 2023, Parliament defined its first reading position on the need for residential buildings to achieve at least energy performance class E by 2030, and D by 2033 (as opposed to F and E under the Commission's proposal) and on support measures against energy poverty. Non-residential and public buildings would have to achieve the same classes by 2027 and 2030 respectively. A limited set of exemptions would apply for special buildings (monuments, technical buildings, temporary use of buildings or churches, places of worship, etc.) and for public social housing where renovations would lead to rent increases that cannot be compensated by saving on energy bills, and targeted grants and subsidies should be made available to vulnerable households. Parliament and the Council are currently in interinstitutional negotiations.

For more information on this topic, please see the website of the Committee on Industry, Research and Energy.

Matteo Ciucci
11/2023

2.4.9. RENEWABLE ENERGY

Renewable sources of energy (wind power, solar power, hydroelectric power, ocean energy, geothermal energy, biomass and biofuels) are alternatives to fossil fuels that help cut greenhouse gas emissions, diversify the energy supply and reduce dependence on unreliable and volatile fossil fuel markets, particularly oil and gas. EU legislation to promote renewables has evolved significantly over the past 15 years. In 2021, renewable energy accounted for 21.8% of the EU's gross final energy consumption. In 2023, the co-legislators increased the EU renewable energy target for 2030 to 42.5%, with the aim of achieving 45%.

LEGAL BASIS AND OBJECTIVES

Article 194 of the Treaty on the Functioning of the European Union.

ACHIEVEMENTS

A. Renewable Energy Directive

1. Renewable Energy Directive: towards 2020

The original Renewable Energy Directive, adopted on 23 April 2009, established that 20% of the EU's gross final energy consumption and 10% of each Member State's transport energy consumption must come from renewable energy sources by 2020. The directive set and confirmed mandatory national targets consistent with the EU's overall target, and asked Member States to develop indicative trajectories to achieve their targets, to submit national renewable energy action plans and to publish national renewable energy progress reports every two years. It mapped out various mechanisms that Member States could apply in order to promote investment in renewable energy sources, such as support schemes, guarantees of origin, joint projects, cooperation with third countries, as well as sustainability criteria for biofuels.

In December 2018, as part of the 'Clean energy for all Europeans' package, the revised Renewable Energy Directive entered into force. This directive, which had to become national law in EU countries by June 2021, established a new binding renewable energy target for the EU of at least 32% of gross final energy consumption by 2030 and an increased 14% target for the share of renewable fuels in transport by 2030. In accordance with Regulation (EU) 2018/1999, EU countries propose national energy targets and establish 10-year national energy and climate plans (NECPs), due by March 2023, for the period 2021-2030. The NECPs are monitored every two years with progress reports and assessed by the Commission, which can take measures at EU level to ensure their consistency with the overall EU targets.

2. Renewable Energy Directive: towards 2030

The revised Renewable Energy Directive updated by Directive (EU) 2023/2413, was the result of three major modifications. In July 2021, as part of the 'fit for 55' package, a first amendment aimed to align the Union's renewable energy targets with its new climate ambition, increasing the binding renewable energy sources target for the EU to 40% by 2030 and promoting the uptake of renewable fuels, such as hydrogen, in industry and transport with additional sub-targets. In May 2022, as part

of its REPowerEU plan following the Russian aggression against Ukraine, a second amendment sought to accelerate the clean energy transition in line with the decision to phase-out dependence on Russian fossil fuels, increasing the binding renewable energy sources target for the EU to 45% by 2030 by installing heat pumps, increasing solar photovoltaic capacity and importing renewable hydrogen and biomethane. In November 2022, a third amendment (released as a Council Regulation) aimed to accelerate the deployment of renewable energy by presuming renewable energy plants to be of overriding public interest, allowing faster permitting for renewable projects and specific derogations from EU environmental legislation.

In October 2023, the update of the Renewable Energy Directive (RED) raised the 2030 renewable energy sources target to 42.5% by 2030, with Member States striving to achieve 45%. The new directive speeds up procedures to grant permits for new renewable energy power plants, such as solar panels or wind turbines, and sets the maximum time to approve new installations to 12 months in go-to areas for renewables and to 24 months elsewhere. In the transport sector, it establishes either: a 29% target for the share of renewable energy by 2030, or a 14.5% reduction of greenhouse gas emissions, by greater use of advanced biofuels and renewable fuels of non-biological origin, such as hydrogen. For industry, the directive introduces a binding target of 42% of renewable hydrogen in total hydrogen consumption by 2030 and 60% by 2035 and an indicative target of an annual average increase of 1.6 percentage points in renewable sources. It also introduces an indicative target of 5% of newly installed renewable energy capacity from innovative technologies by 2030 for Member States.

B. The European Green Deal

On 11 December 2019, the European Green Deal committed to tackle energy, climate and environmental challenges and to achieve climate neutrality by 2050 in accordance with the Paris Agreement. The transformation of the energy system plays a fundamental role, as the production and use of energy accounts for more than 75% of the EU's greenhouse gas emissions.

In July and December 2021, the 'fit for 55' package, a set of proposals to revise and update EU energy, climate and biodiversity legislation, operationalised the EU green pact. The package included proposals on the Renewable Energy Directive, the Energy Efficiency Directive, the Energy Taxation Directive, the Energy Performance of Buildings Directive, the Hydrogen and Decarbonised Gas Market Package, the Methane Emissions Reduction in the Energy Sector Regulation, a Social Climate Fund and several other proposals.

In March and May 2022, following Russia's aggression against Ukraine, the REPowerEU plan amended the 'fit for 55' package to phase out the dependence on Russian fossil fuels. Based on REPowerEU, the EU adopted several measures, including the Permitting Regulation, which simplified and speeded up renewable permitting procedures by focusing on specific technologies and projects such as solar photovoltaic, wind and heat pumps, as well as repowering.

Negotiations on these important files have made significant progress and have largely already been finalised in 2023.

1. Renewable energy financing mechanism

Regulation (EU) 2020/1294 establishes an EU financing mechanism to help countries achieve their individual and collective renewable energy targets. The mechanism

links countries that contribute to the financing of projects (contributing countries) with countries that agree to have new projects built on their territories (host countries). The Commission sets out the implementation framework and means of funding for the mechanism, establishing that Member States, EU funds, or private sector contributions may finance actions under the mechanism. The energy generated through this mechanism will count towards the renewable energy targets of all participating countries.

C. Future steps

1. Trans-European Networks for Energy

The Trans-European Networks for Energy (TEN-E) is a policy that focuses on linking the energy infrastructure of EU countries. The TEN-E Regulation, in line with the 2050 climate neutrality objective, lays down EU rules for cross-border energy infrastructure. It identifies 11 priority corridors and three priority thematic areas, defines the new Projects of Common Interest (PCIs) among EU Member States, introduces Projects of Mutual Interest (PMIs) between EU and third countries, highlights the role of offshore wind projects, and excludes future natural gas projects from EU funding. It also promotes the integration of renewables and new clean energy technologies into the energy system, connects regions currently isolated from European energy markets, strengthens existing cross-border interconnections, promotes cooperation with partner countries and proposes ways to simplify and accelerate permitting and authorisation procedures.

2. Revision of the Energy Taxation Directive

In July 2021, the Commission published a proposal on the revision of the Energy Taxation Directive 2003/96/EC, proposing to align the taxation of energy products with EU energy and climate policies, promoting clean technologies and removing outdated exemptions and reduced rates that currently encourage the use of fossil fuels.

D. Resource-specific issues

1. Solar

The REPowerEU plan introduced a strategy to double solar photovoltaic capacity to 320 GW by 2025 and install 600 GW by 2030. The plan also included a phased-in legal obligation to install solar panels on new public, commercial and residential buildings and a strategy to double the rate of deployment of heat pumps in district and communal heating systems. Under the plan, Member States are also required to identify and adopt plans for dedicated ‘go-to’ areas for renewables, with shortened and simplified permitting processes.

2. Biomass, biofuels and hydrogen

The Renewable Energy Directive ((EU) 2018/2001) includes a target of 1% by 2025 and 5.5% by 2030 for advanced biofuels, biogas and renewable fuels of non-biological origin (RFNBO) in the transport sector.

In July 2020, the EU strategy for energy system integration and the hydrogen strategy introduced three targets: at least 6 GW of renewable hydrogen electrolysers in the EU and up to 1 million tonnes of renewable hydrogen produced by 2024; at least 40 GW of renewable hydrogen electrolysers and up to 10 million tonnes of renewable hydrogen produced in the EU by 2030; and the large-scale deployment of renewable hydrogen from 2030 onwards. In May 2022, the REPowerEU plan established the

double target of producing and importing 10 million tonnes of renewable hydrogen by 2030. In October 2023, the Renewable Energy Directive established the indicative target of 42% of renewable hydrogen in total hydrogen consumption by 2030 and 60% by 2035 for industry.

3. Offshore wind

On 19 November 2020, the Commission published an EU strategy on offshore renewable energy aiming to increase the EU's production of electricity from offshore renewable energy sources from 12 GW in 2020 to over 60 GW by 2030 and 300 GW by 2050. The TEN-E Regulation, which entered into force in June 2022, introduced non-binding regional agreements for the deployment of offshore renewables. In January 2023, Member States agreed on higher non-binding goals for offshore renewable energy generation of 111 GW and 317 GW by 2030 and 2050.

4. Ocean Energy

In January 2014, the Commission published its blue energy action plan to support the development of ocean energy, including that generated by waves, tidal power, thermal energy conversion and salinity gradient power. The offshore renewable energy strategy also highlighted that the marine renewables industry would need to be scaled up fivefold by 2030 and 25-fold by 2050.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has consistently advocated the use of renewables and highlighted the importance of setting mandatory targets for 2020 and, more recently, for 2030.

In January 2018, in view of the 2018 revision of the Renewable Energy Directive, Parliament supported a binding target for the Union of at least 35% renewable energy in 2030 and reinforced self-consumption as a right. After negotiations with the Council, the EU's binding target was decreased to at least 32%.

In January 2020, Parliament adopted a resolution on the European Green Deal calling for a revision of the Renewable Energy Directive and the setting of binding national targets for each Member State, and recommending the implementation of the 'energy efficiency first' principle in all sectors and policies.

In May 2021, Parliament adopted a resolution on a European strategy for energy system integration and a resolution on a European Strategy for Hydrogen, which advocated for the decarbonisation of and use of renewables in the production of electricity and hydrogen, and called on the Commission to assign a guarantee of origin to renewable hydrogen and promote the development of renewables.

In February 2022, Parliament adopted a resolution on a European strategy for offshore renewable energy. The resolution noted that the installed capacity of offshore wind should be 70-79 GW to ensure a cost-competitive transition to a 55% reduction in greenhouse gas emissions by 2030 and called to go beyond the 55% reduction target by 2030.

In September 2022, in its first reading position on the revision of the Renewable Energy Directive, Parliament supported the Commission's proposal to raise the share of renewables in the EU's final energy consumption to 45% by 2030.

In October 2023, Parliament and Council raised the 2030 renewable energy target to 42.5%, with the aim of achieving 45%, almost doubling the existing share of renewable energy in the EU.

For more information on this topic please see the Committee on Industry, Research and Energy (ITRE) website.

Visit the European Parliament homepage on renewable energy.

Matteo Ciucci
11/2023

2.4.10. NUCLEAR ENERGY

Nuclear energy is a low-carbon alternative to fossil fuels and accounts for almost 26% of the electricity produced in the EU. However, in the aftermath of the 1986 Chernobyl disaster and the 2011 catastrophe in Fukushima, nuclear energy has become highly controversial. While Member States choose whether to include nuclear power in their energy mix, EU legislation aims at improving the safety standards of nuclear power stations and ensuring that nuclear waste is safely handled and disposed of.

LEGAL BASIS

Treaty establishing the European Atomic Energy Community (Euratom Treaty), Articles 40-52 (investment, joint undertakings and supplies) and 92-99 (nuclear common market).

OBJECTIVES

To tackle the general shortage of 'conventional' energy in the 1950s, the six founding Member States looked to nuclear energy as a means of achieving energy independence. Since the costs of investing in nuclear energy could not be met by individual countries, the founding Member States joined together to form the European Atomic Energy Community.

ACHIEVEMENTS

A. Nuclear safety

Nuclear safety deals with the safe operation of nuclear installations, radiation protection and the application of safeguards for nuclear materials in non-EU countries. The EU aims to promote an effective nuclear safety culture, including by implementing the highest nuclear safety and radiation standards. Member States are required to establish national frameworks on nuclear safety requirements, the licencing of nuclear power stations, supervision and enforcement. Encouraging the responsible and safe management of spent fuel and radioactive waste, as well as the decommissioning and remediation of former nuclear sites and installations, is also an EU priority.

1. Legislative work

a. The Euratom Treaty

The Basic Safety Standards Directive 2013/59/Euratom establishes uniform basic safety standards for the protection of the health of workers, members of the public and patients. It lays down precise parameters and leaves little discretionary margin. The directive applies under normal conditions, but it also refers to planned and emergency exposure situations. The requirements for emergency preparedness and responses were strengthened to take into account the lessons learnt from the 2011 Fukushima nuclear accident.

b. The Nuclear Safety Directive

Following the Fukushima nuclear accident, the Commission carried out a comprehensive risk and safety assessment of all EU nuclear power stations to assess

the safety and robustness of nuclear installations in the event of extreme natural events. The Commission gave an overall positive assessment of current EU safety standards, but highlighted the need for further upgrades in order to ensure better consistency among Member States and to catch up with international best practices (COM(2012)0571). Together with the European Nuclear Safety Regulators Group, the Commission drew up peer-reviewed national action plans to schedule physical upgrades of EU reactors.

In 2014, EU-wide safety rules for nuclear installations were updated (Directive 2014/87/Euratom). In February 2015, the Commission proposed that the information requirements laid down in Articles 41 and 44 of the Euratom Treaty be reviewed to align them with the new policy developments.

In 2018, the Commission proposed a Council regulation establishing a European Instrument for International Nuclear Safety Cooperation (Council Regulation (Euratom) 2021/948), replacing the previous Instrument for Nuclear Safety Cooperation and complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty (COM(2018)0462).

In June 2021, the new European Instrument for International Nuclear Safety Cooperation entered into force with a financial envelope of EUR 300 million for 2021-2027.

2. Radiation protection

Exposure to ionising radiation represents a significant danger to human health and for the environment. Council Directive 2013/59/Euratom of December 2013 laid down basic safety standards for protection against the dangers arising from exposure to ionising radiation. This simplified EU legislation by replacing five directives, and introduced binding requirements for protection against indoor radon, the use of building materials and an environmental impact assessment of discharges of radioactive effluents from nuclear installations. In addition, Council Directive 2013/51/Euratom focused on monitoring radioactive substances in water intended for human consumption.

Several regulations (including Commission Implementing Regulation (EU) 2020/1158) have laid down conditions governing imports of agricultural products originating in non-EU countries following the accident at the Chernobyl nuclear power station. Council Regulation (Euratom) 2016/52 lays down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other radiological emergency.

Post-Brexit relations on nuclear energy fall under the Euratom-UK Agreement, which provides for a stable framework to continue cooperation and trade with the UK in this field.

3. Transport of radioactive substances and waste

A system of prior authorisation for shipments of radioactive waste was established in the EU in 1992 and amended significantly by Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel, of November 2006. According to Article 20, Member States have to report every three years to the Commission on the implementation of the directive. Rules to maintain control of shipments of radioactive sources between EU countries were established in Council Regulation (Euratom) No 1493/93.

4. Waste management

A legal framework for waste management in the EU was created in 2011 with Council Directive 2011/70/Euratom establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste. It provides for close monitoring of national programmes for the construction and management of final repositories, and legally binding safety standards. Member States published their first national programmes in 2015 and must submit national reports every three years on the implementation of the directive.

5. Decommissioning

The decommissioning of a nuclear facility involves activities ranging from the shutdown and removal of nuclear material to site restoration and the complete elimination of radiological hazards, and falls ultimately under the responsibility of the Member States. In June 2018, the Commission adopted two proposals for a Council regulation (COM/2018/0466 and COM/2018/0467) establishing dedicated financial programmes for the decommissioning of nuclear facilities and the management of radioactive waste pertaining to the nuclear power stations in Bulgaria (Kozloduy), Slovakia (Bohunice) and Lithuania (Ignalina), including nuclear research installations on four sites of the Commission's Joint Research Centre. The proposed budget allocation for 2021-2027 was set at:

— EUR 466 million, with a maximum EU co-financing rate applicable from 2021-2027 of no higher than 50% for the Kozloduy programme and for the Bohunice programme;

— EUR 552 million, with a maximum EU co-financing rate applicable from 2021-2027 of 86% for the Ignalina programme.

Council Regulations (Euratom) 2021/100 and (EU) 2021/101 were adopted on 25 January 2021. They entered into force on 21 February 2021 and have been in application since 1 January 2021.

6. Safeguarding nuclear materials

A number of regulations have been adopted and amended to establish a system of safeguards ensuring that nuclear materials are used only for the purposes declared by their users and that international obligations are complied with, e.g. Commission Regulation (Euratom) No 302/2005. These safeguards cover the entire nuclear fuel cycle, from the extraction of nuclear materials in the Member States, to their importation from non-EU countries and exportation outside the EU. The Commission is responsible for checking civil nuclear material within the EU.

B. Nuclear research, training activities and information

Nuclear research in the EU is funded through multiannual framework programmes. The Euratom programme for nuclear research and training activities complements, but remains separate from, Horizon 2020, the EU framework programme for research and innovation. The amount dedicated to the Euratom programme for 2021-2025 is EUR 1.38 billion, divided among three specific programmes: indirect actions in the field of fusion energy research (EUR 583 million), nuclear fission and radiation protection (EUR 266 million) and direct actions undertaken by the Commission's Joint Research Centre (EUR 532 million).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament's role in the decision-making process under the Euratom Treaty is limited since it only has consultation powers. Nevertheless, it has consistently put emphasis on the need to clarify the distribution of responsibilities between EU institutions and Member States and strengthen the EU framework on various aspects of nuclear installations, as well as on the importance of improving safety and environmental protection requirements.

In its resolution of July 2011 on energy, infrastructure priorities for 2020 and beyond, Parliament supported the Commission's decision to introduce 'stress tests' for nuclear power stations in the EU. Its supplementary resolution of March 2013, pointed out the limits of the stress tests carried out by the Commission in 2012 and asked for the inclusion of additional criteria, notably in relation to material deterioration, human error and flaws in reactor vessels. Parliament pushed for full implementation of the safety improvements.

In its first reading position of June 2011 on the proposed Council directive on the management of spent fuel and radioactive waste, Parliament supported the Commission's proposal for a complete ban on the export of radioactive waste, while the Council was in favour of allowing exports under very strict conditions.

On 14 March 2013, in the aftermath of the Fukushima disaster, in its resolution on risk and safety assessments of nuclear power plants in the European Union (stress tests), Parliament supported the Commission's decision to review European nuclear installations with stress tests, but criticised their limited scope and called for additional criteria to be included in the future.

In its first reading position of October 2013 on the proposal for a Council directive updating the basic safety standards for protection against ionising radiation, Parliament again called for a change of legal basis. It extended the scope of the directive to any planned, existing, accidental or emergency radiation exposure, made stricter the dosage limits for which exposure is allowed and strengthened penalties and reparation for damages. It also improved the system for informing the public.

On 21 April 2021, the Commission made a number of amendments to the EU Taxonomy Regulation (Regulation (EU) 2020/852), which entered into force in July 2020, signalling the inclusion of nuclear energy in the taxonomy. The rules, spelled out in a Taxonomy Climate Delegated Act (Commission Delegated Regulation (EU) 2021/2139), set out detailed green finance criteria, but left out gas and nuclear power for a separate decision to be taken at a later stage by Parliament.

On 1 March 2022, in its resolution on the Russian aggression against Ukraine, Parliament categorically rejected the Russian 'rhetoric hinting at the possible resort to weapons of mass destruction', reminding Russia of its international obligations and warning of the dangers of a nuclear escalation of the conflict.

In its resolution of 7 April 2022 on the conclusions of the European Council meeting of 24-25 March 2022, including the latest developments of the war against Ukraine and the EU sanctions against Russia and their implementation, Parliament called for additional punitive measures, including 'an immediate full embargo on Russian imports of oil, coal, nuclear fuel and gas', accompanied by a plan to ensure the EU's security of energy supply, as well as a strategy to 'roll back sanctions in the event that Russia takes

steps towards restoring Ukraine's independence [...]'. Parliament also condemned the taking over by Russian forces of active or decomposed nuclear facilities and sites in the territory of Ukraine.

On 11 July 2022, after having adopted an objection to the Taxonomy Complementary Climate Delegated Act, which included, under strict conditions, specific nuclear and gas energy activities in the list of economic activities covered by the EU taxonomy, Parliament decided not to veto the Commission's proposal.

For more information on this topic, please see the website of the Committee on Industry, Research and Energy.

Corinne Cordina
10/2023

2.5. ENVIRONMENT POLICY

2.5.1. ENVIRONMENT POLICY: GENERAL PRINCIPLES AND BASIC FRAMEWORK

European environment policy is based on the principles of precaution, prevention and rectifying pollution at source, and on the 'polluter pays' principle. The EU faces complex environmental issues, ranging from climate change and biodiversity loss to resource depletion and pollution. Environment policy has recently been moved to centre stage in EU policymaking, with the Commission launching the European Green Deal (2019) as the main driver of its economic growth strategy.

LEGAL BASIS

Articles 11 and 191 to 193 of the Treaty on the Functioning of the European Union (TFEU). The EU is competent to act in all areas of environment policy, such as air and water pollution, waste management and climate change. Its scope for action is limited by the principle of subsidiarity and the requirement for unanimity in the Council in the fields of fiscal matters, town and country planning, land use, quantitative water resource management, choice of energy sources and structure of energy supply.

ORIGINS AND DEVELOPMENT

EU environment policy dates back to the European Council held in Paris in 1972, at which the Heads of State or Government (in the aftermath of the first UN conference on the environment) declared the need for a Community environment policy flanking economic policies, and called for an action programme. The Single European Act of 1987 introduced a new 'Environment Title', which provided the first legal basis for a common environment policy with the aims of preserving the quality of the environment, protecting human health and ensuring rational use of natural resources. Subsequent treaty revisions strengthened the Community's commitment to environmental protection and the role of the European Parliament in its development. The Treaty of Maastricht (1993) made the environment an official EU policy area, introduced the codecision procedure and made qualified majority voting in the Council the general rule. The Treaty of Amsterdam (1999) established the duty to integrate environmental protection into all EU sectoral policies with a view to promoting sustainable development. 'Combating climate change' (2.5.2) became a specific goal with the Treaty of Lisbon (2009), as did sustainable development in relations with third countries. The Treaty of Lisbon also granted the EU legal personality, which enables the EU to conclude international agreements. These advancements strengthened the EU's role as a key actor on the global environmental front, leading the way with key initiatives such as the European Green Deal and the EU Climate Law.

GENERAL PRINCIPLES

EU environment policy is based on the principles of precaution, prevention and rectifying pollution at source, and on the 'polluter pays' principle. The precautionary principle is a risk management tool that comes into play when there is scientific uncertainty about a suspected risk to human health or to the environment emanating from a certain action or policy. For instance, should doubts arise about the potentially

harmful effects of a product, and should – following an objective scientific evaluation – uncertainty persist, this principle calls for the product to be removed from the market. Such measures must be non-discriminatory and proportionate, and must be reviewed once more scientific information is available.

The 'polluter pays' principle is implemented by the Environmental Liability Directive, which aims to prevent or otherwise remedy environmental damage to protected species or to natural habitats, water and soil. Operators of certain occupational activities such as the transport of dangerous substances, or of activities that imply discharge into waters, have to take preventive measures in case of an imminent threat to the environment. If damage has already occurred, they are obliged to take the appropriate measures to remedy it and pay for the costs. The scope of the directive has been broadened three times to include the management of extractive waste, the operation of geological storage sites and the safety of offshore oil and gas operations respectively.

Furthermore, integrating environmental concerns into other EU policy areas has become an important concept in European politics following the European Council held in Cardiff in 1998. In recent years, environmental policy integration has made significant progress, for instance in the field of energy policy, as reflected in the parallel development of the EU's climate and energy package or in the roadmap for moving to a competitive low-carbon economy by 2050.

In December 2019, the Commission launched the European Green Deal, which should help make Europe the first climate-neutral continent in the world. In 2021, the EU Climate Law was adopted, binding the EU to achieve climate neutrality by 2050 and setting a target of reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels.

BASIC FRAMEWORK

A. Environment Action Programmes

Since 1973, the Commission has issued multiannual Environment Action Programmes (EAPs) setting out forthcoming legislative proposals and goals for EU environment policy. In May 2022, the 8th EAP entered into force, as the EU's legally agreed upon common agenda for environment policy until the end of 2030.

It reiterates the seventh EAP's vision for 2050: ensuring well-being for all, while staying within planetary boundaries.

The new programme endorses and builds on the environmental and climate objectives of the European Green Deal along six priority objectives:

— Achieving the 2030 greenhouse gas emission reduction target and climate neutrality by 2050;

— Enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change;

— Advancing towards a regenerative growth model, decoupling economic growth from resource use and environmental degradation, and accelerating the transition to a circular economy;

— Pursuing a zero-pollution ambition, including for air, water and soil and protecting the health and well-being of Europeans;

— Protecting, preserving and restoring biodiversity, and enhancing natural capital (notably air, water, soil, forest, freshwater, wetland and marine ecosystems);

— Reducing environmental and climate pressures related to production and consumption (particularly in the areas of energy, industrial development, buildings and infrastructure, mobility and the food system).

B. Horizontal strategies

The EU introduced its first **sustainable development strategy** (SDS) in 2001, thereby adding an environmental dimension to its Lisbon strategy. In response to the 2030 Agenda for Sustainable Development adopted by the UN in 2015, the Commission published a communication in 2016 entitled 'Next steps for a sustainable European future – European action for sustainability', outlining how to integrate the Sustainable Development Goals (SDGs) into EU policy priorities.

In January 2019, the Commission presented a reflection paper on the SDGs entitled 'Towards a Sustainable Europe by 2030', which puts forward three scenarios for advancing the SDGs. Parliament has expressed its support for the scenario that goes the furthest, which proposes guiding all EU and Member State actions by defining specific SDG implementation targets, proposing concrete deliverables for 2030 and establishing a mechanism of reporting and monitoring of SDG progress.

In 2011, the EU adopted its biodiversity strategy to 2020, reflecting the commitments made within the UN Convention on Biological Diversity (CBD), the main international agreement on biodiversity, to which the EU is a party. As a contribution towards the discussions on a post-2020 global biodiversity framework (2022 UN Biodiversity Conference (COP15)) the Commission presented its biodiversity strategy for 2030 in May 2020 as a comprehensive, ambitious and long-term plan to protect nature and reverse the degradation of ecosystems. In June 2021, Parliament endorsed this strategy and made further suggestions for strengthening it.

Within the framework of the European Green Deal, in May 2020 the Commission presented its farm to fork strategy, which aims to make food systems fair, healthy and environmentally friendly. Parliament largely endorsed the vision and goals of this strategy in October 2021.

C. International environmental cooperation

The EU plays a key role in international environmental negotiations. It is a party to numerous global, regional or sub-regional multilateral environmental agreements on a wide range of issues, such as nature protection and biodiversity, climate change and transboundary air or water pollution. The EU helped shape several major international agreements adopted in 2015 at UN level, such as the 2030 Agenda for Sustainable Development (which includes the 17 global SDGs and their 169 associated targets), the Paris Agreement **on** Climate Change and the Sendai Framework for Disaster Risk Reduction. It also became a party to the Convention on International Trade in Endangered Species (CITES), underscoring its dedication to conserving biodiversity and curbing illicit wildlife trade.

D. Environmental impact assessment and public participation

Certain projects (private or public) that are likely to have significant effects on the environment, e.g. the construction of a motorway or an airport, are subject to an environmental impact assessment (EIA). Furthermore, a range of public plans and

programmes (e.g. concerning land use, transport, energy, waste or agriculture) are subject to a similar process called a strategic environmental assessment (SEA). Here, environmental considerations are already integrated at the planning phase, and possible consequences are taken into account before a project is approved or authorised so as to ensure a high level of environmental protection. In both cases, consultation with the public is a central aspect. This goes back to the Aarhus Convention, a multilateral environmental agreement under the auspices of the United Nations Economic Commission for Europe (UNECE), which entered into force in 2001 and to which the EU and all its Member States are parties. It guarantees three rights to the public: public participation in environmental decision-making, access to environmental information held by public authorities (e.g. on the state of the environment or of human health where affected by the former) and the right of access to justice where the other two rights have been disregarded.

E. Implementation, enforcement and monitoring

EU environmental law has been built up since the 1970s. Several hundred directives, regulations and decisions are in force today in this field. However, the effectiveness of EU environmental policy is largely determined by its implementation at national, regional and local levels, and deficient application and enforcement remain an important issue. Monitoring is crucial – both of the state of the environment and of the level of implementation of EU environmental law.

To address the wide disparity in the level of implementation among Member States, in 2001 the EU adopted (non-binding) minimum standards for environmental inspections. In order to improve the enforcement of EU environmental law, Member States have to provide for effective, proportionate and dissuasive criminal sanctions for the most serious environmental offences. These include, for instance: the illegal emission or discharge of substances into the air, water or soil; illegal trade in wildlife; illegal trade in ozone-depleting substances; and illegal shipment or dumping of waste. The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international network of the environmental authorities of EU Member States, accession and candidate countries, as well as Norway, created to boost enforcement by providing a platform for policymakers, environmental inspectors and enforcement officers to exchange ideas and best practices.

In May 2016, the Commission launched the Environmental Implementation Review, a new tool designed to help reach full implementation of EU environmental legislation, which goes hand in hand with its fitness check (Regulatory Fitness and Performance Programme – REFIT) of monitoring and reporting obligations under existing EU legislation so as to make it simpler and less costly.

In 1990, the European Environment Agency (EEA) was established in Copenhagen to support the development, implementation and evaluation of environment policy and to inform the general public on the matter. In 2020, it published its sixth State of the Environment Report on the status and outlook of the European environment.

The EU also runs the European Earth Observation Programme (Copernicus), which provides satellite observation data on land, marine, atmosphere and climate change. With regard to pollutants released into the air, water and land, the European Pollutant Release and Transfer Register (E-PRTR) provides key environmental data from more than 30 000 industrial facilities in the EU.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament plays a major role in shaping EU environmental law. During its eighth term (2014-2019), it dealt with legislation deriving from the circular economy action plan (on waste, batteries, end-of-life vehicles, landfilling, etc.), climate change issues (ratification of the Paris Agreement, effort sharing, accounting for land use, land-use change and forestry in the EU's climate change commitments, Emissions Trading System reform, etc.) and more.

Parliament has repeatedly recognised the need for improved implementation as a key priority. In a resolution on 'improving the delivery of benefits from EU environmental measures: building confidence through better knowledge and responsiveness', it criticised the unsatisfactory level of implementation of environmental law in the Member States, and made several recommendations for a more efficient implementation, such as dissemination of best practices between Member States and between regional and local authorities. During its ninth term (2019-2024), Parliament has played a key role in discussing the proposals put forward by the Commission as part of the European Green Deal, both in reacting to the proposals and indicating the directions in which it wants to see further ambition and action. On 29 November 2019, Parliament declared a climate and environmental emergency in Europe and worldwide. In October 2021, Parliament adopted the amended Aarhus Regulation negotiated with Member States to broaden access to information, public participation in decision-making and access to justice in environmental matters.

In 2021, Parliament also passed the EU Climate Law, legally binding the EU to climate action. Additionally, in April 2023, it approved legislation under the 'Fit for 55' package, aimed at achieving climate goals.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Maria-Mirela Curmei / Christian Kurrer
10/2023

2.5.2. COMBATING CLIMATE CHANGE

The European Union is among the leading major economies when it comes to tackling greenhouse gas (GHG) emissions. In 2020, EU GHG emissions were down by 31% from 1990 levels, their lowest level in 30 years, exceeding the EU's Kyoto Protocol target of reducing emissions by 20% by 2020. In 2019, the Commission presented the European Green Deal and is now proposing a set of measures aimed at increasing the EU's GHG emission reduction ambition to 55% by 2030 and decarbonising the EU's economy by 2050, in line with the Paris Agreement.

LEGAL BASIS AND OBJECTIVES

Article 191 of the Treaty on the Functioning of the EU makes combating climate change an explicit objective of EU environmental policy.

GENERAL BACKGROUND

Human activities such as the burning of fossil fuels, deforestation and farming lead to the emission of GHGs such as carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O) and fluorocarbons. These GHGs trap heat that is radiated from the Earth's surface and prevent it from escaping into space, thereby causing global warming. The assessed best estimates of the rise in the average global temperature by the end of the century vary from 1.4 °C to 4.4 °C, according to the sixth synthesis report on climate change of the Intergovernmental Panel on Climate Change (IPCC), published in March 2023.

Global warming has led and will lead to more extreme weather events (e.g. floods, droughts, heavy rain and heatwaves), forest fires, the disappearance of glaciers and rising sea levels, biodiversity loss, plant diseases and pests, food and fresh water shortages, desertification and the migration of people fleeing these dangers. Science shows that the risks of irreversible and catastrophic change would greatly increase if global warming exceeded a 2 °C – or even 1.5 °C – rise above pre-industrial levels.

In 2006, the Stern Review suggested that managing global warming would cost 1% of global GDP every year, while inaction could cost at least 5% and up to 20% of global GDP in a worst-case scenario. Thus, only a small part of total global GDP would be required for investment in a low-carbon economy, while fighting climate change would, in return, entail much greater net benefits.

The Kyoto Protocol was the first international treaty to set legally binding targets to cut GHG emissions. It was adopted on 11 December 1997 and entered into force in 2005. The Protocol was ratified by 192 Parties and represented a landmark international agreement to combat climate change. It committed industrialised countries to reduce their GHG emissions in line with agreed individual targets under the principle of 'common but differentiated responsibility and respective capabilities'. The first universal agreement to combat climate change was adopted in December 2015 at the 21st Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change, in Paris. The Paris Agreement strives to keep the increase in the average global temperature 'well below' 2 °C, while trying to limit the temperature increase to 1.5 °C above pre-industrial levels. To accomplish this goal,

Parties are aiming to reach a global peak in GHG emissions as soon as possible, and to achieve net-zero emissions in the second half of this century. Financial flows are to be made consistent with these goals. For the first time, all Parties must make ambitious efforts to reduce their GHG emissions, following the principle of 'common but differentiated responsibilities and respective capabilities', i.e. in line with their individual situations and the possibilities available to them. They are required to upgrade their climate action plans ('nationally determined contributions') every five years and communicate them in a transparent manner. The most vulnerable and least developed countries and small island developing states will be supported through financial and capacity-building means. Adaptation (e.g. water conservation, crop rotation, public planning and awareness-raising, increasing the height of dykes, relocating ports, etc.) and mitigation (e.g. increasing renewable energy use, promoting behavioural change, etc.) are recognised as global challenges, along with the importance of addressing 'loss and damage' associated with the adverse effects of climate change. In order to be ratified, The agreement needed a threshold number of 55 Parties representing at least 55% of total global GHG emissions. The EU formally ratified the Paris Agreement on 5 October 2016, thus enabling its entry into force on 4 November 2016.

OBJECTIVES AND ACHIEVEMENTS

A. EU efforts to combat climate change

By means of its 2030 climate and energy framework, agreed on in 2014 prior to the Paris Agreement, the EU has committed itself to the following goals, to be reached by 2030: reducing GHG emissions by at least 40% below 1990 levels, improving energy efficiency by 32.5% and increasing the share of renewable energy sources to 32% of final consumption. The 2030 framework is a follow-up to the '20-20-20 targets' agreed on in 2007 by EU leaders for 2020: a 20% reduction in GHG emissions, a 20% increase in the share of renewable energy in final energy consumption and a 20% reduction in total EU primary energy consumption (compared to 1990 levels). These targets were all translated into binding legislative measures, which were also linked to the EU's targets under the Kyoto Protocol.

The EU Emissions Trading System (ETS), the first and still the largest international carbon market, is a key EU policy instrument for fighting climate change. Set up in 2005, the ETS is based on the 'cap and trade' principle: a 'cap' is set on the total amount of GHG emissions that can be emitted by the more than 11 000 installations (factories, power stations, etc.) included in the scheme. Each installation buys or receives 'emission allowances' auctioned by the Member States. These credits – corresponding to one tonne of CO_2 each – can be traded with other installations if unused. Over time, the overall amount of allowances is progressively reduced. Two funds – a modernisation fund and an innovation fund – help to upgrade energy systems in lower-income Member States and foster innovation by funding renewable energy, carbon capture and storage and low-carbon projects. Aviation emissions are also covered by the ETS, although the current exemption for intercontinental flights has been extended until the end of 2023, when the first phase of the International Civil Aviation Organization's (ICAO) Carbon Reduction and Offsetting Scheme for International Aviation is set to begin. Switzerland and the EU have agreed to link their emissions trading systems.

Emissions from sectors not covered by the ETS, such as road transport, waste, agriculture and buildings, are subject to binding annual GHG emission reduction targets for each Member State, laid out in the Effort Sharing Regulation. Parliament and the Council agreed on minimum targets for 2021-2030 to help reach the EU's goal of a 30% GHG reduction from these sectors compared to 2005 and to contribute to the achievement of the objectives of the Paris Agreement. Furthermore, for the first time, each Member State must ensure that emissions from land use, land use change and forestry do not exceed removals. In other words, forests, croplands and grasslands have to be managed sustainably in order to absorb as much GHGs from the atmosphere as possible, and at least as much as the sector emits ('no-debit-rule'), and thus make an important contribution to the fight against climate change.

The Renewable Energy Directive seeks to ensure that, by 2030, renewable energy such as solar power, wind, hydroelectric power and biomass will make up an initial target of at least 32% of the EU's total energy consumption in terms of electricity generation, transport, heating and cooling. Each Member State is required to adopt its own national renewable energy action plan, including sectoral targets. In order to mainstream the use of renewable energy in the transport sector, Member States must set an obligation on fuel suppliers to ensure that the share of renewable energy within the final energy consumption of the transport sector is at least 14% by 2030.

The 2018 revision of the Directive on Energy Efficiency sets a 2030 energy efficiency target of 32.5% for the EU (calculated using the 2007 reference baseline scenario), with a clause for upward revision by 2023. In addition, the revised Directive on the Energy Performance of Buildings, adopted in May 2018,included measures to accelerate the rate of building renovation and the move towards more energy-efficient systems, and intelligent energy management systems.

Moreover, for the first time, the Governance Regulation implements a transparent governance process to track progress towards the objectives of the EU Energy Union and Climate Action, including monitoring and reporting rules. Member States are obliged to adopt integrated national energy and climate energy plans for the 2021-2030 period. In September 2020, the Commission took stock of the final plans and confirmed their overall consistency with the Union's 2030 targets with the exemption of energy efficiency, for which an ambition gap for 2030 remains. The governance process also provides an opportunity to update the plans every two years to reflect experience and to take advantage of new opportunities for the remainder of the decade.

Carbon capture and storage technology separates CO_2 from atmospheric emissions (resulting from industrial processes), compresses the CO_2 and transports it to a location where it can be stored. According to the Intergovernmental Panel on Climate Change, this process could remove 80-90% of CO_2 emissions from fossil fuel-burning power plants. However, the implementation of the envisaged demonstration projects in Europe has proven more difficult than initially foreseen, with high costs being one of the main barriers.

New passenger cars registered in the EU have to comply with CO_2 emissions standards, which have set an EU fleet-wide target of 95g/km for cars, as of 2021. In order to create incentives for the industry to invest in new technologies, 'super-credits' can be used, whereby the cleanest cars in each manufacturer's range count as more than one car when calculating the average specific CO_2 emissions.

Fuel quality is also an important element for GHG emission reductions. EU legislation aimed to reduce the GHG intensity of fuels by 6% by 2020: this was to be achieved by, among other measures, the use of biofuels, which also had to meet certain sustainability criteria.

CO_2 emissions from international maritime shipping are significant, and are expected to grow considerably. While pressing for a global approach, the EU has established an EU-wide system for the monitoring, reporting and verification of CO_2 emissions from ships, as a first step towards cutting them. Large ships have to monitor and annually report their verified CO_2 emissions released on their way to and from EU ports and within those ports, along with other relevant information.

Following bans on chlorofluorocarbons in the 1980s to stop the depletion of the ozone layer, fluorinated gases (F-gases) are today used as substitutes in a range of industrial applications such as air conditioning and refrigeration, since they do not harm the ozone layer. However, they may have a global warming potential of up to 25 000 times higher than that of CO_2. The EU has therefore taken measures to control the use of F-gases and ban their use in new air conditioning appliances and refrigerators by 2022-2025, thereby setting the pace for a global phase-out.

B. The European Green Deal

On 11 December 2019, the Commission presented the European Green Deal, an ambitious package of intended measures designed to enable the EU to become carbon neutral by 2050. The measures, which are accompanied by a roadmap of key actions, range from ambitious cuts to emissions, to investing in cutting-edge research and innovation, and preserving Europe's natural environment. Supported by investments in green technologies, sustainable solutions and new businesses, the Green Deal also aims to act as a new EU growth strategy to transform the EU into a sustainable and competitive economy. The involvement and commitment of the public and of all stakeholders is crucial to its success. Among the key actions proposed under the European Green Deal is the European Climate Law to ensure a climate-neutral EU by 2050. In particular, it makes provision for increasing the 2030 target to cut GHG emissions to at least 55% from 1990 levels. Moreover, other Commission proposals include communications on the Sustainable Europe Investment Plan and the European Climate Pact; proposals for regulations establishing the Just Transition Fund and revising the guidelines for trans-European energy infrastructure; and EU strategies for energy system integration and for hydrogen; and a new EU strategy on adaptation to climate change.

On 14 July 2021, the Commission put forward a package of legislative proposals with the aim of making the EU 'Fit for 55' and delivering the transformational change that is needed across the economy, society and industry on the way to achieving climate neutrality by 2050. These proposals include the extension of the ETS to maritime, road transport and buildings, and cleaner fuels for the aviation and maritime sectors, including new infrastructure for alternative fuels. On 17 December 2022, Parliament and the Council reached an agreement on more ambitious measures to reform the ETS: an emission reduction target of 62% by 2030 compared to 2005 levels. To support Member States in their efforts to cut emissions from buildings, road transport and certain industrial sectors, a new separate emissions trading system (ETS II) will be launched in 2027. The above-mentioned package also introduces the new Carbon

Border Adjustment Mechanism to counter carbon leakage, the new Social Climate Fund and enhanced modernisation and innovation funds.

The Effort Sharing Regulation (approved in March 2023 as part of the 'Fit for 55' package) increases the EU's climate ambition. In particular, all sectors covered by the regulation are required to achieve a collective reduction of 40% in their emissions by 2030 compared to 2005 levels. The updated Renewable Energy Directive proposes increasing the overall binding target of renewables in the EU's energy mix to 42.5%.

The revision of the Energy Efficiency Directive, concluded after the interinstitutional negotiations in July 2023, sets an ambitious legally binding EU energy efficiency target of an 11.7% reduction in final energy consumption by 2030 compared to 2020.

Moreover, on 5 April 2022, the Commission presented a strengthened F-gases proposal that aims to save the equivalent of 40 million tonnes of CO_2 emissions by 2030. On 14 October 2020, the Commission also presented an EU strategy to reduce methane emissions. Methane is the second biggest contributor to climate change after CO_2. Tackling methane emissions is therefore essential in reaching our 2030 climate targets and the 2050 climate neutrality goal. The Commission presented a further proposal on 15 December 2021 to reduce methane emissions in the energy sector in Europe and in the global supply chain.

The revision of the Energy Performance of Buildings Directive, adopted on 15 December 2021, upgrades the existing regulatory framework, while providing Member States with the flexibility needed to take into account the differences in the building stock across Europe. The directive is currently being recast. On 14 March 2023, Parliament's plenary approved its stance on the directive, establishing a more ambitious position ahead of negotiations with Member States. The revised directive sets out how Europe can achieve a zero-emission and fully decarbonised building stock by 2050. In February 2023, Parliament and the Council agreed on a further EU fleet-wide emission reduction target for new cars (55%) and new vans (50%) by 2030. They also introduced a 30% CO_2 emission reduction target for new lorries, with an intermediate target of 15% by 2025. The revision of the Regulation on the land use, land use change and forestry sector was adopted by Parliament on 14 March 2023, determining a new 2030 target to increase EU carbon sinks by 15%.

On 23 March 2023, Parliament and the Council reached an informal agreement on the sustainable maritime fuels law, aiming to reduce ship emissions by 2% as of 2025 and by 80% as of 2050. Furthermore, at least 2% of the EU's shipping fuels will need to come from e-fuels made with green electricity by 2034. The next step in the legislative procedure will be a formal agreement on the file, which is part of the 'Fit for 55' package.

ROLE OF THE EUROPEAN PARLIAMENT

On climate change issues, Parliament has traditionally participated in interinstitutional negotiations with the European Council having positions which add ambition to EU actions.

Prior to the COP 21 in 2015, Parliament reiterated the urgent need to 'effectively regulate and cap emissions from international aviation and shipping'. It expressed its disappointment at the fact that the ICAO had not agreed on emission reductions. The introduction of the Carbon Reduction and Offsetting Scheme for International Aviation mainly focuses instead on offsets, with no guarantee of quality and only having legally

binding status from 2027 onward. Major ICAO members are not yet committed to participating in the voluntary phase.

Parliament favours broad-based carbon pricing and advocates the allocation of emissions trading revenues to climate-related investments. It asked for concrete steps, including a timetable, for the phase-out of all fossil fuel subsidies.

In an earlier update on CO_2 emissions from passenger cars and vans, Parliament insisted on introducing the new UN-defined global test cycle as soon as possible, with a view to reflecting real-world driving conditions when measuring CO_2 emissions.

In view of the 24th Conference of the Parties in Katowice, for the first time, Parliament called, in its resolution of 25 October 2018, for an increase of the EU's 2030 GHG emission reduction target of 55%. Moreover, Parliament considered that the profound and most likely irreversible impacts of a 2 °C rise in global temperatures might be avoided if the more ambitious Paris target of 1.5 °C is pursued, which would require that rising global GHG emissions fall to net-zero by 2050 at the latest. This is why it also called on the Commission to propose a long-term mid-century net-zero GHG emission strategy for the EU.

In July 2018, Parliament adopted a resolution on EU climate diplomacy, in which it emphasised the EU's responsibility to lead on climate action as well as conflict prevention. It stressed that EU diplomatic capacities should be strengthened in order to promote climate action globally, support the implementation of the Paris Agreement and prevent climate change-related conflict.

On 28 November 2019, Parliament declared a climate emergency in Europe and urged all Member States to commit to net-zero GHG emissions by 2050. Parliament also wanted the Commission to ensure that all relevant legislative and budgetary proposals were fully aligned with the objective of limiting global warming to under 1.5 °C.

On 8 October 2020, Parliament adopted its negotiating mandate on the EU Climate Law, requesting that the 2030 emission reduction target be increased to 60%. Although the interinstitutional agreement reached on 21 April 2021 between Parliament and the Council confirmed the 55% target proposed by the Commission, Parliament succeeded in boosting the role and contribution of carbon removal, which has the potential to translate that target into 57%. Moreover, in line with Parliament's mandate, the Commission will make a proposal for a 2040 target at the latest six months after the first global stocktake of the Paris Agreement, taking into account the EU's projected indicative GHG budget. Finally, given the importance of independent scientific advice, the European Scientific Advisory Board on Climate Change has been set up to assess whether the policy is consistent and to monitor progress, as suggested by Parliament.

In a report entitled 'Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030–2050' published in January 2023, the European Scientific Advisory Board on Climate Change provides the EU institutions with a science-based estimate of a 2040 climate target and an EU greenhouse gas emissions budget for the period 2030-2050. According to this report, the EU must strive for net emissions reductions of 90-95% by 2040, relative to 1990 levels.

On 15 September 2022, Parliament adopted a resolution on the consequences of drought, fire and other extreme weather phenomena, aimed at further strengthening the EU's efforts to fight climate change.

For further information on this topic, please visit the website of the Committee on the Environment, Public Health and Food Safety.

Georgios Amanatidis
09/2023

2.5.3. BIODIVERSITY, LAND USE AND FORESTRY

The EU has played an important role at international level in seeking solutions to biodiversity loss, deforestation and climate change. The 1992 UN Conference on the Environment and Development marked a major step forward with the adoption of the Convention on Biological Diversity. The 2015 Paris Agreement on climate change notes the importance of ensuring the integrity of all ecosystems and the protection of biodiversity. As part of the European Green Deal, the Commission proposed a new biodiversity strategy that aims to put Europe's biodiversity on the path to recovery by 2030. It includes a nature restoration law to restore damaged ecosystems and bring nature back across Europe.

LEGAL BASIS

Articles 3, 11 and 191-193 of the Treaty on the Functioning of the European Union.

GENERAL BACKGROUND

The UN Conference on the Environment and Development, held in Rio de Janeiro in 1992, led to the adoption of the UN Framework Convention on Climate Change (UNFCCC) and of the Convention on Biological Diversity (CBD), as well as to the Rio Declaration, a Statement of Forest Principles and the Agenda 21 programme. The CBD is complemented by two major protocols: the Cartagena Protocol on Biosafety, which was adopted in 2000 and entered into force in 2003, seeks to protect biodiversity from the potential risks posed by living modified organisms resulting from modern biotechnology; the Nagoya Protocol on Access and Benefit-Sharing, which was adopted in 2010 and entered into force in 2014, aims to create greater legal certainty and transparency for both providers and users of genetic resources. However, the CBD's report entitled 'The Global Biodiversity Outlook 3' shows that the 2010 biodiversity target was not met. In 2010 in Nagoya (Aichi Prefecture, Japan), the Parties to the CBD also adopted a revised strategic plan incorporating the Aichi Biodiversity Targets: 20 ambitious targets organised in five strategic goals to achieve biodiversity protection by 2020, as part of a strategic biodiversity plan for the 2011-2020 period.

The EU is also a party to the following conventions: the Ramsar Convention on the Conservation of Wetlands (February 1971); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (March 1973); the Bonn Convention on the Conservation of Migratory Species of Wild Animals (June 1979); the Bern Convention on the Protection of European Wildlife and Natural Habitats (1982); the Rio de Janeiro CBD (June 1992); and the following regional conventions: the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (1974); the Barcelona Convention on the Mediterranean (1976); and the Convention on the Protection of the Alps (1991). The EU is also bound by the Aarhus Convention (1998), which provides for public access to environmental information, public participation in decision-making and access to justice.

International efforts to reduce greenhouse gas (GHG) emissions are made under the UNFCCC. In December 2015, the Parties to the UNFCCC adopted the Paris Agreement, a legally binding climate agreement that applies to all countries and aims

to limit global warming to well below 2 ºC and pursue efforts to stay below 1.5 ºC. (2.5.2) Within the UNFCCC, the REDD+ initiative provides instruments for combating deforestation and forest degradation in the tropics. The Paris Agreement marks the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity. Moreover, the agreement points to the critical role of the land use sector in reaching the long-term climate mitigation objectives.

OBJECTIVES AND ACHIEVEMENTS

A. Earlier Biodiversity action plans

In May 2006, the Commission adopted a communication and an action plan entitled 'Halting the loss of biodiversity by 2010 – and beyond: sustaining ecosystem services for human well-being'. As the EU was unlikely to meet its 2010 target of halting biodiversity decline, a new strategy was adopted by the Commission in June 2011 in order to 'halt the loss of biodiversity and the degradation of ecosystems services in the EU by 2020, and restore them [...], while stepping up the EU contribution to averting global biodiversity loss'. In December 2011, the Council endorsed the EU biodiversity strategy to 2020, incorporating the following six targets: full implementation of EU nature legislation so as to protect biodiversity; better protection of ecosystems and greater use of green infrastructure; more sustainable agriculture and forestry; better management of fish stocks; tighter controls on invasive alien species; and a bigger EU contribution to averting global biodiversity loss.

B. Conservation of natural habitats and of wild fauna and flora

The Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, amended by Directive 97/62/EC) established a European network, Natura 2000. It comprises 'Sites of Community Interest'/'Special Areas of Conservation' designated by Member States, and 'Special Protection Areas' classified pursuant to Directive 79/409/EEC on the conservation of wild birds. With a total area of over 850 000 km^2, this is the largest coherent network of protected sites in the world. The Habitats Directive aims principally to promote the conservation of biological diversity while taking account of economic, social, cultural and regional requirements. The amended Birds Directive (2009/147/EC) covers the protection, management and control of (wild) birds, including rules for sustainable hunting.

C. Invasive alien species (IAS)

Tighter controls on IAS are one of the six targets of the EU biodiversity strategy to 2020. IAS cause damage amounting to billions of euros every year in the EU, not only to ecosystems but also to crops and livestock, disrupting local ecology and affecting human health. A key feature of Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of IAS is the list of IAS of Union concern. The regulation seeks – through prevention, early warning and rapid response – to protect native biodiversity and to minimise and mitigate the impact of such species on human health and the economy. In particular, the Member States will have to establish surveillance systems and action plans.

D. Access and benefit-sharing

Following the adoption of the Nagoya Protocol on Access and Benefit-Sharing, the Commission presented a proposal in October 2012 with a view to laying down binding requirements for access to genetic resources in the country of origin and ensuring that

the benefits are fairly and equitably shared. An agreement between Parliament and the Council led to the adoption of Regulation (EU) No 511/2014. Under this regulation, genetic resources and traditional knowledge associated with such resources can only be transferred and utilised in accordance with terms mutually agreed between the users (businesses, private collectors and institutions) and the authorities of the country of origin.

E. Exploitation and trade of wild fauna and flora

The CITES convention regulates international trade, specifically the (re-)exporting and importing of live and dead animals and plants and of parts and derivatives thereof, on the basis of a system of permits and certificates. The basic regulation ((EC) No 338/97) on the protection of wild fauna and flora by regulating trade applies the objectives, principles and provisions of the CITES convention to EU law. Whenever a change is made to the list of species listed in the annexes to Council Regulation (EC) No 338/97, e.g. in order to implement listing decisions by the CITES Conference of the Parties, this is done by means of a Commission implementing regulation, such as Implementing Regulation (EU) 2019/1587, which prohibits the introduction into the EU of specimens of certain species of wild fauna and flora.

F. Biodiversity related to animal welfare

The Commission launched the 2006-2010 community action plan on protection and welfare of animals in support of the 'three Rs' principle (replacing, reducing and refining the use of animals for research). Directive 2010/63/EU on the protection of animals used for scientific purposes (repealing Directive 86/609/EEC) is based on that principle, and took effect from 1 January 2013. Moreover, Regulation (EC) No 1007/2009 aims to ensure that products derived from seals are no longer found on the EU market.

G. Marine biodiversity

Marine biodiversity comes within the scope of the biodiversity action plans for natural resources and fisheries. The review of the EU Biodiversity Strategy stresses the importance of the 'good ecological status' of seas and coastal areas if they are to support biodiversity. Furthermore, the Marine Strategy Framework Directive (MSFD) (2008/56/EC) on the protection and conservation of the marine environment entered into force in July 2008. It aimed to ensure the good status of the EU's marine waters by 2020 and to protect the resource base on which marine-related economic and social activities depend. The MSFD was amended by Directive (EU) 2017/845, replacing its Annex III concerning the indicative lists of elements to be taken into account for the preparation of marine strategies.

H. Forests

Forests make up almost 30% of the surface area of the Natura 2000 network. The EU has close to 182 million hectares of forests, covering 43% of its land area and therefore several EU measures are aimed at protecting forests. The Timber Regulation ((EU) No 995/2010) lays down the obligations of operators who place timber and timber products on the EU market. It counters the trade in illegally harvested timber and timber products through key obligations and prohibits the placing on the EU market for the first time of illegally harvested timber and timber products. A Commission communication entitled 'A new EU Forest Strategy: for forests and the forest-based sector' was adopted in September 2013. A mid-term report on the implementation of the EU Forest Strategy concluded that significant progress towards the 2020 objectives had been made.

I. Land use, land-use change and forestry (LULUCF)

The LULUCF sector covers the use of soils, trees, plants, biomass and timber, and has the particular characteristic of not only emitting GHGs but also being able to absorb CO_2 from the atmosphere. Until 2020, Member States were committed under the Kyoto Protocol to ensuring that GHG emissions from land use were compensated by an equivalent absorption of CO_2, made possible by additional action in the sector. (2.5.2) The EU now aims to enshrine this principle (the so-called no-debit rule) in EU law for the period 2021-2030, by incorporating LULUCF into the EU's emissions reduction efforts for the first time. Under Regulation (EU) 2018/841, which entered into force on 9 July 2018, on the inclusion of GHG emissions and removals from LULUCF into the 2030 climate and energy framework, GHG emissions from LULUCF should be offset by at least an equivalent removal of CO_2 from the atmosphere during the period 2021-2030. The LULUCF Regulation was amended in April 2023 to determine a new 2030 target in line with the European Green Deal. In particular, the objective is to expand EU carbon sinks by 15%, corresponding to 310 million tonnes of CO_2 equivalent. In May 2023, a Commission guidance document aided Member States in aligning land use, forestry and agriculture with updated national energy and climate plans, ensuring compliance with revised regulations.

J. Financial instruments

Since 1992, the EU's dedicated funding instrument for the environment has been the LIFE programme. Nature conservation and biodiversity have been included among the sub-programmes for the first four phases already completed. The fifth phase of the LIFE programme (introduced by Regulation (EU) No 1293/2013 and covering the LIFE period 2014-2020) consisted of two main fields of action, on climate change and the environment. A budget of EUR 1.155 billion was available for nature and biodiversity, as part of the environment sub-programme. Other funding to support biodiversity has been taken up under agriculture and fisheries policies, Cohesion and Structural Funds, and the multiannual research framework programmes. The most recent phase of the LIFE programme (2021-2027) is structured in the same way as the previous one, with the same two fields of action and four sub-programmes. The budget for the nature and biodiversity sub-programme is EUR 2.15 billion.

K. The biodiversity and forest strategies for 2030

On 11 December 2019, the Commission presented the European Green Deal, an ambitious package of measures intended to enable the EU to become carbon neutral by 2050. The European Green Deal provides an action plan to transform the EU into a sustainable and competitive economy. Among the actions proposed is a new EU biodiversity strategy for 2030 (published on 20 May 2020) with measures to address the main drivers of biodiversity loss, as well as a new EU forest strategy for 2030 (published on 14 July 2021) with measures to support deforestation-free value chains. The Biodiversity Strategy for 2030 addresses the five main drivers of biodiversity loss (changes in land and sea use, overexploitation, climate change, pollution, and invasive alien species), sets out an enhanced governance framework to fill remaining gaps, ensures the full implementation of EU legislation, and pulls together all existing efforts. The Forest Strategy for 2030 aims to adapt Europe's forests to the new conditions, weather extremes and considerable uncertainty brought about by climate change. This

is a precondition for forests to continue to fulfil their socioeconomic functions and ensure vibrant rural areas with thriving populations.

As part of the EU biodiversity strategy for 2030, the Commission adopted a proposal on 22 June 2022 for a nature restoration law, for the sake of 'restoring damaged ecosystems and bringing nature back across Europe, from agricultural land and seas, to forests and urban environments'. The law would require Member States to develop national restoration plans to pursue the targets while allowing them the flexibility to take into account their national circumstances.

On 24 January 2023, the Commission published a communication entitled 'Revision of the EU Pollinators Initiative - A new deal for pollinators', aiming at revising the 2018 EU pollinators initiative, as part of the EU biodiversity strategy for 2030. The 2018 initiative represented the first ever EU framework to address the decline of wild pollinators. The revised EU pollinators initiative sets objectives for 2030 and actions under three priorities: improving pollinator conservation and tackling the causes of their decline; improving knowledge; and mobilising society and promoting strategic planning and cooperation.

ROLE OF THE EUROPEAN PARLIAMENT

As co-legislator, Parliament has long been supportive of EU biodiversity protection and climate change policies. In September 2010, Parliament adopted a resolution on the implementation of legislation aiming at the conservation of biodiversity, in view of the post-2010 target. It expressed deep concern at the absence from the international political agenda of any sense of urgency in relation to halting the loss of biodiversity, and called for improved biodiversity governance in both internal and external relations.

In November 2016, Parliament adopted a resolution in response to the action plan on wildlife trafficking, aiming at countering this organised and destructive crime that represents a threat to biodiversity by bringing many species to the brink of extinction. The action plan has three priorities: prevention, enforcement and cooperation. The importance of global cooperation between countries of origin, transit countries and destination countries was stressed. In October 2016 and October 2017, Parliament adopted resolutions against the authorisation by the Commission of genetically modified organisms (GMOs) – maize, soybean, etc. – and on efforts to facilitate the banning of GMO cultivation by Member States in line with the objective of protecting biodiversity, nature and soil.

In its resolution of 14 October 2015 entitled 'Towards a new international climate agreement in Paris', Parliament recalled that climate change is accelerating the loss of biodiversity, called for an agreement that involves the 'comprehensive effort of all sectors' and noted that land use 'has significant cost-effective potential for mitigation and enhancing resilience'.

Parliament's resolution of 16 January 2020 on the 15th meeting of the Conference of Parties (COP15) to the Convention on Biological Diversity underlined the need to increase the ambition and inclusiveness, and improve the functioning of the post-2020 Global Biodiversity Framework.

In its resolution of 8 October 2020 on the new EU forest strategy, Parliament also stressed the crucial role played by the post-2020 EU forest strategy and the European

Green Deal in meeting the goals of the Paris Agreement and the UN 2030 Agenda for Sustainable Development.

Parliament's resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation stressed that trade and investment policy need to be reviewed in order to address the global deforestation challenge in a more effective manner, by creating a global level playing field and taking into account the link between trade agreements and global biodiversity, as well as forest ecosystems.

For further information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Georgios Amanatidis / Maria-Mirela Curmei
10/2023

2.5.4. WATER PROTECTION AND MANAGEMENT

Water is essential for human, animal and plant life and for the economy. Its protection and management transcend national boundaries. The EU's water policy plays a crucial role in safeguarding the environment in the EU. There are laws designed to preserve water sources and both freshwater and marine ecosystems, and to guarantee the cleanliness of drinking and bathing water. The EU Water Framework Directive (WFD) establishes a legal framework to protect and restore clean water in the EU and to ensure its long-term sustainable use.

LEGAL BASIS

Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU).

GENERAL BACKGROUND

Water is not just a commercial product, but also a common good and a limited resource that needs to be protected and used in a sustainable way, in terms of both quality and quantity. It is, however, under pressure from various sectors, such as agriculture, industry, tourism, transport and energy. In 2012, the Commission launched the Blueprint to Safeguard Europe's Water Resources, a long-term strategy that aims to ensure the availability of a sufficient level of quality water for all legitimate uses by better implementing current EU water policy, integrating water policy objectives into other policy areas and filling gaps in the current framework. It envisages the establishment by the Member States of water accounts and water efficiency targets, as well as the development of EU standards for water reuse.

OBJECTIVES AND ACHIEVEMENTS

EU policy has established two main legal frameworks for the protection and management of our freshwater and marine resources in an ecosystem-based, holistic approach: the Water Framework Directive (WFD) and the Marine Strategy Framework Directive (MSFD).

A. Water Framework Directive and specific supporting water directives

The EU Water Framework Directive establishes a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. It aims to prevent and reduce pollution, promote sustainable water use, protect and improve the aquatic environment and mitigate the effects of floods and droughts. The overall objective is to achieve good environmental status for all waters. Member States are therefore requested to draw up river basin management plans based on natural geographical river basins, as well as specific programmes of measures to achieve the objectives.

A 2019 evaluation of the WFD concluded that it is broadly fit for purpose, but that its implementation needs to be sped up. As a result, in June 2020, the Commission announced that the WFD would not be changed, and it would instead focus on implementing and enforcing the current directive.

The WFD is supported by more targeted directives, i.e. the Groundwater Directive, the Drinking Water Directive, the Bathing Water Directive, the Nitrates Directive, the Urban

Waste Water Treatment Directive, the Environmental Quality Standards Directive and the Floods Directive.

The directive on the protection of groundwater against pollution and deterioration provides for specific criteria for the assessment of good chemical status, the identification of significant and sustained upward trends and the definition of starting points for trend reversals. All threshold values for pollutants (with the exception of nitrates and pesticides, for which the limits are set by specific EU legislation) are set by the Member States.

In October 2022, the Commission presented a proposal amending the framework for Community action in the field of water policy and the directives on the protection of groundwater against pollution and deterioration and on environmental quality standards in the field of water policy. The proposal also included a suggestion to update the listings of contaminants in both surface water and groundwater.

The revised Drinking Water Directive of 2020 defines essential quality standards for water intended for human consumption. It requires Member States to regularly monitor the quality of water by using a 'sampling points' method. Member States can include additional requirements specific to their territory but only if this leads to setting higher standards. The directive also requires the provision of regular information to consumers. Furthermore, the quality of drinking water has to be reported to the Commission every three years. The revised directive was proposed by the Commission in February 2018, in response to the European Citizens' Initiative 'Right2Water', replacing the previous directive of 1998. The revised directive updates existing safety standards and improves access to safe drinking water along the lines of the latest recommendations of the World Health Organization. It furthermore increases transparency for consumers on the quality and supply of drinking water, thereby helping to reduce the number of plastic bottles through increased confidence in tap water. EU-wide risk-based water safety assessments help identify and address possible risks to water sources at the distribution level.

The Bathing Water Directive aims to enhance public health and environmental protection by laying down provisions for the monitoring and classification (in four categories) of bathing water and informing the public about it. During bathing season, Member States have to take samples of bathing water and assess the concentration of at least two specific bacteria once a month at each bathing water site. They have to inform the public through 'bathing water profiles' containing, for instance, information on the kind of pollution and sources that affect the quality of the bathing water. There is a standard symbol for informing the public about the bathing water classification and any bathing prohibition. A summary report on the quality of bathing water is published annually by the Commission and the European Environment Agency.

The Environmental Quality Standards Directive establishes limits on concentrations of 33 priority substances presenting a significant risk to, or via, the aquatic environment at EU level and eight other pollutants in surface waters. In the 2013 review, 12 new substances were added to the existing list and an obligation was introduced for the Commission to establish an additional list of substances to be monitored in all Member States to support future reviews of the priority substances list. The October 2022 Commission proposal provides for the addition of 23 individual substances to the list of priority substances for surface waters, including pesticides such as glyphosate, some

pharmaceuticals (painkillers, anti-inflammatory drugs and antibiotics), Bisphenol A, and a group of 24 per-and polyfluoroalkyl substances (PFAS).

The Urban Waste Water Treatment Directive aims to protect the environment from the adverse effects of urban waste water discharges and discharges from industry. The directive sets minimum standards and timetables for the collection, treatment and discharge of urban waste water, introduces controls on the disposal of sewage sludge, and requires the dumping of sewage sludge at sea to be phased out. In line with other European Green Deal policies aimed at reducing pollution to net zero by 2050, the Commission adopted its proposal for a revised directive in October 2022

The Nitrates Directive aims to protect waters from nitrates from agricultural sources. A complementary regulation requires Member States to send a report to the Commission every four years, providing details of codes of good agricultural practice, designated nitrate vulnerable zones, water monitoring and a summary of action programmes. Both the directive and the regulation aim to safeguard drinking water and prevent damage from eutrophication. In October 2021, the Commission published its latest implementation report, in which it warned that nitrates are still causing harmful pollution to water in the EU, and that excessive fertilisation remains a problem in many parts of the Union.

The EU Floods Directive aims to reduce and manage the risks posed by floods to human health, the environment, infrastructure and property. It requires Member States to carry out preliminary assessments to identify the river basins and associated coastal areas at risk and then prepare flood risk maps and management plans focused on prevention, protection and preparedness. All of these tasks are to be carried out in accordance with the WFD and the river basin management plans set out therein.

B. EU coastal and marine policy

The Marine Strategy Framework Directive (MSFD) is the environmental pillar of the EU's Integrated Maritime Policy (IMP), which was set up with a view to enhancing the sustainable development of its maritime economy while better protecting its marine environment. The objective of the MSFD was to reach 'good environmental status' (GES) of the EU's marine waters by 2020, to continue its protection and preservation, and to prevent subsequent deterioration. It establishes European marine regions (the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea) and sub-regions within the geographical boundaries of the existing Regional Sea Conventions. In order to achieve GES by 2020, Member States had to develop ecosystem-based strategies for their marine waters, to be reviewed every six years. A regulation on Integrated Coastal Zone Management, moreover, defines the principles of sound coastal planning and management to be taken into account by Member States.

The Commission adopted a report on the first implementation cycle of the Marine Strategy Framework Directive in June 2020. The new EU biodiversity strategy for 2030 (adopted in May 2020) aims to further strengthen the protection of marine ecosystems, including through the expansion of protected areas and the establishment of strictly protected areas for habitats and fish stocks recovery.

The Erika oil spill disaster of 1999 prompted the EU to strengthen its role in the field of maritime safety and marine pollution with the establishment of the European Maritime Safety Agency, responsible, among other tasks, for the prevention of, and response to, pollution caused by ships, as well as response to marine pollution caused by oil and gas installations. A 2005 directive on ship-source pollution and the introduction of

penalties for infringements and its 2009 update aim to ensure that those responsible for polluting discharges at sea are subject to effective and dissuasive penalties, which may be criminal or administrative. The discharge of polluting substances from ships is to be regarded as a criminal offence if it is intentional, carried out recklessly or arises from serious negligence, and results in the serious deterioration of water quality.

C. International agreements on regional waters

The protection of marine waters in Europe is governed by four international cooperation structures, known as Regional Sea Conventions, between the Member States and neighbouring countries sharing common waters: the OSPAR Convention of 1992 (based on the earlier Oslo and Paris conventions) for the North-East Atlantic; the Helsinki Convention (HELCOM) of 1992 on the Baltic Sea Area; the Barcelona Convention (UNEP-MAP) of 1995 for the Mediterranean; and the Bucharest Convention of 1992 for the Black Sea. EU river waters are protected by international conventions, such as the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), the 1996 Danube River Protection Convention, the 1999 Convention on the Protection of the Oder against Pollution and the 1999 Convention for the Protection of the Rhine. Interregional environmental cooperation focused on marine waters or river basins has led to the creation of several macro-regional strategies in the EU: the 2009 Baltic Sea region strategy (the first comprehensive EU strategy designed for a macro-region); the 2011 strategy for the Danube Region, and the 2014 strategy for the Adriatic and Ionian region.

ROLE OF THE EUROPEAN PARLIAMENT

The first ever European Citizens' Initiative, 'Right2Water' (2013), urged the EU institutions and the Member States to ensure that all citizens enjoy the right to water and sanitation, that water supply and the management of water resources are not subject to internal market rules, and that water services are excluded from liberalisation measures. In 2015, in response to this European Citizens' Initiative, Parliament, by a large majority, called on the Commission to come forward with legislation implementing the human right to water and sanitation as recognised by the United Nations, and, if appropriate, a revision of the WFD that would recognise universal access and the human right to water.

Underlining the necessary transition to a circular economy, Parliament supported plans to promote water reuse for agricultural irrigation. In a similar spirit, it endorsed plans to improve the quality of tap water so as to reduce the use of plastic bottles.

Parliament attaches great importance to tackling water pollution and is pushing to enhance- water quality standards in the EU. The revised Drinking Water Directive, adopted by Parliament on 15 December 2020, entered in force on 12 January 2021, giving Member States two years to transpose it into their national laws.

In its 2018 resolution on international ocean governance, Parliament 'emphasises that creating a sustainable maritime economy and reducing pressures on the marine environment require action on climate change, land-based pollution reaching the seas and oceans, marine pollution and eutrophication, on the preservation, conservation and restoration of marine ecosystems and biodiversity, and on the sustainable use of marine resources'. In this context, it 'urges the Commission to support international efforts to protect marine biodiversity, in particular in the framework of the ongoing negotiations

for a new legally binding instrument for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction' and 'calls on the Commission to propose more stringent legislation in order to preserve and ensure sustainable uses of marine biodiversity in areas under the jurisdiction of the Member States'.

In its resolution of 25 March 2021 on marine litter, Parliament drew attention to the impact of marine litter on the marine ecosystem, the fisheries industry and consumers, and called for more restrictions on single-use plastics and the use of specially designed, sustainable materials for fishing gear.

The new EU biodiversity strategy for 2030 (adopted by the Commission in May 2020) aims to further strengthen the protection of marine ecosystems. This topic also figured prominently in the 15th meeting of the Conference of the Parties (COP15) to the Convention on Biological Diversity, which was concluded in December 2022 in Montreal, Canada.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Maria-Mirela Curmei / Christian Kurrer
10/2023

2.5.5. AIR AND NOISE POLLUTION

Air pollution is the largest environmental health risk in Europe. The 2013 EU air quality strategy aimed to achieve full compliance with existing air quality legislation by 2020 and set long-term objectives for 2030. The EU also aims to further improve air quality by revising the Ambient Air Quality Directives. The 2002 Environmental Noise Directive helps to identify noise levels in the EU and to take measures to reduce them to acceptable levels. Separate legislation regulates noise pollution from specific sources.

LEGAL BASIS

Articles 191-193 of the Treaty on the Functioning of the European Union.

GENERAL BACKGROUND

Air pollution can cause cardiovascular and respiratory diseases as well as cancer, and is the leading environmental cause of premature death in the EU. Certain pollutants, such as arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons, are human genotoxic carcinogens, and there is no identifiable threshold below which they do not pose a risk. Air pollution also negatively impacts the quality of water and soil and damages ecosystems, for example through eutrophication (excess nitrogen pollution) and acid rain. Agriculture and forests, as well as material and buildings, are therefore affected. Air pollution has many sources, but mainly stems from industry, transport, energy production and agriculture. While air pollution in Europe has generally decreased in recent decades, the EU's 2013 long-term objective, namely to achieve levels of air quality that do not have significant negative impacts on human health and the environment, has yet to be achieved. Air quality standards are often not complied with, especially in urban areas (air pollution 'hotspots') – which is where the majority of Europeans live. The most problematic pollutants today are fine particles, nitrogen oxides and ground-level ozone. According to a 2022 Eurobarometer survey, Europeans are seriously worried about air quality and call for stronger action. The European Environment Agency's briefing entitled 'Europe's air quality status 2023' shows that excessive air pollution, surpassing EU standards, is widespread in the EU, and that it often exceeds World Health Organization guidelines.

Environmental noise levels are rising in urban areas, mainly as a result of increasing traffic volumes and intensifying industrial and recreational activities. It is estimated that around 20% of the population of the EU are subjected to noise levels that are considered unacceptable. This can affect quality of life and lead to significant levels of stress, sleep disturbance and adverse health effects, such as cardiovascular problems. Noise also has an impact on wildlife.

ACHIEVEMENTS IN COMBATING AIR POLLUTION

Air quality in Europe has much improved since the EU first started to tackle this issue in the 1970s. Concentrations of substances such as sulphur dioxide (SO_2), carbon monoxide (CO), benzene (C_6H_6) and lead (Pb) have been significantly reduced since then. The EU has three different legal mechanisms to manage air pollution: defining

general air quality standards for ambient concentrations of air pollutants; setting national limits on total pollutant emissions; and designing source-specific legislation, for example to control industrial emissions or to set standards for vehicle emissions, energy efficiency or fuel quality. This legislation is complemented by strategies and measures to promote environmental protection and its integration into other sectors.

A. Ambient air quality

Building on the objectives of the 2005 Thematic Strategy on Air Pollution (to reduce fine particles by 75%, ground-level ozone by 60%, and the threat to the natural environment from both acidification and eutrophication by 55% – all by 2020 compared with 2000 levels), a directive on ambient air quality came into effect in June 2008, merging most of the existing legislation in the field. Only the fourth 'daughter directive' of the earlier Air Quality Framework Directive remains in place, setting target values (less strict than limit values) for arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons.

Directive 2008/50/EC on ambient air quality lays down measures to define and establish ambient air quality objectives (i.e. limits not to be exceeded anywhere in the EU) relating to the main air pollutants (sulphur dioxide, nitrogen oxides, (fine) particulate matter, lead, benzene, carbon monoxide and ozone). Member States are required to define zones and urban agglomerations in order to assess and manage ambient air quality, to monitor long-term trends and to make the information available to the public. Where air quality is good it must be maintained; where limit values are exceeded, action has to be taken.

In line with the 2013 Clean Air Programme for Europe, Directive (EU) 2016/2284 (the National Emission Ceilings Directive) sets stricter national emission ceilings for the five key pollutants – sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter. The directive requires Member States to draw up national air pollution control programmes. It also transposes the commitments made by the EU and its Member States in 2012 to reduce emissions by 2020 under the revised Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of the UN Economic Commission for Europe Convention on Long-range Transboundary Air Pollution. In October 2022, the Commission presented its proposal for the revision of EU rules on ambient air quality, with the aim of more closely aligning EU air quality standards with the new World Health Organization recommendations and strengthening provisions on air quality monitoring, modelling and plans to help local authorities attain clean air.

B. Road transport

Several directives have been adopted to limit pollution from road transport by setting emission performance standards for different categories of vehicles, such as cars, light commercial vehicles, lorries, buses and motorcycles, and by regulating the quality of fuel. The current Euro 6 emission standard for cars and light vans sets emission limits on a number of air pollutants, in particular nitrogen oxides and particulate matter. Since September 2017, a more realistic test cycle has been in use: 'Real Driving Emissions' are now determined for new car models to better reflect real driving conditions. Furthermore, there are rules on in-service conformity (which require vehicles to continue to conform to the standards while in circulation), durability of pollution control devices, on-board diagnostic systems, measurement of fuel consumption and access to vehicle repair and maintenance information for independent operators. Similar rules

are in place for heavy-duty vehicles such as buses and lorries. A 2018 regulation on type approval and market surveillance of motor vehicles entered into force on 1 September 2020, with the aim of increasing the quality and independence of technical services and verifying whether vehicles already on the road comply with the requirements.

The Commission presented its proposal for the new Euro 7 emission standards in November 2022, as part of its 2020 sustainable and smart mobility strategy and the 2021 aero-pollution action plan.

C. Other transport emissions

To reduce air pollution from ships – said to be responsible for 50 000 premature deaths every year – the EU has set limits on the sulphur content of marine bunker fuels used in ships operating in European seas. The general sulphur limit fell from 3.5% to 0.5% in 2020 in line with limits agreed by the International Maritime Organization. Since 2015, an even stricter standard of 0.1% has applied in certain designated 'Sulphur Emission Control Areas', such as the Baltic Sea, the English Channel and the North Sea. Further emission performance standards were set in 2016 for non-road mobile machinery, such as excavators, bulldozers and chainsaws, as well as for agricultural and forestry tractors and recreational craft such as sport boats.

In December 2022, the Council approved the Carbon Offsetting and Reduction Scheme for International Aviation, a global scheme for reducing CO2 emissions from international aviation also involving EU member states. The ReFuelEU Aviation regulation, proposed in July 2021 as part of the Fit for 55 package, aims to cut aviation's environmental impact. The corresponding FuelEU Maritime Regulation aims for an 80% reduction in ships' onboard energy greenhouse gas intensity by 2050, encouraging the adoption of renewable and low-carbon fuels.

D. Emissions from industry

The 2010 Industrial Emissions Directive (IED) covers highly polluting industrial activities that account for a significant share of pollution in Europe. It consolidates and merges all relevant directives (on waste incineration, volatile organic compounds, large combustion plants, integrated pollution prevention and control, etc.) into one coherent legislative instrument, with the aim of facilitating the implementation of the legislation and of minimising pollution from various industrial sources. The IED lays down the obligations to be met by all industrial installations, contains a list of measures for the prevention of water, air and soil pollution, and provides a basis for drawing up operating licences or permits for industrial installations. Using an integrated approach, it takes into account the total environmental performance of a plant, including the use of raw materials or energy efficiency. The concept of 'best available techniques' plays a central role, as do flexibility, environmental inspections and public participation. The IED was complemented in 2015 by a directive on emissions from medium combustion plants.

In April 2022, the Commission presented its proposals for a revision of the IED, aiming, for example, to ensure full and consistent implementation of the IED across Member States, with tighter permit controls on air and water emissions.

ACHIEVEMENTS REGARDING NOISE POLLUTION

The EU's approach to noise pollution is two-fold: a general framework for the identification of noise pollution levels requiring action at both Member State and EU

level; and a set of legislation on the main sources of noise, such as road, air and rail traffic noise, and noise from equipment for outdoor use.

The 2002 framework directive on environmental noise aims to reduce exposure to environmental noise by harmonising noise indicators and assessment methods, gathering noise exposure information in the form of 'noise maps', and making this information available to the public. On this basis, the Member States are required to draw up action plans to address noise problems. Noise maps and action plans need to be reviewed at least every five years. The most recent implementation report, published in March 2023, confirmed the overall good progress made by most Member States in implementing the directive, despite some initial delays.

The 2014 regulation on the sound level of motor vehicles introduces a new test method for measuring noise emissions, lowers the existing noise limit values and includes additional sound emission provisions in the type-approval procedure. Other regulations deal with noise limits for mopeds, motorcycles and tyre rolling.

Since June 2016, EU aviation noise rules, in line with the 'balanced approach' created by the International Civil Aviation Organization, have applied to airports with more than 50 000 civil aircraft movements per year. This approach consists of four principal elements designed to identify the most cost-efficient way of tackling aircraft noise at each individual airport: reducing noise levels at the source through the deployment of modern aircraft, managing the land around airports in a sustainable way, adapting operational procedures to reduce the impact of noise on the ground, and, if necessary, introducing operating restrictions such as bans on night flights.

In the context of the 2008 railway interoperability directive (recast in 2016), a 2014 technical specification for interoperability on noise (amended in 2019) sets maximum levels of noise that new (conventional) railway vehicles can produce. The 2015 noise charge regulation incentivises the retrofitting of freight wagons with low-noise composite brake blocks.

Large industrial and agricultural installations covered by the IED are able to receive permits following the use of best available techniques as references. Noise emitted by construction plants (e.g. noise from excavators, loaders, earth-moving machines and tower cranes), as well as from recreational craft or equipment for outdoor use, is also regulated.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a decisive role in the formulation of a progressive environmental policy to combat air and noise pollution.

For instance, Members of the European Parliament (MEPs) voted to drastically lower the harmful sulphur content of marine fuels from 3.5% to 0.5% by 2020 and successfully fought attempts to postpone this deadline by five years. In line with recommendations from the World Health Organization, Parliament also called for stricter air quality rules, especially on fine particles. In the wake of the discovery in the US that the Volkswagen group used test-cheating software to drive down NO_x emissions, Parliament set up a temporary committee of inquiry into emission measurements in the automotive sector to investigate the matter. In its 2017 final report, it called for Member States and car manufacturers to be held accountable and urged them to retrofit or withdraw highly polluting cars from the market.

On 25 March 2021, Parliament adopted a resolution on the implementation of the Ambient Air Quality Directives: Directive 2004/107/EC and Directive 2008/50/EC. It noted that European air quality standards have been only partially successful in effectively reducing air pollution and limiting its adverse effects on health, quality of life and the environment, and welcomed the European Green Deal's commitment to revising air quality standards in line with current World Health Organization reference levels. It called for the EU to become a global leader in this field by adopting and enforcing ambitious standards for all air pollutants.

The resolution also highlighted the growing evidence that exposure to air pollution may affect the health outcomes of people who catch COVID-19, and stressed the need to take the lessons learnt from the pandemic into account when developing new air pollution measures. MEPs insisted that air quality should be prioritised and included in all relevant EU legislation such as on climate, energy, transport, industry, agriculture and waste, and that cohesion between all policy areas should be ensured. The resolution also called on the Commission and the Member States to assess the effectiveness of existing emissions legislation and asked for the soonest possible establishment of a set of minimum requirements and best practices for both the preparation and implementation of air quality plans by the Member States.

With regard to environmental noise, Parliament has repeatedly stressed the need for further reductions in limit values and for improved measurement procedures. It has called for the establishment of EU values for noise around airports and for the extension of noise reduction measures to cover military subsonic jet aircraft. Furthermore, it has approved the phasing-in of new, lower noise limits for cars and has successfully campaigned for the introduction of labels to inform consumers about noise levels, similar to those of the existing schemes for fuel efficiency, tyre noise and CO_2 emissions.

In September 2023, Parliament adopted its stance on revised legislation designed to enhance air quality across the EU. The proposal includes more stringent objectives compared to the Commission's initial recommendations for various pollutants such as particulate matter, nitrogen dioxide, sulfur dioxide and ozone, with the aim of safeguarding human health, natural ecosystems and biodiversity from air pollution.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Maria-Mirela Curmei / Christian Kurrer
10/2023

2.5.6. RESOURCE EFFICIENCY AND THE CIRCULAR ECONOMY

Past and current patterns of resource use have led to high pollution levels, environmental degradation and the depletion of natural resources. EU waste policy has traditionally focused on environmentally sustainable waste management. The Roadmap to a Resource Efficient Europe and the Circular Economy Package aim to transform the EU's economy into a sustainable one by 2050. Under the European Green Deal, the Circular Economy Action Plan provides a future-oriented agenda for a cleaner and more competitive EU.

LEGAL BASIS

Articles 191-193 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES AND ACHIEVEMENTS

All products have a natural basis. The EU's economy is highly dependent on natural resources. If current patterns of consumption and production are maintained, the degradation and depletion of natural resources will continue, as will waste generation. The scale of our current resource use is such that it is jeopardising the chances of future generations – and developing countries – of having access to their fair share of scarce resources. Rational utilisation of natural resources was one of the earliest environmental concerns underpinning the first European Treaties. The Roadmap to a Resource Efficient Europe was among the key initiatives of the 7th Environment Action Programme (EAP). One of its main objectives was to unlock the EU's economic potential so that it could be more productive while using fewer resources and moving towards a circular economy. Moreover, the recent Circular Economy Package includes measures that will help to stimulate the EU's transition towards a circular economy through greater recycling and reuse, in addition to boosting global competitiveness, fostering sustainable economic growth and generating new jobs.

A. Resource efficiency

The Roadmap to a Resource Efficient Europe was part of the resource efficiency flagship initiative of the Europe 2020 strategy. It supported the shift towards sustainable growth via a resource-efficient, low-carbon economy. The roadmap took into account the progress made on the 2005 thematic strategy on the sustainable use of natural resources and the EU sustainable development strategy, and set out a framework for the design and implementation of future action. It also outlined the structural and technological changes needed by 2050, including milestones to be reached by 2020. It proposed ways to increase resource productivity and decouple economic growth from resource use and its environmental impact.

B. Waste management and prevention

The Waste Framework Directive followed on from the thematic strategy on the prevention and recycling of waste. It aimed to reform and simplify EU policy by introducing a new framework and setting new targets, with a focus on prevention. In July 2023, the Commission introduced a proposal to amend the Waste Framework

Directive, with the intention of shifting the responsibility for the entire life cycle of textile products to manufacturers. This initiative aims to encourage the sustainable handling of textile waste.

The Waste Shipment Regulation ((EC) No 1013/2006) laid down rules for waste shipments both within the EU and between the EU and non-EU countries, with the specific aim of improving environmental protection. It covered the shipment of practically all types of waste (with the exception of radioactive material) by road, rail, sea and air. However, illegal waste shipments have remained a serious problem; the new Regulation ((EU) No 660/2014) strengthened the inspection provisions of the previous legislation, with more stringent requirements for national inspections and planning.

C. Production- and waste-stream-specific laws

Directive 2000/53/EC aimed to reduce waste from end-of-life vehicles (ELVs) and their components, for example by increasing the rate of reuse and recovery to 95% by 2015, and the rate of reuse and recycling to at least 85%. It also encouraged manufacturers and importers to limit the use of hazardous substances and to develop the integration of recycled materials. In 2017, the majority of Member States had met their 2015 target rate of 85% reuse and recycling based on an average weight per vehicle and year. In 2021, a public consultation was held on the revision of the directive. Directive 2000/53/EC was amended by Directive (EU) 2018/849 which empowers the Commission to enforce ELV compliance, exempt materials, set coding standards and establish treatment requirements. The Ship Recycling Regulation ((EU) No 1257/2013) entered into force on 30 December 2013. Its main objective was to prevent, reduce and eliminate accidents, injuries and other adverse effects on human health and the environment resulting from the recycling and treatment of EU ships, in particular with a view to ensuring that hazardous waste from such ship recycling is subject to environmentally sound management. The regulation set out a number of requirements for EU ships, EU ship-owners, ship recycling facilities willing to recycle EU ships, and the relevant competent authorities or administrations.

Directive 2002/96/EC, as amended by Directive 2012/19/EU aimed to protect soil, water and air through better and reduced disposal of waste electrical and electronic equipment (WEEE). Directive 2002/95/EC, repealed by Directive 2011/65/EU, on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS), adopted in parallel to the WEEE Directive, aimed to protect the environment and human health by restricting the use of lead, mercury, cadmium, chromium and brominated flame retardants in such equipment. The implementation of the WEEE and RoHS Directives in the Member States proved difficult, with only one third of all electrical and electronic waste being collected and properly treated. These two directives, together with Directive 2012/18/EU, required the Member States to increase the amount of e-waste they collect and to allow consumers to return appliances to any shop selling small electrical goods, without having to purchase new ones.

Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators aimed to improve the waste management and environmental performance of such items by establishing rules for their collection, recycling, treatment and disposal. The directive also set limit values for certain hazardous substances (in particular mercury and cadmium) in batteries and accumulators. Amending

Directive 2013/56/EU removed the exemption for button cells with a mercury content of no more than 2% by weight.

In accordance with Council Directive 96/29/Euratom on radioactive waste and substances, repealed by Council Directive 2013/59/Euratom, each Member State had to make it compulsory to report activities that involve a hazard arising from ionising radiation. Shipments of radioactive waste are covered by Council Regulation (Euratom) No 1493/93 and Council Directive 2006/117/Euratom.

Directive 94/62/EC covered all packaging placed on the EU market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level. Amending Directive 2004/12/EC established criteria and clarified the definition of 'packaging'. Moreover, Directive (EU) 2015/720 amended Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags, which easily escape waste management streams and accumulate in our environment, especially in the form of marine litter. The directive sets out to drastically cut the consumption of lightweight plastic bags, by focusing on all plastic carrier bags that are thinner than 50 microns.

The Directive on the management of waste from extractive industries (the Mining Waste Directive, 2006/21/EC) sought to tackle the significant environmental and health risks associated with the volume and pollution potential of current and historical mining waste.

D. Waste treatment and disposal

The progressive implementation of the Urban Waste Water Treatment Directive (91/271/EEC) in all the Member States increased the quantities of sewage sludge requiring disposal.

The Landfill Directive (1999/31/EC) intended to prevent or reduce the adverse effects of landfill on the environment, in particular on surface water, groundwater, soil and air, as well as on human health. Implementation has remained unsatisfactory, as not all of the provisions have been transposed in all the Member States and a large number of illegal landfills still exist. Amending Directive (EU) 2018/850 limits landfill for recyclable waste, sets new targets and enforces controls.

Directive 2000/76/EC on the incineration of waste aimed to prevent or reduce, as far as possible, air, water and soil pollution caused by the incineration or co-incineration of waste. As of November 2010, it was repealed and replaced by Directive 2010/75/EU on industrial emissions and related directives.

E. The 2018 Circular Economy Package

In December 2015, the Commission presented an action plan on the circular economy, as well as four legislative proposals amending the following legal acts: (a) the Waste Framework Directive; (b) the Landfill Directive; (c) the Packaging and Packaging Waste Directive; and (d) the directives on ELVs, on batteries and accumulators and waste batteries and accumulators, and on WEEE. Some of these proposals were prompted by legal obligations to review waste management targets. The Waste Framework Directive required the Commission to take the following measures by the end of 2014: review the 2020 targets on the reuse and recycling of household waste and on construction and demolition waste, set waste prevention objectives for 2020, and assess a number of measures, including extended producer responsibility schemes. The Landfill Directive

required the Commission to review targets set therein by July 2014 and the Packaging Directive by the end of 2012.

Adopted in May, the four directives ((EU) 2018/849, (EU) 2018/850, (EU) 2018/851 and (EU) 2018/852) incorporate among others the following key elements:

— A common EU target to recycle 65% of municipal waste by 2035 (55% by 2025 and 60% by 2030);

— A common EU target to recycle 70% of packaging waste by 2030;

— A binding landfill target to reduce landfill to a maximum of 10% of municipal waste by 2035;

— A ban on the landfilling of separately collected waste, requiring separate collection for bio-waste by 2023 and for textiles and hazardous waste from households by 2025.

F. Plastics in the circular economy

On 16 January 2018, the Commission published a communication laying out a strategy for plastics in a circular economy. The strategy identifies key challenges, including the low reuse and recycling rates of plastic waste, the greenhouse gas emissions associated with plastics production and incineration, and the presence of plastic waste in oceans. The Commission proposes that all plastic packaging should be designed to be recyclable or reusable by 2030. With a view to moving towards this target, the strategy presents a wide range of measures focusing on four areas: (1) improving the economics and quality of plastics recycling; (2) curbing plastic waste littering; (3) driving investment and innovation in the plastics value chain; and (4) harnessing global action.

As part of the plastics strategy to tackle wasteful and damaging plastic litter through legislative action and following a Commission proposal of 28 May 2018, the Council and Parliament agreed to reduce plastic pollution by setting tough new restrictions on certain single-use plastic products. (Directive (EU) 2019/904). Products banned in the EU include plastic cutlery (forks, knives, spoons and chopsticks), plastic plates and straws, food and beverage containers made of expanded polystyrene and cotton bud sticks made of plastic. From 2025 onwards, the Member States will have the binding target for all PET beverage bottles to contain at least 25% recycled plastic. By 2030, all plastic bottles will have to contain at least 30% recycled content.

G. The new Circular Economy Action Plan under the European Green Deal

The new Circular Economy Action Plan for a cleaner and more competitive Europe was published on 11 March 2020 and is one of the cornerstones of the European Green Deal, the EU's new agenda for sustainable growth. It announced initiatives along the entire life cycle of products, targeting, for example, their design, promoting circular economy processes, fostering sustainable consumption, and aiming to ensure that the resources used are kept in the EU economy for as long as possible.

The European Parliament and the Council adopted the new Batteries Regulation on 12 July 2023. This will minimise the environmental impact of the battery sector as it undergoes exponential growth in a context of new socioeconomic conditions, technological developments, markets, and battery usages. On 17 November 2021, the Commission adopted a proposal on waste shipments, proposing stronger rules on waste exports, a more efficient system for the circulation of waste as a resource, and concrete action against waste trafficking. Waste shipments to OECD countries will be

monitored and can be suspended if they generate serious environmental problems in the country of destination. Waste exports to non-OECD countries will be restricted and only allowed if those countries are able to manage them sustainably.

On 30 November 2022, the Commission proposed to revise the Packaging and Packaging Waste Directive with the goal of guaranteeing that packaging available in the EU can be reused or recycled in a financially sustainable manner by 2030. It also adopted the communication on a policy framework on bio-based, biodegradable and compostable plastics.

European consumption of textiles has the fourth highest impact on the environment and climate change – after food, housing and mobility. On 30 March 2023, the Commission published the EU strategy for sustainable and circular textiles. This strategy sets out concrete actions to ensure that by 2030, textile products placed on the EU market are sustainable and recyclable, free of hazardous substances and that they respect social rights and the environment.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has repeatedly called for a new agenda for future European growth with resource efficiency at its core, which would require some radical changes in our production and consumption patterns. Total life-cycle thinking should improve the use of secondary materials and create the right economic incentives for avoiding and reusing waste.

Following the Commission's strategy for plastics in a circular economy of January 2018, Parliament adopted a resolution on this strategy in September 2018. The resolution urged the Commission, among other things, to consider introducing requirements for minimum recycled content for specific plastic products placed on the EU market. It advocated creating a genuine single market for recycled plastics, proposed measures to tackle marine litter, and requested a ban on microplastics in cosmetics and cleaning products by 2020. Parliament debated the 2018 Circular Economy package in the Committee on the Environment, Public Health and Food Safety (ENVI), tabling 2 000 amendments.

Parliament's resolution of 15 January 2020 on the European Green Deal called for an ambitious new circular economy action plan, with the aim of reducing the total environmental and resource footprint of EU production and consumption while providing strong incentives for innovation, sustainable business and markets for climate-neutral and non-toxic circular products. It highlighted the strong synergies between climate action and the circular economy, in particular in energy- and carbon-intensive industries and called for the establishment of an EU-level target for resource efficiency.

On 17 January 2023, Parliament adopted its negotiating position for talks with EU governments on a new law to revise EU procedures and control measures for waste shipments. The revised legislation should better protect the environment and human health, while taking full advantage of the opportunities provided by waste to achieve the EU's goal of a circular and zero-pollution economy. Parliament called for the creation of an EU risk-based targeting mechanism to guide EU countries that carry out inspections to prevent and detect illegal shipments of waste.

For more information on this topic, please visit the Committee on the Environment, Public Health and Food Safety's website.

Georgios Amanatidis / Maria-Mirela Curmei
10/2023

2.5.7. SUSTAINABLE CONSUMPTION AND PRODUCTION

Sustainable growth is one of the main objectives of the European Union (EU). In a period of rapid climate change and growing demand for energy and resources, the EU has introduced a range of policies and initiatives aimed at sustainable consumption and production. Under the European Green Deal and, in particular, the circular economy action plan, a sustainable product policy legislative initiative was announced to make products fit for a climate-neutral, resource-efficient and circular economy.

LEGAL BASIS

Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES AND ACHIEVEMENTS

A. Sustainable consumption and production (SCP) action plan

In July 2008, the Commission proposed a package of actions and proposals on SCP and sustainable industrial policy (SIP), which aimed to improve the environmental performance of products throughout their life cycle, to increase consumer awareness and demand for sustainable goods and production technologies, to promote innovation in EU industry and to address international aspects, such as trade and standards. The SCP action plan led to initiatives in the following areas: extension of the Eco-design Directive, revision of the Ecolabel Regulation, revision of the Eco-management and Audit Regulation, legislation on green public procurement, the Resource Efficiency Roadmap, and the eco-innovation action plan. These instruments are an integral part of the EU's sustainable development strategy (EU SDS), reinforcing the commitment to meet the challenges of sustainable development, as well as to strengthen cooperation with partners outside the EU, for instance through the UN's Marrakech Process.

B. Roadmap to a Resource Efficient Europe

Following on from the Europe 2020 flagship initiative on resource efficiency, which calls for a strategy to define medium- and long-term objectives for resource efficiency and the means of achieving them, the Roadmap to a Resource Efficient Europe was launched in 2011. It proposes ways to increase resource productivity and decouple economic growth from resource use and its environmental impact (2.5.6).

C. Ecolabelling and energy labelling

Labelling provides crucial information that enables consumers to make informed choices. The European Ecolabel is a voluntary scheme established in 1992 to encourage businesses to market products and services that meet certain environmental criteria. Products and services awarded the Ecolabel carry the flower logo, allowing consumers – including public and private purchasers – to identify them easily. The label has so far been awarded to cleaning products, appliances, paper products, clothing, home and garden products, lubricants, personal and animal care products, and services such as tourist accommodation. Ecolabel criteria are not based on one single factor, but on studies which analyse the impact of a product or service on the environment throughout its life cycle. The 2008 revision of the Ecolabel Regulation

((EC) No 66/2010) aimed to promote the use of the voluntary Ecolabel scheme by reducing the costs and bureaucracy associated with its application. On 30 June 2017, the Commission presented the conclusions of its evaluation (fitness check) of the Ecolabel Regulation. It found that the regulation is relevant, broadly coherent and delivers EU added value. However it also concluded that the regulation is partly effective (as it enables enhanced environmental performance for products carrying the label, but criteria may not be adequate and uptake remains low for some product types) and partly efficient (as costs for compliance may act as a barrier to participation in some cases).

Directive 92/75/EEC introduced an EU-wide energy labelling scheme for household appliances (white goods), under which labels and information in product brochures provide potential consumers with energy consumption rates for all models available. Since its introduction in 1995, the EU Energy Label has become a widely recognised and respected guide for manufacturers and consumers. In June 2010, the Energy Labelling Directive 2010/30/EU was revised in order to extend its scope to a wider range of energy-related products. On 15 July 2015, the Commission proposed a return to a single 'A to G' labelling scale. New energy labelling requirements for individual product groups have been created under the Regulation (EU) 2017/1369 of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU. Concretely, from 2021 onwards, five product groups (fridges, dishwashers, washing machines, TVs and lamps) have been 'rescaled': a product showing an A+++ energy efficiency class for example became a B class after rescaling, without any change in its energy consumption. The A class will initially be empty to leave room for more energy efficient models. This will enable consumers to distinguish more clearly between the most energy efficient products.

D. Eco-design

The Eco-design Directive ensures the technical improvement of products. The 2009 revision (Directive 2009/125/EC) of Directive 2005/32/EC extended its scope to energy-related products other than energy-using products; these are products that do not consume energy during use but which have an indirect impact on energy consumption, such as water-using devices, windows and insulation material. On 30 March 2022, the Commission published a proposal for a regulation establishing a framework for setting eco-design requirements for sustainable products, repealing Directive 2009/125/EC.

E. Eco-management and Audit Scheme (EMAS)

EMAS is a management tool enabling companies and other organisations to evaluate, report and improve their environmental performance. The scheme has been available to companies since 1995, but was originally restricted to those in industrial sectors. Since 2001, however, EMAS has been open to all economic sectors, including public and private services. In 2009, EMAS underwent a significant change with the adoption of the new EMAS Regulation ((EC) No 1221/2009), aimed at encouraging organisations to register with EMAS. This revision of the EMAS Regulation has improved the scheme's applicability and credibility and strengthened its visibility and outreach. In 2017, Annexes I, II and III to the EMAS Regulation were amended to include the changes associated with the revision of the ISO 14001:2015 standard. Regulation (EU) 2017/1505 amending these annexes entered into force on 18 September 2017.

F. Green public procurement (GPP)

GPP is a voluntary policy within the strategic public procurement framework supporting public authorities in the purchase of goods, services and works with a reduced environmental impact. The concept of GPP has been widely recognised in recent years as a useful tool for driving the market for greener products and services and reducing the environmental impacts of public authorities' activities. National action plans (NAPs) are the means by which Member States implement GPP. Two public procurement directives adopted in 2004 (Directives 2004/18/EC and 2004/17/EC) were the first to contain specific references to the possibility of incorporating environmental considerations into the contract award process, for instance through the inclusion of environmental requirements in technical specifications, the use of ecolabels or the application of award criteria based on environmental characteristics. The three directives adopted in February 2014 as part of the reform of public procurement under the Single Market Act – Directives 2014/24/EU (the Classic Directive), 2014/25/EU (the Utilities Directive) and 2014/23/EU (the Concessions Directive) – simplify the relevant procedures by improving the conditions for business to innovate and encouraging wider use of green public procurement, thus supporting the shift towards a resource-efficient and low-carbon economy.

In 2008, the Commission published a communication entitled 'Public procurement for a better environment', which set out a number of measures to be taken to support the implementation of GPP by Member States and individual contracting authorities. As a result, EU GPP criteria have been developed as part of the voluntary approach to GPP. To date, 21 sets of GPP criteria have been published for selected sectors such as transport, office IT equipment, cleaning products and services, construction, thermal insulation, and gardening products and services.

G. Eco-innovation action plan (EcoAP)

The EcoAP launched by the Commission in December 2011 is the successor to the environmental technologies action plan (ETAP), aimed at boosting the development and use of environmental technologies and improving European competitiveness in this area.

The EcoAP is mainly linked to the Innovation Union flagship initiative of the Europe 2020 strategy. It is intended to expand the focus of innovation policies towards green technologies and eco-innovation and to highlight the role of environmental policy as a factor for economic growth. It also targets specific eco-innovation barriers and opportunities – especially those not covered by more general innovation policies. The EcoAP promotes eco-innovation through environmental policy, financial support for small and medium-sized enterprises, international collaboration, new standards, and skill development.

The EcoAP is a broad policy framework that is financed from different sources. From 2014 to 2020, the main source of support was Horizon 2020. Other sources include European Structural and Investment Funds such as the European Regional Development Fund, the LIFE programme for the environment and climate action, COSME and the common agricultural policy. More recently, another major source of support was introduced: the NextGenerationEU recovery plan. In recent years, many of the EcoAP goals have come together in the concept of the circular economy – an economy that learns from nature in that it wastes nothing. Eco-innovation is key to

delivering many aspects of the circular economy: industrial symbiosis or ecologies, cradle-to-cradle design and new, innovative business models, etc. (2.5.6).

The Eco-Innovation Index evaluates the eco-innovation achievements of Member States, using a measurement framework consisting of 12 indicators.

H. Sustainable product policy

Under the European Green Deal, the Commission presented a new circular economy action plan (CEAP) in March 2020, in which it announced a sustainable products initiative to make products fit for a climate-neutral, resource-efficient and circular economy, as well as reduce waste. The sustainable products initiative builds on the Eco-design Directive and also addresses the presence of harmful chemicals in products such as electronics and ICT equipment, textiles, furniture, steel, cement and chemicals.

On 22 March 2023, the Commission adopted a proposal for a directive on new rules on substantiating green claims, which tackles false environmental claims, and the wide expansion of public and private environmental labels. Moreover, the Commission adopted a proposal for a directive on common rules promoting the repair of goods. The 'right to repair' initiative encourages sustainable consumption, making it easier and cheaper for consumers to repair defective goods as opposed to replacing them. Together with the proposal for a directive on empowering consumers for the green transition, the new rules establish a regime for environmental claims and labels with the aim of addressing greenwashing.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has expressed its support for the SCP Action Plan and its components on many occasions. During the 2009 revision of the Eco-design Directive, Parliament successfully strengthened the concept of life-cycle analysis, and in particular the notion of resource and material efficiency.

In its resolution of 10 February 2021 on the new Circular Economy Action Plan, Parliament underlined, among other things, that sustainable, circular, safe and non-toxic products and materials should become the norm in the EU market and not the exception, and should be seen as the default choice, which is attractive, affordable and accessible for all consumers.

Parliament has played a significant role in the successive introduction of greener provisions in the public procurement directives. In the last revision of these directives, adopted in 2014, Parliament supported, inter alia, the introduction of the new 'most economically advantageous tender' (MEAT) criterion in the award procedure. This enables public authorities to put more emphasis on quality, environmental considerations, social aspects and innovation, while still taking into account the price and life-cycle cost of what is procured.

On 19 April 2004, Parliament decided to establish an environmental management system (EMS), in accordance with EMAS. On 24 January 2006, Parliament signed an EMAS Statement, pledging to ensure that its activities are consistent with current best practices in environmental management. In 2007, it obtained ISO 14001.2004 certification and received EMAS registration. Under EMAS, on 16 December 2019 Parliament decided to reduce its greenhouse gas (GHG) emissions per person by at least 40% by 2024 in comparison to 2006, as well as a number of other climate performance indicators, including GHG emissions from the transport of persons,

renewable energy use, gas, fuel oil and electricity consumption, etc. According to EMAS data, Parliament's GHG emissions per person had already reduced by 37.7% from 2006 to 2019.

Parliament also applies a GPP policy. In June 2017, Parliament published a study on GPP, which examines the current use and opportunities of GPP in the EU, in the context of and as a follow-up to the Commission's EU action plan for the circular economy. The study identified environmental benefits for citizens, as well as gains for employment and the overall economy at European level.

The EcoAP was welcomed by Parliament in its resolution of 17 October 2013. Parliament emphasised the potential synergy effects of eco-innovation for sustainable job creation, environmental protection and the reduction of economic dependency. Furthermore, the resolution emphasised the cross-cutting policy character of eco-innovation and the need to mainstream eco-innovation in all policy areas. Parliament also adopted its position of 13 June 2017 on simplifying energy labelling for home appliances to a scale from A to G, enabling customers to choose products that reduce energy consumption and their energy bills.

In its resolution of 4 July 2017 entitled 'A longer lifetime for products: benefits for consumers and companies', Parliament called on the Commission to improve product durability information by considering launching a voluntary European label covering, in particular, the product's durability, eco-design features, upgradeability in line with technical progress and reparability.

In its resolution of 31 May 2018 on the implementation of the Eco-design Directive (2009/125/EC), Parliament called on the Commission to deploy sufficient resources for the eco-design process given the significant EU added value of the legislation. It also asked the Commission to assess whether the current eco-design methodology could be used for other product categories in addition to energy-related products and to come forward with proposals for new legislation.

Although Parliament, under EMAS, has already claimed carbon neutrality since 2016 as a result of the 100% offsetting of its irreducible emissions, in its resolution of 14 May 2020 Parliament stated that it would lead by example and instructed its Bureau to develop a strategy for becoming carbon-neutral by 2030 through domestic measures (without offsetting). Parliament's study on carbon neutrality, published in September 2020, describes short-, medium- and long-term GHG emission reduction measures that would enable Parliament to drastically decrease its carbon footprint with a view to carbon neutrality by 2030.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Georgios Amanatidis / Maria-Mirela Curmei
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2.5.8. CHEMICALS AND PESTICIDES

EU chemicals and pesticides legislation aims to protect human health and the environment, as well as to prevent barriers to trade. It consists of rules governing the marketing and use of particular categories of chemical products, a set of harmonised restrictions on the placing on the market and use of hazardous substances, and protocols for handling major accidents and exports of dangerous substances. The two most important achievements at EU level are the CLP Regulation (classification, labelling and packaging) and the REACH Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals). Under the European Green Deal and particularly the 'chemicals for sustainability', 'farm to fork' and 'biodiversity' strategies, EU legislation on these issues is currently undergoing a revision process.

LEGAL BASIS

Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES AND ACHIEVEMENTS

A. Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

EU chemicals policy underwent a radical overhaul with the introduction in 2006 of Regulation (EC) No 1907/2006 (the REACH Regulation). The regulation entered into force on 1 June 2007, establishing a new legal framework to regulate the development and testing, production, placing on the market and use of chemicals and replacing around 40 previous legislative acts. REACH introduced a single system for all chemicals and transferred the burden of proof concerning the risk assessment of substances from public authorities to companies. In addition, it demanded that the most dangerous chemicals to be substituted by suitable alternatives.

The European Chemicals Agency (ECHA), established under this regulation and based in Helsinki, is responsible for managing the technical, scientific and administrative aspects of REACH, and for ensuring consistency in its application. By November 2010, industries had to register all substances produced or imported in quantities over 1 000 tonnes per year, highly toxic substances in quantities over 100 tn/y, and hazardous carcinogenic, mutagenic or reprotoxic substances (CMRs) in quantities over 1 tn/y. In June 2013, the registration obligation was extended to all substances produced or imported in quantities of 100-1 000 tn/y, and finally, in June 2018, to all substances in quantities of 1-100 tn/y.

In February 2013, the Commission published a review of the REACH Regulation in which it concluded that REACH did not require any changes to its enacting terms, even though progress could be made in reducing the financial and administrative burden on industries and finding alternative methods to animal testing. In 2017, the Commission conducted a second evaluation under the regulatory fitness and performance programme (REFIT), the results of which were published in COM(2018)0116. The evaluation concludes overall that REACH was effective, but opportunities for further improvement, simplification and burden reduction were identified, which could be achieved by delivering the actions outlined in the report. Those should be implemented

in line with the renewed EU industrial policy strategy, the circular economy action plan and the 7th environment action programme.

The Commission published a new chemicals strategy for sustainability on 14 October 2020. It is part of the EU's zero pollution ambition, which is a key commitment of the European Green Deal. The strategy includes a revision of the REACH Regulation, prohibiting the use of the most harmful chemicals in consumer products such as toys, childcare articles, cosmetics, detergents, food contact materials and textiles, unless proven to be essential for society, and ensuring that all chemicals are used more safely and sustainably.

On 20 January 2022, the Commission launched a public consultation on the REACH revision.

B. Classification, packaging and labelling

In order to enhance the level of protection of human health and the environment, the same criteria for identifying, and labels for describing, chemical hazards should be used throughout the EU and the world. Adopted in 2008, Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) was introduced to align the EU system to the UN Global Harmonised System (GHS). The earlier directives on dangerous substances and preparations were repealed in June 2015.

On 19 December 2022, the Commission proposed a revised regulation on classification, labelling and packaging of chemicals (CLP) focusing on hazard communication, online sales and poison centre notifications. A delegated act (Regulation (EU) 2023/707) defining hazard classes, including endocrine disruptors, was adopted on 31March 2023.

C. Export and import of dangerous substances

EU rules on the export and import of dangerous chemicals were defined in Regulation (EU) No 649/2012, which aimed to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals, and to implement the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The PIC procedure consists in sharing information on toxic chemicals and awaiting a country's explicit agreement before exporting the product in question. On August 25, 2023, the Commission released Commission Delegated Regulation (EU) 2023/1656 amending Regulation (EU) No 649/2012, adding 35 additional hazardous chemicals to the EU's PIC regulation.

D. Major accidents

Named after an Italian municipality which was contaminated by an accidental release of dioxin from a nearby industrial site in 1976, the Seveso Directive (82/501/EEC) aimed to prevent major accidents such as fires and explosions and to limit the consequences of those that do occur by requiring safety reports, emergency plans and the provision of information to the public. In 1996, the Seveso II Directive (96/82/EC) on the control of major accident hazards involving dangerous substances introduced new requirements relating to safety management systems, emergency planning and land-use planning, and strengthened provisions on inspections carried out by Member States. In the light of a number of serious industrial accidents (in Toulouse, France; Baia Mare, Romania; and Enschede, the Netherlands), and on the basis of studies on carcinogens

and substances dangerous for the environment, the scope of the Seveso II Directive was extended by Directive 2003/105/EC. The Seveso III Directive 2012/18/EU was published in July 2012 after being approved by Parliament and the Council. It takes account of new UN-agreed international classifications of substances that allow better risk evaluation and handling of substances.

In September 2021, the Commission published a report on the implementation and efficient functioning of the Seveso III Directive. The report shows that between 2015 and 2018, the number of major industrial accidents in the EU stabilised at a low level: 25 per year for 12 000 establishments.

E. Sustainable use of pesticides

Substances used to suppress, eradicate and prevent organisms that are considered harmful are grouped under the term 'pesticides'. The term includes both plant protection products (PPPs) used on plants in agriculture, horticulture, parks and gardens, and biocidal products used in other applications, for example, as a disinfectant or to protect materials. In 2009, a Pesticides Package was adopted, consisting of: Directive 2009/128/EC on the sustainable use of pesticides (SUD), aimed at reducing environmental and health risks while maintaining crop productivity and improving controls on the use and distribution of pesticides; Regulation (EC) No 1107/2009 on the placing on the market of PPPs; and Regulation (EC) No 1185/2009 concerning statistics on pesticides, which sets out rules for collecting information on the annual quantities of pesticides placed on the market and used in each Member State.

Directive 2009/128/EC required the Member States to adopt national action plans (NAPs) for the establishment of quantitative objectives, targets, measures and timetables in order to reduce the risks and impact of pesticide use for human health and the environment. Aerial crop spraying is banned as a general rule, and no spraying at all is allowed in close proximity to residential areas. The regulation dealing with the production and licensing of pesticides contains a positive list of approved 'active substances' (the chemical ingredients of pesticides), drawn up at EU level. Pesticides are then licensed at national level on the basis of this list.

A controversy has emerged since 2015 over the renewal of the approval of glyphosate, one of the active substances most commonly found in broad-spectrum herbicides in the world. The controversy started as a result of diverging assessments of its carcinogenicity: the International Agency for Research on Cancer, a branch of the World Health Organization, classified glyphosate as probably carcinogenic to humans, while the European Food Safety Authority (EFSA) found it unlikely to pose a carcinogenic hazard to humans. The ECHA later concluded that glyphosate did not classify as a carcinogen. Several national authorities outside the EU also came to the same conclusion. The Commission eventually renewed the approval of glyphosate for five years in December 2017 and on 19 September 2023, the Commission introduced a proposed regulation to extend the approval of glyphosate for another ten years.

An implementation report on the SUD of 25 May 2020 showed that although Member States have made progress in implementing the SUD, fewer than one in three have completed the review of their NAPs within the five-year legal deadline. Of those that have reviewed their NAPs, most have failed to address the weaknesses identified by the Commission in their initial NAPs.

Under the European Green Deal and particularly its farm to fork and biodiversity strategies, the Commission will take actions to reduce by 50% the use and risk of

chemical pesticides, including the use of the more hazardous pesticides, by 2030. To this end, on 22 June 2022 the Commission adopted the proposal to revise the SUD and promote the greater use of alternative ways to protect harvests from pests and diseases.

F. Biocidal products

Biocidal products such as antibacterial disinfectants and insect sprays are essential for managing harmful organisms affecting human and animal health. Yet, they can pose risks to humans, animals, and the environment. Regulation (EU) No 528/2012 entered into force in 2013 in order to simplify the authorisation mechanisms and enhance the role of the ECHA in reviewing approval dossiers on the basis of stricter conditions. The legislation reflects what was established under the previous regime, with controls over the marketing and use of biocides aimed at managing the associated risks to the environment and to human and animal health. These substances are authorised only if they appear on a positive list, while a ban applies to the most toxic chemicals - especially those that are carcinogenic or harmful to fertility, or interfere with genes or hormones (endocrine disrupters). Pursuant to the mutual recognition principle, a substance authorised in one Member State may be used throughout the EU. Regulation (EC) No 1107/2009 sets out scientific criteria for the determination of endocrine-disrupting properties of biocidal products, as well as PPPs.

G. Persistent organic pollutants (POPs)

POPs are chemical substances that persist in the environment because of their resistance to different forms of degradation (chemical, biological, etc.). They bioaccumulate through the food chain and can provoke adverse effects on human health and the environment. This group of priority pollutants consists of pesticides (such as DDT), industrial chemicals (such as polychlorinated biphenyls or PCBs) and unintentional by-products of industrial processes (such as dioxins and furans). The EU has committed itself at international level to controlling the handling, exportation and importation of POPs, under the Aarhus POP Protocol to the Geneva Convention on long-range transboundary air pollution (in force since 2003) and the Stockholm Convention on POPs (in force since 2004). The EU made additional progress with Regulation (EC) No 850/2004, which complements earlier EU legislation on POPs and aligns it with the provisions of the international agreements.

The recast Regulation (EU) 2019/1021 incorporates all of the amendments and corrigenda to the POPs Regulation up to 25 June 2019. It provides, inter alia, for the flame retardant decaBDE to be added to Annexes I and IV. The 'unintentional trace contaminant' limit is set at 10 mg/kg in substances. Specific exemptions concerning the use of decaBDE have been introduced for aircraft, motor vehicles and electrical and electronic equipment, and have been extended to imports. In 2021, the Commission adopted the proposal to review Annexes IV and V of the POPs Regulation, aiming to address the negative consequences of the presence of certain POPs substances in waste and in material that could be recovered from it. As a consequence, better waste management should also minimise emissions of POPs to air, water and soil.

H. Asbestos

Asbestos is a mineral with a fibrous structure, which is dangerous when inhaled. It was widely used in the past for insulation and other purposes, owing to its resistance to fire and heat. Directive 1999/77/EC enforced a ban on the use of asbestos has been in place in the EU since 1 January 2005. Furthermore, the extraction, manufacturing and

processing of asbestos products is prohibited under Directive 2003/18/EC, repealed by Directive 2009/148/EC, which also lays down removal programme strategies to be implemented by the Member States. On 28 September 2022, the Commission presented a comprehensive approach to better protect people and the environment from asbestos. The package includes a Communication on working towards an asbestos-free future and a proposal to amend the Asbestos at Work Directive.

I. Detergents

Detergents refer to any substance or preparation containing soaps and/or other surfactants intended for washing and cleaning processes. Regulation (EC) No 648/2004 harmonises the rules on the biodegradability of surfactants, the restrictions and bans on surfactants, the information that manufacturers must provide, and the labelling of detergent ingredients. It was subsequently amended in 2006 (Regulation (EC) No 907/2006), 2009 (Regulation (EC) No 551/2009) and 2012 (Regulation (EU) No 259/2012), in order to introduce new biodegradability tests to provide an enhanced level of protection for the aquatic environment. In addition, the scope of the tests has been extended to include all classes of surfactant, thereby including the 10% of surfactants that hitherto had not been covered by legislation. On 28 April 2023 the Commission submitted a proposal to repeal Regulation (EC) No 648/2004. As regards labelling, Regulation (EC) No 907/2006 also extends the rules to include fragrance ingredients that could cause allergies, requiring manufacturers to disclose a full list of ingredients to medical practitioners treating patients suffering from allergies. As of 30 June 2013, the use of phosphates in laundry detergents is banned and the content of other phosphorus-containing compounds is limited.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament played a key role in the development of the REACH Regulation. It secured the insertion of certain provisions at first reading – notably, in the registration chapter, a targeted approach with regard to data requirements for existing substances produced at lower tonnages (1-10 tonnes), and the 'one substance, one registration' (OSOR) approach intended to minimise costs, introducing an opt-out under specific conditions. In order to limit animal testing as much as possible, Parliament secured a requirement for companies to share data from tests conducted on animals (in return for reasonable compensation), thereby avoiding the need to duplicate experiments. As regards the authorisation chapter, Parliament endorsed a stronger approach whereby all substances of very high concern may only be authorised if a suitable alternative or technology does not exist.

During the long discussion on the pesticides package in 2008, amendments by Parliament ensured the establishment of appropriately sized buffer zones for the protection of aquatic organisms, along with the introduction of protection measures for the most vulnerable groups, including the prohibition of the use of pesticides in public gardens, sports and recreation grounds, school grounds and playgrounds, and in the close vicinity of healthcare facilities. In early 2013, following the publication of a report by the EFSA on the damaging effects of certain neonicotinoid insecticides, Parliament called on the Commission to take determined action to preserve bee populations. In March 2013, Parliament adopted a resolution on asbestos related to occupational health threats and prospects for eliminating all existing asbestos.

Parliament's decision of 6 February 2018 on setting up a special committee on the Union's authorisation procedure for pesticides (PEST) is a response to concerns raised about the risk posed by the herbicide substance glyphosate. The herbicide had its marketing licence renewed by the Commission for five years in December 2017. The special committee assessed: a) the authorisation procedure for pesticides in the EU; b) potential failures in how substances are scientifically evaluated and approved; c) the role of the Commission in renewing the glyphosate licence; d) possible conflicts of interest in the approval procedure; and e) the role of the EU agencies, and whether they are adequately staffed and financed to enable them to fulfil their obligations.

On 16 January 2019, Parliament adopted the report from the PEST special committee, which concluded, inter alia, the following: the public should be granted access to studies used in the authorisation procedure; the EU's framework should stimulate innovation and promote low-risk pesticides; scientific experts should review studies on the carcinogenicity of glyphosate; and data requirements for PPPs should include long-term toxicity.

On 10 July 2020, Parliament adopted a resolution outlining its priorities as regards the upcoming chemicals strategy for sustainability. Parliament asked, among other things, that the strategy be used to develop coherence and synergies between chemicals legislation, occupational safety and health, and related EU legislation, including specific and general product legislation, legislation on water, soil and air, legislation on sources of pollution, including industrial installations, and legislation on waste. It underlined that the strategy should be based on robust and up-to-date scientific evidence, taking account of the risks posed by endocrine disruptors, hazardous chemicals in imported products, and combination effects of different chemicals and very persistent chemicals.

For more information on this topic, please see the website of the Committee on the Environment, Public Health and Food Safety (ENVI).

Georgios Amanatidis / Maria-Mirela Curmei
10/2023

2.6. ECONOMIC AND MONETARY UNION, TAXATION AND COMPETITION POLICIES

2.6.1. HISTORY OF THE ECONOMIC AND MONETARY UNION

The economic and monetary union (EMU) is the result of economic integration in the EU. A common currency, the euro, has been introduced in the euro area, which currently comprises 20 EU Member States. All EU Member States – with the exception of Denmark – must adopt the euro once they fulfil the convergence criteria. A single monetary policy is set by the Eurosystem, comprising the European Central Bank's Executive Board and the governors of the central banks of the euro area.

LEGAL BASIS

— Article 3 of the Treaty on European Union (TEU); Articles 3, 5, 119-144, 219 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocols annexed to the Treaties: Protocol 4 on the statute of the European System of Central Banks and the European Central Bank; Protocol 12 on the excessive deficit procedure; Protocol 13 on the convergence criteria; Protocol 14 on the Eurogroup; Protocol 16, which contains the opt-out clause for Denmark;

— Intergovernmental treaties comprise the Treaty on Stability, Coordination and Governance (TSCG), the Europlus Pact and the Treaty on the European Stability Mechanism (ESM).

OBJECTIVES

EMU is designed to support sustainable economic growth and a high level of employment through appropriate economic and monetary policymaking. This comprises three main fields: (i) implementing a monetary policy that pursues the main objective of price stability; (ii) avoiding possible negative spillover effects due to unsustainable government finance, preventing the emergence of macroeconomic imbalances within Member States, and allowing the Member States to coordinate their economic policies among themselves to a certain degree; (iii) ensuring the smooth operation of the internal market.

ACHIEVEMENTS

The euro is already part of daily life in 20 Member States of the European Union. The single currency has a number of advantages, which include lowering the costs of financial transactions, making travel easier, and strengthening the role of Europe at international level. It helps complete the internal market.

HISTORY OF EMU

At the summit in The Hague in 1969, the Heads of State or Government defined a new objective of European integration: economic and monetary union (EMU). A group headed by Pierre Werner, Prime Minister of Luxembourg, drafted a report outlining the achievement of full economic and monetary union within 10 years. The collapse of the Bretton Woods system produced a wave of instability in respect of foreign exchange,

which called into serious question the parities between the European currencies. The EMU project was brought to an abrupt halt.

At the 1972 Paris Summit, the EU attempted to impart fresh momentum to monetary integration by creating the 'snake in the tunnel': a mechanism for the managed floating of currencies (the 'snake') within narrow margins of fluctuation against the dollar (the 'tunnel'). Thrown off course by the oil crises, the weakness of the dollar and differences in economic policy, the 'snake' lost most of its members in less than two years and was finally reduced to a 'mark area' comprising Germany, the Benelux countries and Denmark.

Efforts to establish an area of monetary stability were renewed at the Brussels Summit in 1978 with the creation of the European Monetary System (EMS), based on the concept of fixed but adjustable exchange rates. The currencies of all Member States, except the UK, participated in the exchange rate mechanism, ERM I. Exchange rates were based on central rates against the ECU (European Currency Unit), the European unit of account, which was a weighted average of the participating currencies. Over a 10-year period, the EMS did much to reduce exchange rate variability: the flexibility of the system, combined with the political resolve to bring about economic convergence, achieved currency stability.

With the adoption of the Single Market Programme in 1985, it became increasingly clear that the potential of the internal market could not be fully achieved as long as relatively high transaction costs linked to currency conversion and the uncertainties linked to exchange rate fluctuations, however small, persisted.

In 1988, the Hanover European Council set up a committee to study EMU under the chairmanship of Jacques Delors, the then Commission President. The committee's report (the Delors report), submitted in 1989, proposed strengthening a three-stage introduction of EMU. In particular, it stressed the need for better coordination of economic policies, the establishment of fiscal rules that set limits for deficits in national budgets, and the creation of an independent institution that would be responsible for the Union's monetary policy: the European Central Bank (ECB). On the basis of the Delors report, the Madrid European Council decided in 1989 to launch the first stage of EMU: the full liberalisation of capital movements by 1 July 1990.

In December 1989, the Strasbourg European Council called for an intergovernmental conference to identify what amendments to the Treaty were needed in order to achieve EMU. The work of this intergovernmental conference led to the Treaty on European Union, which was formally adopted at the Maastricht European Council in December 1991 and came into force on 1 November 1993.

The Treaty provided for EMU to be introduced in three stages (some key dates of which were left open and would be set at later European summits as events progressed):

— Stage 1 (from 1 July 1990 to 31 December 1993): establishing the free movement of capital between Member States;

— Stage 2 (from 1 January 1994 to 31 December 1998): convergence of Member States' economic policies and strengthening of cooperation between Member States' national central banks. The coordination of monetary policies was institutionalised by the establishment of the European Monetary Institute (EMI);

— Stage 3 (which started on 1 January 1999): implementation of a common monetary policy under the aegis of the Eurosystem from the very first day and the gradual

introduction of the euro notes and coins in all euro area Member States. Transition to the third stage was subject to the achievement of a high degree of durable convergence measured against a number of criteria laid down by the Treaties. The budgetary rules were to become binding and any Member State failing to comply could face penalties. The monetary policy for the euro area was entrusted to the Eurosystem, made up of the six members of the ECB's Executive Board and the governors of the national central banks of the euro area.

In principle, by adhering to the Treaties, all EU Member States agreed to adopt the euro (Article 3 of the TEU and Article 119 of the TFEU). However, no deadline has been set and some Member States have not yet fulfilled all the convergence criteria. These Member States benefit from a provisional derogation. Furthermore, the United Kingdom and Denmark had given notification of their intention not to participate in the third stage of EMU and therefore not to adopt the euro. Today, only Denmark currently benefits from an exemption with regard to its participation in EMU's third stage, but maintains an option to end its exemption. At the time of writing, 20 of the 27 Member States have adopted the euro.

In the aftermath of the European sovereign debt crisis, which unfolded in 2009-2012, EU leaders pledged to strengthen EMU, including by improving its governance framework. A Treaty amendment, affecting Article 136 of the TFEU, allowed for the creation of a permanent support mechanism for Member States in distress, provided the mechanism is based on an intergovernmental treaty, the stability of the euro area as a whole is threatened and the financial support is linked to strict conditionality. This led to the establishment of the European Stability Mechanism (ESM) in October 2012, which replaced several ad hoc mechanisms. In addition, ECB President Mario Draghi announced in 2012 that 'within our mandate, the ECB is ready to do whatever it takes to preserve the euro'. To this end, it created the Outright Monetary Transactions (OMT) instrument. The OMT allows the ECB to buy the sovereign bonds of a Member State in distress, provided the country signs a memorandum of understanding with the ESM, thus indirectly making ECB support subject to strict conditionality. To avoid a reoccurrence of a sovereign debt crisis, EMU's secondary legislation was upgraded. The European Semester was established, which strengthened the Stability and Growth Pact (SGP), introduced the Macroeconomic Imbalance Procedure (MIP), and endeavoured to further strengthen economic policy coordination. The improved economic governance framework was supplemented with intergovernmental treaties, such as the Treaty on Stability, Coordination and Governance (TSCG or 'Fiscal Compact') and the Europlus Pact.

A first attempt to further elevate EMU was proposed by the Commission in its Blueprint for a deep and genuine EMU in 2012. The ultimate aim would have been the establishment of a political union. Another 2012 initiative, the less ambitious 'Four Presidents' Report', failed to initiate substantial changes to EMU's economic governance framework. In 2015, taking inspiration from the Blueprint, the Presidents of the European Commission, the European Council, the Eurogroup, the ECB and the European Parliament published a report on Completing Europe's Economic and Monetary Union ('Five Presidents' Report'). It outlined a reform plan aimed at achieving a genuine economic, financial, fiscal and political Union in three stages (to be completed by 2025 at the latest). However, in order to fully realise the grand plans of the Blueprint or the 'Five Presidents' Report', it would be necessary to amend the EU

Treaties in a substantial way. As no Treaty changes have been made since then, the most ambitious projects could not be realised.

The economic crisis induced by COVID-19 has put considerable pressure on public finances. In March 2020, the Council activated the SGP's general escape clause to give Member States a limited time span in which they can increase their public debt beyond the constraints of fiscal rules. This allows, among other things, the temporary exceedance of the 60% debt-to-GDP ratio without risking EU sanctions. However, Member States which already display a very high debt-to-GDP ratio are requested only to increase their debt with much caution. Even with the general escape clause activated, the imposition of sanctions is still possible within the framework of the SGP. Also in March 2020, the ECB initiated the pandemic emergency purchase programme (PEPP), which includes the acquisition of large amounts of sovereign debt on the secondary markets. This provides liquidity to the markets and is designed to avoid the emergence of large spreads between German Bunds and government bonds from a number of highly indebted EU Member States. The amounts provided are very large, but the programme is limited in time.

A strategy review was conducted by the ECB in the summer of 2021, the first since 2003, aiming for a 2% inflation target over the medium term, allowing for the target to be overshot on a temporary basis and for climate change to be taken into account in the Eurosystem's decisions.

All the effects combined of years of ultra-loose monetary policy, further driven by the post-pandemic economic situation, as well as the fall-out from the war in Ukraine, mainly in the form of steep energy price hikes, resulted in a historic increase in inflation in the euro area, which showed its first signs in 2022. Second-round effects materialised when the dramatic loss of purchasing power led to strong demands for wage increases, resulting in a possible wage-price spiral. The Eurosystem made a U-turn on its monetary policy, tapering asset purchases and increasing interest rates. Responding to fears that there would be excessive spreads for sovereign bonds of high-debt countries, the ECB announced an 'anti-fragmentation tool', the Transmission Protection Instrument (TPI), in July 2022.

A debate in the Eurosystem and among euro area Member States on possible changes to the SGP gained momentum in the summer of 2022. However, Member States' positions diverged so widely that there were doubts about the feasibility of any substantial changes. Yet a consensus emerged to allow high-debt countries additional time to bring down their debt-to-GDP ratio to within the 60% upper limit. There is also consensus to simplify, where possible, the excessively complicated enforcement procedures of the SGP, while the current 60% and 3% thresholds for debt and deficit will be maintained. The general escape clause is planned to be deactivated at the end of 2023.

In April 2023, the Commission made legislative proposals to amend the SGP, urging the completion of the legislative procedure by the end of 2023. The proposals, if adopted as they stand, would transfer substantial decision-making powers from the Council to the Commission (which, according to the Treaties, essentially has none in this field), allowing the Commission to directly influence the fiscal adjustment path of individual euro area Member States. It would also allow the Commission to de facto have an influence on the economic policies of each euro area Member State by vetting national

reforms and investments. However, strongly diverging positions within both the Council and Parliament cast doubts on the achievability of a fast breakthrough.

In 2023, after 11 rounds of interest rate increases, inflation in the euro area began to recede, but remains well above the target of 2%.

ROLE OF THE EUROPEAN PARLIAMENT

Since the entry into force of the Lisbon Treaty, the European Parliament has participated as co-legislator in establishing most of the detailed rules shaping the economic governance framework (based among others on Articles 121, 126 and 136 of the TFEU). However, on some dossiers the Treaty only provides for a consultative role for Parliament, including, inter alia, the preventive part of the Stability and Growth Pact, as well as macroeconomic surveillance. In addition, Parliament is consulted on the following issues:

— Agreements on exchange rates between the euro and non-EU currencies;

— Countries eligible to join the single currency;

— The appointment of the President, Vice-President and the four other members of the ECB Executive Board;

— Some parts of the legislation implementing the excessive deficit procedure.

Each year, the ECB presents its annual report, which the ECB President then presents in plenary. Parliament usually reacts to the report by adopting an own-initiative report. Parliament has no decision-making powers for the different stages of the European Semester, but is regularly updated by the Commission and the Council, which hold the executive powers. Parliament's role in the economic governance of the EU was somewhat strengthened by the European Semester, in particular through the setting-up of an 'Economic Dialogue' involving Parliament, the relevant Council formations and the Commission. Parliament may accompany the Semester by adopting own-initiative reports.

By nature, Parliament is not formally involved in the establishment of intergovernmental treaties (e.g. the TSCG), or in the setting-up and running of intergovernmental mechanisms (e.g. the ESM), although Parliament establishes a variety of contacts and is involved in exchanges of views nevertheless.

For more information on this topic, please see the website of the Committee on Economic and Monetary Affairs.

Christian Scheinert
10/2023

2.6.2. THE INSTITUTIONS OF THE ECONOMIC AND MONETARY UNION

The institutions of the Economic and Monetary Union (EMU) are largely responsible for establishing European monetary policy, rules governing the issuing of the euro and price stability within the EU. These institutions are: the European Central Bank (ECB), the European System of Central Banks (ESCB), the Economic and Financial Committee, the Eurogroup and the Economic and Financial Affairs Council (Ecofin).

LEGAL BASIS

— Articles 119-144, 219, 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocols annexed to the Treaty on European Union (TEU): Protocol (No 4) on the statute of the European System of Central Banks and the European Central Bank, Protocol (No 14) on the Eurogroup.

OBJECTIVES

The main objectives (2.6.1) of the institutions of the EMU are to:

— Finalise the completion of the internal market by removing exchange rate fluctuations and abolishing the costs inherent in exchange transactions, as well as the costs of hedging against currency fluctuation risks;

— Esure comparability of costs and prices within the Union, which helps consumers, stimulates intra-Union trade and facilitates business;

— Reinforce Europe's monetary stability and financial power by:

  — Ending, by definition, any possibility of speculation between the Union currencies;

  — Ensuring, through the economic dimension of the EMU that the new currency is less vulnerable to international speculation;

  — Enabling the euro to become a major reserve and payment currency.

ACHIEVEMENTS

A. The institutions of the first stage of the EMU (1 July 1990 — 31 December 1993)

No monetary institutions were established during the first stage of the EMU.

B. The institutions of the second stage of the EMU (1 January 1994 — 31 December 1998)

1. The European Monetary Institute (EMI)

The EMI was established at the beginning of the second stage of the EMU (pursuant to Article 117 of the EC Treaty) and took over the tasks of the Committee of Governors and the European Monetary Cooperation Fund (EMCF). It had no say in the conduct of monetary policy, which remained the prerogative of the national authorities. Among its main tasks for the implementation of the second stage of the EMU were

the strengthening of both cooperation between the national central banks and the coordination of Member States' monetary policies with a view to ensuring price stability. In accordance with Article 123(2) of the EC Treaty, the EMI was dissolved following the establishment of the ECB, for which it had paved the way (1 June 1998).

2. The Monetary Committee

This committee consisted of members appointed in equal numbers by the Commission and the Member States. Set up to promote the coordination of Member States' policies to the full extent needed for the functioning of the internal market (Article 114 of the EC Treaty), it had an advisory role. It was dissolved at the start of the third stage and replaced by the Economic and Financial Committee (Article 134 TFEU).

C. The institutions of the third stage (1 January 1999 onwards)

1. The European Central Bank (ECB) (1.3.11)

a. Organisation

Established on 1 June 1998, the ECB is based in Frankfurt am Main. It is run by two bodies that enjoy independence from Union institutions and national authorities (namely the ECB Governing Council and the Executive Board) and – for certain tasks – by the ECB General Council (which is not itself a decision-making body of the European System of Central Banks, ESCB, described in subsection 2 below). The Treaty of Lisbon introduced the ECB as an institution of the EU (Article 13(1) TEU, Articles 282-284 TFEU); prior to this, it had had no status according to the provisions of the EC Treaty, although it had nevertheless had legal personality.

i. The Governing Council

Comprises the Members of the Executive Board and the Governors of the national central banks of those countries that have adopted the euro (Article 283 TFEU and Article 10(1) of the Statute of the European System of Central Banks and of the European Central Bank, 'the Statute'). As the supreme decision-making body, it adopts the guidelines and takes the decisions necessary to ensure the performance of the tasks entrusted to the ESCB, formulates the monetary policy of the Union (including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB) and establishes the necessary guidelines for its implementation (Article 12 of the Statute). The Treaty of Lisbon states that the members of the ECB Executive Board are selected and appointed by mutual consent by a qualified majority in the European Council (Article 283 TFEU).

ii. The Executive Board

Comprises a President, Vice-President and four other members, all appointed by common accord of the Heads of State or Government of the euro area Member States for a non-renewable period of eight years (Article 283 TFEU). It is entrusted with implementing monetary policy and, in doing so, gives the necessary instructions to national central banks. It is also responsible for the preparation of meetings of the Governing Council and for the current business of the ECB (Articles 11 and 12 of the Statute).

iii. The General Council

The General Council (Article 44 of the Statute) consists of the President and Vice-President of the ECB and the Governors of the Central Banks of all EU Member States, regardless of whether they have adopted the euro. It contributes to the collection of

statistical information, coordinates the monetary policies of those Member States that have not adopted the euro and oversees the functioning of the European exchange rate mechanism.

b. Role

Whereas either the ECB or the national central banks may issue banknotes within the euro area, only the ECB may authorise their issuing. Member States may issue coins subject to approval by the ECB of the volume of the issue (Article 128 TFEU). The ECB takes the decisions necessary for the ESCB to carry out the tasks entrusted to it under its Statute and through the Treaty (Article 132 TFEU). Assisted by the national central banks, it collects the necessary statistical information either from the national authorities responsible or directly from economic agents (Article 5 of the Statute). It is consulted on any proposed Union act in its fields of competence and, at the request of national authorities, on any draft legislative provision (Article 127(4) TFEU). It is responsible for the smooth running of the trans-European automated real-time gross settlement express transfer system (TARGET2), which is a euro payment system that links up the national payment systems and the ECB payment mechanism. The ECB makes the arrangements to integrate the central banks of the Member States joining the euro area into the ESCB.

The ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions (Article 127(6) TFEU and Article 25.2 of the Statute). The ECB has been granted additional tasks under the Single Supervisory Mechanism (SSM) concerning the direct oversight of 'significant' banks in the euro area and other participating Member States. The national authorities in the Member States continue to oversee the 'less significant' banks, in cooperation with the ECB; cross-border cooperation of supervisory authorities in the Union is ensured by the three European Supervisory Agencies (ESAs): The European Banking Agency (EBA), the European Securities and Market Agency (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). This supervisory system is supplemented by the new macro-prudential oversight institution, the European Systemic Risk Board (ESRB).

2. The European System of Central Banks (ESCB) and the Eurosystem

a. Organisation

The ESCB consists of the ECB and the national central banks of all EU Member States (Article 282(1) TFEU and Article 1 of the Statute). It is governed by the same decision-making bodies as those of the ECB (Article 282(2) TFEU). The Eurosystem comprises only the ECB and the national central banks of the Member States in the euro area.

b. Role

The ESCB's fundamental task lies in maintaining price stability (Article 127(1) and Article 282(2) TFEU, Article 2 of the Statute). Without prejudice to this objective, the ESCB supports the general economic policies contributing to the achievement of the Union's objectives. It discharges this task by carrying out the following functions (Article 127(2) TFEU and Article 3 of the Statute):

— Defining and implementing the monetary policy of the Union;

— Conducting foreign-exchange operations consistent with the provisions of Article 219 TFEU;

— Holding and managing the Member States' official foreign reserves;

— Promoting the smooth operation of payment systems; and

— Contributing to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system (Article 127(5) TFEU and Article 3.3 of the Statute).

3. The Economic and Financial Committee

The Member States, the Commission and the ECB each appoint no more than two members of the Committee (Article 134(2) TFEU). Its duties are the same as those of the Monetary Committee, which it succeeded on 1 January 1999, with one important difference: notifying the Commission and the Council of developments on the monetary situation is now the responsibility of the ECB.

4. The Economic and Financial Affairs Council (Ecofin)

Ecofin brings together the finance ministers of all EU Member States and is the decision-making body at European level. Having consulted the ECB, it takes decisions regarding the exchange-rate policy of the euro vis-à-vis non-EU currencies, while adhering to the objective of price stability.

5. The Eurogroup

Originally called Euro-11, the meeting of the Economics and Finance Ministers of the euro area changed its name to 'Eurogroup' in 1997. This advisory and informal body meets regularly to discuss all the issues connected with the smooth running of the euro area and the EMU. The Commission and, where necessary, the ECB are invited to attend these meetings (Article 1 of the Protocol (No 14) on the Eurogroup). The role of the Eurogroup was enhanced by the Treaty of Lisbon with the aim of increasing coordination in the euro area. The term 'Eurogroup' is also mentioned for the first time in this Treaty (Article 137 TFEU). Official innovations include the election by the majority of the Member States represented in the Eurogroup of a Chairman of the Eurogroup for a term of two-and-a-half years (Article 2 of the Protocol (No 14) on the Eurogroup). At the informal Ecofin meeting in Scheveningen on 10 September 2004, Luxembourg's Prime Minister and Minister of Finance, Jean-Claude Juncker, was elected President of the Eurogroup. He thus became the Eurogroup's first elected and permanent President for a mandate that started on 1 January 2005. Since 13 July 2020, Paschal Donohoe, Minister for Finance of Ireland, has been the President of the Eurogroup. He was elected on 9 July 2020.

ROLE OF THE EUROPEAN PARLIAMENT

A. Legislative role

1. The European Parliament, together with the Council, in the ordinary legislative procedure:

— Adopts detailed rules for the multilateral surveillance procedures (Article 121(6) TFEU);

— Amends certain Articles of the ECB's Statute (Article 129(3) TFEU); and

— Lays down the measures necessary for the use of the euro as single currency (Article 133 TFEU).

2. The European Parliament is consulted on the following issues:

— Arrangements for Member States' introduction of euro coins (Article 128(2) TFEU);

— Agreements on exchange rates between the euro and non-EU currencies (Article 219(1) TFEU);

— Choice of countries eligible to join the single currency in 1999 and subsequently;

— Nomination of the President, Vice-President and other Members of the ECB Executive Board (Article 283(2) of the TFEU and Article 11.2 of the Statute);

— Any changes to voting arrangements within the ECB Governing Council (Article 10.2 of the Statute);

— Legislation implementing the excessive deficit procedure provided for in the Stability and Growth Pact;

— Any changes to the powers given to the ECB to supervise credit and other financial institutions (Article 127(6) TFEU);

— Changes to certain Articles of the Statute (Article 129(4) TFEU).

3. The European Parliament is informed about the detailed provisions concerning the composition of the Economic and Financial Committee (Article 134(3) TFEU).

B. Supervisory role

1. Under the Treaty on the Functioning of the European Union

The ECB addresses an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to Parliament, the Council and the Commission, and to the European Council. The President of the ECB must then present this report to the Council and to Parliament, which may hold a general debate on that basis (Article 284(3) TFEU and Article 15.3 of the Statute). The President of the ECB and the other members of the Executive Board may, at the request of Parliament or on their own initiative, be heard by Parliament's relevant committees (Article 284(3), subparagraph 2).

2. Parliament's roles

Parliament called for the extensive powers of the ECB provided for under the Treaty – i.e. freedom to determine the monetary policy to be pursued – to be balanced by democratic accountability (resolution of 18 June 1996). To that end it instituted a 'Monetary Dialogue'. The President of the ECB, or another Member of its Governing Council, appears before Parliament's Committee on Economic and Monetary Affairs (ECON) at least once every three months to answer questions on the economic outlook and to justify the conduct of monetary policy in the euro area. In addition, Parliament routinely delivers an opinion on the ECB's annual report in the context of an own-initiative report.

The new supervisory responsibilities of the ECB are matched with additional accountability requirements under the Single Supervisory Mechanism Framework Regulation. The practical arrangements for this are governed by an interinstitutional agreement between Parliament and the ECB. The accountability arrangements include the attendance of the Chair of the Supervisory Board at the competent committee, the Economic and Monetary Affairs Committee; answering questions asked by Parliament; and confidential oral discussions with the Chair and Vice-Chair of the competent

committee upon request. In addition, the ECB prepares an annual supervisory report, which is presented to Parliament by the Chair of the Supervisory Board.

For more information on this topic, please see the website of the Committee on Economic and Monetary Affairs (ECON).

Jost Angerer
10/2023

2.6.3. EUROPEAN MONETARY POLICY

The European System of Central Banks (ESCB) comprises the ECB and the national central banks of all the EU Member States. The primary objective of the ESCB is to maintain price stability. In order to achieve this objective, the Governing Council of the ECB bases its decisions on an integrated analytical framework and implements both standard and non-standard monetary policy measures.

LEGAL BASIS

— Articles 119-144, 219 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocol (No 4) to the Lisbon Treaty on the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB).

OBJECTIVES

The primary objective of the ESCB under Article 127(1) TFEU is to maintain price stability. Without prejudice to this objective, the ESCB supports general economic policy in the Union, with a view to contributing to the achievement of the Union's objectives. The ESCB acts in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources (Article 127(1) TFEU).

ACHIEVEMENTS

A. Guiding principles

1. Independence

The essential principle of the ECB's independence is set out in Article 130 TFEU: 'When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body'. Independence is also maintained by the prohibitions of monetary financing referred to in Article 123 TFEU, which also apply to the national central banks. The Treaty provides for the use of traditional instruments (Articles 18 and 19 of the Statute) and allows the Governing Council to decide on the use of other methods (Article 20 of the Statute).

2. Transparency and accountability

In order to ensure the credibility of the ECB, the Treaty (Article 284 TFEU) and the Statute (Article 15) impose reporting commitments. The ECB draws up and publishes reports on the activities of the ESCB at least quarterly. A consolidated financial statement of the ESCB is published each week. In February 2015, the ECB published, for the first time, an account of a Governing Council monetary policy meeting and, in so doing, aligned itself with the communication policies of other leading central banks.

Central bank independence is matched with accountability to the public and to its elected representatives. According to the TFEU, the ECB is primarily accountable to

the European Parliament (see 'Role of the European Parliament' below). Additional improvements to the accountability framework, going beyond Treaty requirements, have been put in place between the two institutions. The ECB also reports to the Council of the EU.

B. The ECB's monetary policy strategy

1. Overview

In October 1998, the ECB Governing Council agreed on the main elements of its monetary policy strategy, namely (i) a quantitative definition of price stability, (ii) an important role for the monitoring of the money growth identified by a monetary aggregate and (iii) a broadly based assessment of the outlook for price developments. The ECB has opted for a monetary strategy based on two pillars (economic and monetary analyses), whose respective roles were clearly defined once again during the review of the monetary strategy on 8 May 2003.

In July 2021, the ECB completed the review of its monetary policy strategy. In an effort to engage with stakeholders, the ECB set up an 'ECB Listens Portal' and organised a series of 'listening events' with the public, civil society organisations and academia across the euro area. The current strategy, due to be periodically reassessed (the next time being in 2025), redefines the price stability target and the two-pillar analysis. It also recognises the implications of climate change and financial stability on price stability.

2. Price stability target

The Governing Council has the discretion to define the precise definition of its price stability target. Since July 2021, price stability is defined as an inflation rate (year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area) of 2% over the medium term. The target is symmetric, meaning that both negative and positive deviations from this target are considered as equally undesirable. This may imply a transitory period in which inflation is moderately above the 2% target.

3. Integrated analytical framework

In July 2021, the existing two-pillar strategy was revised and it became the 'integrated analytical framework' composed of (i) economic analysis, and (ii) monetary and financial analysis.

The economic analysis focuses on real and nominal economic developments. The monetary and financial analysis looks at monetary and financial indicators, enabling a focus on the monetary transmission mechanism and implications of financial imbalances and monetary factors on medium-term price stability.

4. Climate change

The 2020-2021 strategy review recognised that climate change has implications for price stability and led to a commitment to take into account, within the ECB's mandate, the implications of climate change and the carbon transition. The Governing Council adopted a climate-related action plan aimed at incorporating climate factors in monetary policy assessments, expanding analytical capacity related to climate change, adapting the design of the monetary policy operational framework, and implementing actions in the area of environmental sustainability disclosure and reporting.

C. Implementation of the monetary policy

1. Standard instruments

The primary monetary policy instrument of the ECB are its three key policy interest rates at which commercial banks can borrow from or deposit with the ECB: the main refinancing operations (MRO) rate, the deposit facility rate and the marginal lending facility rate.

a. Open market operations

Open market operations play an important role in steering interest rates, managing the liquidity situation in the market and signalling the monetary policy stance. The Eurosystem's regular open market operations consist of one-week liquidity-providing operations (MROs) and three-month liquidity-providing operations (longer-term refinancing operations, or LTROs). MROs aim at short-term interest rates, while LTROs provide additional, longer-term refinancing.

Other open market operations are fine-tuning operations and structural operations. The aim of the former is to deal with unexpected liquidity fluctuations in the market, in particular with a view to smoothing the effects on interest rates, while the latter are mainly aimed at adjusting the structural position of the Eurosystem vis-à-vis the financial sector on a permanent basis.

b. Standing facilities

The Eurosystem offers credit institutions two standing facilities: the marginal lending facility in order to obtain overnight liquidity from the central bank, against the presentation of sufficient eligible assets, and the deposit facility in order to make overnight deposits with the central bank.

c. Holding of minimum reserves

In accordance with Article 19(1) of the Statute, the ECB may require credit institutions to hold minimum reserves with the ECB and national central banks. The aim of the minimum reserves is to stabilise the short-term interest rates on the market and to create (or enlarge) a structural liquidity shortage in the banking system vis-à-vis the Eurosystem, making it easier to control money market rates through regular allocations of liquidity.

2. Non-standard instruments

a. Asset purchase programmes

Since 2009, several asset purchase programmes have been implemented by the ECB. Now terminated programmes include: the covered bond purchase programme (CBPP) running from July 2009 to June 2010, the CBPP2 from November 2011 to October 2012 and the Securities Markets Programme (SMP) from May 2010 to September 2012.

Active programmes include the asset purchase programme (APP) and the pandemic emergency purchase programme (PEPP).

The APP consists of four separate programmes: the corporate sector purchase programme (CSPP), the public sector purchase programme (PSPP), the asset-backed securities purchase programme (ABSPP) and the CBPP3. Asset purchases ('quantitative easing') under the APP started in October 2014. Monthly net asset purchases were recalibrated several times, ranging from EUR 15 billion per month (October to December 2018) to EUR 80 billion per month (April 2016 to March 2017).

Net asset purchases were stopped twice (January to October 2019 and July 2022 to February 2023). In these periods, principal repayments from maturing securities were fully reinvested, thus maintaining the overall stock of assets held by the Eurosystem. In December 2022, the Governing Council decided, for the first time, to reduce asset holdings under the APP through a partial reinvestment of principal repayment. From March to June 2023, APP holdings were reduced by EUR 15 billion per month, in a process known as 'quantitative tightening'. Since July 2023, the Governing Council decided to implement a full passive unwinding of asset holdings under the APP by discontinuing reinvestments of principal repayments, thus reducing the APP holdings at a variable monthly pace that depends on the amount of repayments in a given month. At the peak in 2022-2023, the Eurosystem held more than EUR 3.2 trillion of assets under the APP.

In response to the COVID-19 pandemic, the temporary PEPP was launched in March 2020 to conduct public- and private-sector asset purchases. The initial envelope of EUR 750 billion was subsequently expanded to EUR 1.85 trillion. The PEPP allowed for 'fluctuations in the distribution of purchase flows over time, across asset classes and among jurisdictions'. The capital key was guiding, on a stock basis, net purchases under the PEPP. Net asset purchases under the PEPP ended in March 2022. The stock of assets was maintained with full reinvestments of principal repayments until 'at least the end of 2024'. Reinvestments were conducted flexibly between Member States, 'with a view to countering risks to the monetary policy transmission mechanism related to the pandemic'.

b. Outright monetary transactions (OMT)

In August 2012, the ECB announced the possibility of conducting OMT in secondary sovereign bond markets to safeguard an appropriate monetary policy transmission and preserve the singleness of its monetary policy. OMT was designed to be conditional upon a European Financial Stability Facility/European Stability Mechanism macroeconomic adjustment or precautionary programme. Following the announcement, OMT has never been used but remains part of the ECB's toolkit.

c. Transmission protection instrument (TPI)

The TPI was announced in July 2022 to support the effective transmission of monetary policy while the ECB continues normalising monetary policy. Intended to be used as a second line of defence, after PEPP reinvestments, the TPI enables selective 'secondary market purchases of securities issued in jurisdictions experiencing a deterioration in financing conditions not warranted by country-specific fundamentals, to counter risks to the transmission mechanism to the extent necessary'. The TPI includes four eligibility criteria: 1) compliance with the EU fiscal framework; 2) absence of severe macroeconomic imbalances; 3) sustainable public debt; and 4) sound and sustainable macroeconomic policies.

d. Forward guidance

Since July 2013, the ECB has been providing forward guidance on the future path of interest rate policy and asset purchases. Providing forward guidance has been a material shift in the ECB's communication strategy as it has involved communicating not only how the ECB assesses current economic conditions and the risks to price stability over the medium term, but also what this assessment implies for its future monetary policy orientation. In response to high uncertainty in 2022 and 2023, the ECB has been utilising forward guidance to a lesser extent. Starting from July 2022, the

ECB has adopted a meeting-by-meeting and data-dependent approach in its decision-making process.

e. Long-term refinancing operations

In June 2014, the ECB announced a series of targeted longer-term refinancing operations (TLTROs) aimed at improving bank lending to the euro area credit institutions, initially for a window of two years. The second series (TLTRO II) started in March 2016 and a third (TLTRO III) in March 2019. In addition, in response to the COVID-19 pandemic, the Governing Council decided to introduce 11 additional pandemic emergency longer-term refinancing operations (PELTROs).

ROLE OF THE EUROPEAN PARLIAMENT

The ECB is directly accountable to the European Parliament. This accountability is exercised in three principal ways.

By virtue of Article 284(3) of the TFEU and Article 15(3) of the ESCB Statute, the President of the ECB is required to present an annual report to Parliament. Parliament usually adopts a resolution on the ECB annual report. The ECB provides feedback on Parliament's resolutions.

The ECB President, as a standing practice, appears four times a year before Parliament's Committee on Economic and Monetary Affairs (ECON) to explain the ECB's policy decisions and answer questions from committee members (Monetary Dialogue). The meetings are open to the general public and the transcripts are published on both the Parliament and ECB websites. The ECON Committee's external Monetary Expert Panel provides independent input and expertise ahead of each Monetary Dialogue.

Under Rule 140 of the Rules of Procedure of the European Parliament, any Member of the European Parliament may submit up to six questions for written answers per month to the ECB.

Dražen Rakić / MAJA SABOL
10/2023

2.6.4. ECONOMIC GOVERNANCE

Economic governance refers to the system of institutions and procedures established to achieve EU objectives in the economic field, namely the coordination of economic policies to promote economic and social progress for the EU and its citizens. The financial, fiscal and economic crises that began in 2008 showed that the EU needed a more effective model of economic governance than the economic and fiscal coordination in force until then. Developments in economic governance, still ongoing, include reinforced coordination and surveillance of both fiscal and macroeconomic policies and the setting-up of a framework for the management of financial crises.

LEGAL BASIS

— Article 3 of the Treaty on European Union (TEU);

— Articles 2-5, 119-144 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocols annexed to the TFEU: Protocol No 12 on the excessive deficit procedure, Protocol No 13 on the convergence criteria and Protocol No 14 on the Eurogroup.

OBJECTIVES

A. Treaty provisions

The preamble to the TEU states that Member States are 'resolved to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union'.

Article 3 of the TEU states that '[the Union] shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress [...]'.

Articles 2, 5 and 119 of the TFEU constitute the basis for economic coordination: they require the Member States to view their economic policies as a matter of common concern and to coordinate them closely. The areas and forms of coordination are specified in Article 121, which lays down the procedure related to the policy recommendations, both general (broad economic policy guidelines) and country-specific, and in Article 126, which establishes the procedure to be followed in case of excessive government deficits (2.6.6).

Articles 136 to 138 lay down specific provisions for those Member States whose currency is the euro, requiring them to strengthen their coordination and surveillance of budgetary discipline and economic policies.

Furthermore, Title IX on employment requires that employment policies be coordinated and consistent with the economic policies as defined in the broad guidelines (Article 146) (2.3.3).

B. Areas subject to economic governance

The financial, fiscal and economic crisis that originated in 2008 showed that financial, fiscal and macroeconomic imbalances are strictly interrelated, not only within national

boundaries, but also at EU level, and even more so for countries in the euro area. Therefore, the reinforced economic governance system, which was set up in 2011 and is still under further development, refers to several economic areas, including fiscal policies, macroeconomic issues, crisis management, macro-financial supervision and investments.

ACHIEVEMENTS

A. Economic coordination until 2011

Until 2011, economic policy coordination was mainly based on consensus, without legally enforceable rules, except in the fiscal policy framework defined under the Stability and Growth Pact (SGP) (2.6.6). The scope of economic coordination was wide, and different forms of cooperation could be implemented, depending on the extent to which the cooperation agreement involved was binding. Two examples of such coordination are:

— Coordination as a crisis management tool, e.g. the setting-up of the European Financial Stability Mechanism in May 2010;

— Delegation of a policy, whereby the entire authority over a policy could be delegated to a single institution (examples include monetary policy (2.6.3) and competition policy (2.6.12), delegated to the European Central Bank (ECB) and the Commission respectively).

B. Economic governance since 2011

The financial and economic crisis of 2008-2012 exposed fundamental problems and unsustainable trends in many European countries, and made it clear that the EU's economies are strictly interdependent. Greater economic policy coordination across the EU was considered necessary in order to address problems and boost growth and job creation in the future. To this end, the system of bodies and procedures for economic coordination in place in the EU was revised and reinforced: since 2011, a number of legislative acts have been adopted and new institutions established.

1. Reinforced economic and fiscal surveillance, and coordination thereof under the European Semester

Reinforced governance includes: a new synchronised working model – the European Semester – to discuss and coordinate economic and budgetary priorities; tighter EU surveillance of fiscal policies as part of the Stability and Growth Pact (2.6.6); new tools to tackle macroeconomic imbalances (2.6.7) and new instruments to deal with Member States in financial distress (2.6.8).

The European Semester is an annual cycle during which the Member States' budgetary, macroeconomic and structural policies are coordinated so as to allow Member States to take EU considerations into account at an early stage of their national budgetary processes and in other aspects of economic policymaking. The aim is to ensure that all policies are analysed and assessed together, and that policy areas, which were previously not systematically covered by economic surveillance – such as macroeconomic imbalance and financial issues – are included. The key stages in the European Semester are as follows:

— In late autumn, the Commission presents the annual sustainable growth strategy (ASGS), which sets out the EU's priorities for the upcoming year in terms of

economic, budgetary and labour policies, and of other reforms needed to boost growth and employment. The Commission proposes specific recommendations for the euro area as a whole, which are then discussed by the Council of the European Union (hereinafter 'the Council') and endorsed by the spring European Council. The Commission also publishes the Alert Mechanism Report (AMR), which identifies those Member States with potential macroeconomic imbalances;

— In April, the Member States submit their plans for sound public finances (Stability or Convergence Programmes (SCPs)) and for reforms and measures to make progress towards smart, sustainable and inclusive growth (National Reform Programmes (NRPs)). This joint submission allows account to be taken of complementarities and spillover effects between fiscal and structural policies;

— In May, the Commission assesses the NRPs and SCPs, including the correction of possible macroeconomic imbalances. On the basis of those assessments, the Commission proposes country-specific recommendations (CSRs), which are then discussed by different formations of the Council;

— In June/July, the European Council endorses the CSRs, which are officially adopted by the Council in July, closing the annual cycle of the European Semester at the EU level.

The first European Semester was put into practice in 2011. EU-level discussions on fiscal policy, macroeconomic imbalances, financial sector issues and growth-enhancing structural reforms take place jointly during the European Semester, before governments draw up their draft budgetary plans (DBPs) for the upcoming year and submit them for national parliamentary debate. Before finalising the budgets, euro area Member States submit their DBPs to the Commission, which provides its opinion, and to the Eurogroup, which assesses them.

2. By way of action to repair the financial sector, the EU has promoted banking union (2.6.5), with new rules and new institutions, including the Single Supervisory Mechanism, the Single Resolution Mechanism and the European supervisory authorities, to prevent crises and make sure that financial players are properly regulated and supervised.

3. As a consequence of the economic and financial crises, several Member States faced serious difficulties in terms of their financial stability or the sustainability of their public finances, and therefore sought financial assistance (2.6.8). The EU reacted by setting up various mechanisms, including the European Financial Stability Mechanism, the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), as well as adopting legislation that lays down provisions for the macroeconomic conditionality attached to the loans provided to the Member States concerned (Regulation (EU) No 472/2013). The EFSF and the ESM were established by ad hoc Treaties outside the European Union Treaties and are governed by a board composed of the Ministers of Finance of euro area Member States.

C. Possible further evolution of the Economic and Monetary Union

Once the economic and financial crisis was overcome, the EU established a process aimed at reinforcing the architecture of EMU. The process is based on the Five Presidents' Report on Completing Europe's Economic and Monetary Union of 2015, which focused on four main issues:

— A genuine economic union;

— A financial union;

— A fiscal union;

— A political union.

These four unions are strictly interrelated and would develop in parallel. The report was followed by a series of communications, proposals and measures, and the discussion is still ongoing.

In accordance with the relevant legislation, the Commission launched a review of the current governance framework in February 2020, including a public debate on the extent to which the different surveillance elements introduced or amended by the 2011 and 2013 reforms have been effective in achieving their key objectives, namely:

— Ensuring sustainable government finances and growth, as well as avoiding macroeconomic imbalances;

— Providing an integrated surveillance framework that enables the closer coordination of economic policies, in particular in the euro area; and

— Promoting the convergence of economic performance among Member States.

In October 2021, the Commission relaunched the review of the framework through a public consultation on potential reform avenues. The summary report of the consultations was published in May 2022. The Commission put forward a communication laying out orientation principles for the reform in November 2022 before tabling its legislative proposals on 26 April 2023.

The proposed reform seeks to balance the need to reduce public debt levels with support for sustainable growth. At the same time, it attempts to improve enforcement and national ownership of the framework, allowing Member States to negotiate country-specific fiscal adjustment paths focusing on medium-term debt reduction objectives. Moreover, the commitment to investment and reform programmes would allow Member States to extend the length of their adjustment programme to have a more gradual debt reduction path. The sanctions mechanism and the opening of debt-based excessive deficit procedures have also been amended with a view to increasing applicability.

Discussions on the future of the banking union are also ongoing. In April 2023, the Commission tabled proposals to reform the current bank crisis management and deposit insurance framework in Europe to address shortcomings with respect to the failures of medium-sized and smaller banks and improve depositor protection. The debate on the potential establishment of a European deposit insurance scheme – the so-called third pillar of the banking union – currently remains gridlocked.

A reform of the ESM Treaty, which is supposed to expand its toolbox and establish a backstop to the Single Resolution Fund, was agreed in late 2021 but has not entered into force yet pending ratification in Italy.

D. Actors

The European Council sets coordinated political priorities and issues guidelines at the highest level. The Council adopts recommendations and decisions on proposals by the Commission. The Commission is in charge of drafting recommendations and decisions, and of assessing their implementation. The Member States are in charge of national reporting, information exchanges and the implementation of the recommendations and decisions adopted by the Council. The Eurogroup (comprising the finance ministers

of the Member States that have introduced the euro) discusses matters concerning EMU and governs the ESM. The ECB participates in the Eurogroup's deliberations in matters pertaining to monetary or exchange rate policy. The Economic and Financial Committee delivers opinions and prepares the work of the Council, as do the Economic Policy Committee and the Eurogroup Working Group.

ROLE OF THE EUROPEAN PARLIAMENT

With the entry into force of the Lisbon Treaty, Parliament is now a co-legislator as regards the setting of rules for multilateral surveillance (Article 121(6) of the TFEU).

The legislative acts related to economic governance established the Economic Dialogue. In order to enhance the dialogue between the EU institutions, in particular Parliament, the Council and the Commission, and ensure greater transparency and accountability, Parliament's competent committees may invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup, to discuss their respective decisions or present their activities in the context of the European Semester. In the framework of this dialogue, Parliament may also offer a Member State that is subject to a Council decision under the excessive deficit procedure or excessive imbalance procedure the opportunity to participate in an exchange of views.

Under the European Semester, Parliament expresses its opinion on the ASGS in specific resolutions, also taking into account the contributions gathered during a Parliamentary Week meeting on the European Semester with national parliaments, held at the beginning of the year. In late autumn, Parliament expresses its opinion on the ongoing European Semester cycle (including the CSRs as adopted by the Council).

Parliament promotes the involvement of national parliaments through annual meetings with members of their relevant committees. Furthermore, and in line with the legal and political arrangements of each Member State, national parliaments should be duly involved in the European Semester and in the preparation of Stability or Convergence Programmes and National Reform Programmes, in order to increase transparency and ownership of, and accountability for, the decisions taken.

Parliament has expressed its opinion on the possible evolution of the EMU in several resolutions, namely its resolution on the review of the macroeconomic legislative framework; its resolution on budgetary capacity for the euro area; its resolution on possible evolutions of and adjustments to the current institutional set-up of the European Union, and its resolution on improving the functioning of the European Union building on the potential of the Lisbon Treaty.

Samuel De Lemos Peixoto / GIACOMO LOI
10/2023

2.6.5. BANKING UNION

The Banking Union is based on a proposal that the European Commission presented in 2012, a few years after the severe financial crisis had started to unfold in the EU. The key innovation was to transfer responsibility for the day-to-day supervision of the largest banks in the euro area from national to European level. From then on, the European Central Bank (ECB) was put in charge of both monetary policy and supervisory tasks, even though it needed to keep them strictly separate. Another institution – the Single Resolution Board (SRB) – was set up at European level to deal with the failure of large banks. A third element, a European deposit insurance scheme, has often been called for, including by the European Parliament, but has so far not been put in place.

LEGAL BASIS

Articles 114 and 127(6) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The Banking Union (BU) is an essential complement to the Economic and Monetary Union (EMU) and the internal market. It aligns responsibility for supervision and crisis management at EU level. This adds unified enforcement in the euro area of the single rulebook that applies to EU banks. In particular, the Banking Union seeks to ensure that banks take measured risks and that failing banks can be resolved in an orderly manner, with as little impact as possible on the real economy and public finances of the participating EU countries.

ACHIEVEMENTS

A. Roadmap for Banking Union

In December 2012, the President of the European Council, in close collaboration with the Presidents of the European Commission, the European Central Bank (ECB) and the Eurogroup, drew up a specific and time-bound roadmap for the achievement of a genuine EMU. One of the vital parts of this roadmap was the creation of a more integrated financial framework, i.e. the BU.

B. Agreement on the SSM

In March 2013, Parliament and the Council reached a political agreement to establish the first pillar of the BU, the Single Supervisory Mechanism (SSM), covering all banks in the euro area. Non-euro area Member States may opt in to the SSM. Operational since November 2014, the SSM has been placed within the ECB and is responsible for the direct supervision of the largest and most significant banking groups, while national supervisors continue to supervise all other banks, under the coordination and ultimate responsibility of the ECB. The criteria for determining whether banks are considered significant – and therefore fall under the ECB's direct supervision – are set out in the SSM Regulation and the SSM Framework Regulation, and relate to a bank's size, economic importance, cross-border activities and need for direct public support. In line with the development of these criteria, the actual number of banks directly supervised

by the ECB changes over time; the ECB can moreover decide at any time to classify a bank as significant if that is necessary to ensure that high supervisory standards are consistently applied.

In order to avoid a potential conflict of interests, clear rules govern the organisational and operational separation of the ECB's roles in the areas of supervision and of monetary policy.

C. Comprehensive Assessment

Prior to assuming its supervisory responsibilities, the ECB conducted a 'financial health check' called the Comprehensive Assessment, which consisted of an asset quality review and a stress test. The aim of that exercise was to achieve greater transparency in the banks' balance sheets in order to ensure a reliable starting point. The results, published in October 2014, showed that 25 out of 130 participating banks had capital shortfalls.

All banks subsequently underwent a similar kind of 'financial health check' when they first came under direct supervision; following Bulgaria's request to establish close cooperation between the ECB and the Bulgarian National Bank, for example, the ECB carried out a comprehensive assessment of six Bulgarian banks, with the results published in July 2019.

From 2014 until 2022, the comprehensive assessment's two parts (asset quality review and stress test) were carried out in tandem. The results were then combined and published at the same time. In 2022, however, the ECB decided to split the comprehensive assessment and to henceforth conduct the two parts as independent exercises and to publish the results independently.

D. SRB/SRM

In March 2014, Parliament and the Council reached a political agreement to establish the second pillar of the Banking Union, the Single Resolution Mechanism (SRM). The main objective of the SRM is to ensure that bank failures in the Banking Union are managed efficiently, with minimal costs to taxpayers and the real economy. When action is needed, a central authority – the Single Resolution Board (SRB) – will take charge of the decision to initiate the resolution of a bank, while from an operational point of view, the decision will be implemented in cooperation with national resolution authorities. The SRB started its work as an independent EU agency in January 2015, and became fully operational in January 2016.

In June 2017, the SRB adopted its first resolution decision in the case of Banco Popular. The SRB, however, decided not to take resolution action in June 2017 as regards Banca Popolare di Vicenza and Veneto Banca, in February 2018 as regards ABLV Bank AS and its subsidiary ABLV Bank Luxembourg S.A., and in August 2019 as regards AS PNB Banka.

These banks became subject to national insolvency proceedings instead. In March 2022, the SRB took several decisions concerning the failure of the Sberbank Europe AG, a banking group whose parts were later partially liquidated and partially taken over by other banks (further information here).

E. CRD/CRR

Minimum capital requirements define how much capital a bank must hold to be considered safe to operate and able to deal with operational losses on its own. The

financial crisis demonstrated that previous regulatory minimum capital requirements were actually too low in a major crisis. It was therefore agreed at international level to increase the respective minimum thresholds (Basel III standards). In April 2013, Parliament and the Council adopted two legal acts that transpose the prudential capital requirements for banks into European law, the fourth Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). The CRD and CRR entered into force in January 2014.

The level playing field inside the single market is strengthened by a Single Rule Book applicable to all banks in the EU, as the bulk of technical rules that banks have to fulfil take the form of directly applicable regulations, avoiding the frictions that can result from the implementation of directives in national laws. Moreover, in the legal acts that were adopted by Parliament and the Council, some technical details still needed to be finalised. The Commission was therefore empowered to draft complementing legislative acts (so-called level-2 measures) that specify the missing technical details.

In November 2016, the Commission presented a comprehensive package of reforms to amend the rules set out in the CRD and the CRR. Within Parliament, the two legislative proposals amending the CRD and CRR were negotiated in parallel. Parliament's Committee on Economic and Monetary Affairs adopted its full report on the amending proposals in June 2018. In June 2019, the amended Capital Requirements Directive (CRD V) and Capital Requirements Regulation (CRR II) were published in the Official Journal of the European Union.

F. EDIS

In November 2015, the Commission presented a legislative proposal that aimed to add another element to the Banking Union, namely the European Deposit Insurance Scheme (EDIS). The Commission's initial proposal built on existing national deposit guarantee schemes and recommended a gradual introduction of EDIS. It conceived the proposal as cost-neutral overall for the banking sector (though riskier banks were meant to pay higher contributions than safer banks), and suggested complementary safeguards and measures to reduce banking risks.

The European Parliament's rapporteur published her draft report on EDIS in November 2016. Subsequent discussions in Parliament and the Council revealed divergent positions as regards the design of the system at its final stage. In order to facilitate progress, the Commission published an additional communication in October 2017, proposing some options for the design of EDIS. In December 2020, the three EU institutions agreed on the legislative priorities for 2021, including EDIS, in the related working document.

Despite repeated attempts, the issue of the diverging positions on the file have not been resolved, which means that the legislative process remains at a standstill.

G. CMDI reform

While many would agree that the transfer of the responsibility for the day-to-day supervision of the largest banks in the euro area from national to European level has worked well overall, the jury is still out on the suitability of the current bank resolution framework.

In view of the experience that the failure of some medium-sized and smaller banks have been dealt with outside the resolution framework, sometimes involving taxpayers' money instead of the resources intended for that purpose (banks' internal resources

or industry-funded safety nets such as the Single Resolution Fund), the European Commission proposed several changes to the legal framework, subsumed under the label crisis management and deposit insurance reform (CMDI) (more information here). At the time of writing, this legislative package is being discussed by the European Parliament and the Council.

ROLE OF THE EUROPEAN PARLIAMENT

As a response to the roadmap on a genuine EMU, Parliament adopted a resolution entitled 'Towards a genuine Economic and Monetary Union' on 20 November 2012, with recommendations to the Commission to establish a real Banking Union. By adopting and introducing important amendments to the legislative acts on the SSM, SRM, DGS, BRRD and CRD IV in 2013 and 2014, Parliament contributed significantly to establishing a real Banking Union.

These legislative acts give Parliament a role in the scrutiny of the newly established institutions. The ECB is, in its supervisory role (i.e. in the SSM), accountable to Parliament and to the Council. Details of its accountability towards Parliament are laid down in an Interinstitutional Agreement (IIA) between Parliament and the ECB.

So far, 26 public hearings of the Chair of the SSM have taken place in the Committee on Economic and Monetary Affairs, i.e. in March 2014, November 2014, March 2015, October 2015, March 2016, June 2016, November 2016, March 2017, June 2017, November 2017, March 2018, June 2018, November 2018, March 2019, September 2019, December 2019, May 2020, October 2020, March 2021, July 2021, October 2021, March 2022, June 2022, December 2022, March 2023 and June 2023.

The same procedure applies to the Single Resolution Board, whose Chair participates at least once every calendar year in a hearing of the competent committee of Parliament on the execution of the resolution tasks by the Board. So far, 23 public hearings of the SRB have taken place in the Committee on Economic and Monetary Affairs, i.e. in June 2015, January 2016, July 2016, December 2016, March 2017, July 2017, December 2017, March 2018, July 2018, December 2018, April 2019, July 2019, December 2019, May 2020, October 2020, March 2021, July 2021, December 2021, March 2022, July 2022, November 2022, March 2023 and July 2023.

Details of the SRB's accountability towards Parliament and related practical modalities are laid down in an Interinstitutional Agreement between Parliament and the SRB that was published on 24 December 2015.

For more information on this topic, please see the website of the Committee on Economic and Monetary Affairs (here).

Marcel Magnus
10/2023

2.6.6. THE EU FRAMEWORK FOR FISCAL POLICIES

In order to ensure the stability of the Economic and Monetary Union, a robust framework is needed to prevent unsustainable public finances as far as possible. A reform (part of the 'Six Pack') amending the Stability and Growth Pact (SGP) entered into force at the end of 2011. Another reform in this policy area, the intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), including the Fiscal Compact, entered into force in early 2013. Furthermore, a regulation on assessing national draft budgetary plans (part of the 'Two Pack') entered into force in May 2013. On 26 April 2023, the Commission presented its legislative proposals for the EU economic governance reform.

LEGAL BASIS

— Articles 3, 119-144, 136, 219 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocol No 12 (on the excessive deficit procedure) and Protocol No 13 (on the convergence criteria) to the Treaties.

OBJECTIVES

The objective of the fiscal policy architecture of the European Union is to build a robust and effective framework for the coordination and surveillance of the fiscal policies of the Member States. The 2011-2013 reforms of the legal framework were a direct response to the sovereign debt crisis, which highlighted the need for stricter rules in the light of the spillover effects from unsustainable public finances between euro area countries. The revised framework therefore draws on the experiences of the initial design failures of the European Monetary Union and attempts to reinforce the guiding principle of sound public finances, which is enshrined in Article 119(3) TFEU. In April 2023, the Commission launched a new reform of the legal framework, building on the evolving economic governance of the EU over the past decade.

ACHIEVEMENTS

A. Stability and Growth Pact

Primary EU law provides the main legal foundation for the SGP in Articles 121 (multilateral surveillance) and 126 (excessive deficit procedure) of the TFEU and Protocol No 12 on the excessive deficit procedure. Secondary EU law sets out in more detail how the rules and procedures provided for by the TFEU have to be implemented. The first Economic Governance Package ('Six Pack') entered into force on 13 December 2011, reforming and amending the rules of the SGP. The amended SGP provides the main instruments for the surveillance of the Member States' fiscal policies (preventive arm) and for the correction of excessive deficits (corrective arm). In its current form, the SGP consists of the following measures:

— Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, as amended by Council Regulation (EC) No 1055/2005 of

27 June 2005 and Regulation (EU) No 1175/2011 of 16 November 2011. This regulation constitutes the preventive arm;

— Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EC) No 1056/2005 of 27 June 2005 and Council Regulation (EU) No 1177/2011 of 8 November 2011. This regulation constitutes the corrective arm;

— Regulation (EU) No 1173/2011 of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area.

In addition, the 'Code of Conduct', which is an opinion of the Economic and Financial Committee (EFC) (Committee of the Economic and Financial Affairs Council (ECOFIN)), contains specifications on the implementation of the SGP and provides guidelines on the format and content of the Stability and Convergence Programmes (SCPs). Though the Code of Conduct is formally below the level of a regulation, the fact that it specifies how to implement the SGP makes it of great practical importance. Its most recent update, agreed by the EFC on 15 May 2017, includes specifications on flexibility within the existing rules of the SGP (via so-called investment and structural reform clauses and a matrix specifying 'economic good times' and 'economic bad times' of the preventive arm and specifying which fiscal adjustment efforts are needed for the relevant cyclical situation and debt ratio). These specifications are based on a 'commonly agreed position on flexibility within the SGP' of the EFC (November 2015), which was endorsed by the ECOFIN Council in February 2016. The starting point for the discussions was the Commission communication entitled 'Making the best use of the flexibility within the existing rules of the Stability and Growth Pact' of 13 January 2015. Furthermore, the current version of the Code of Conduct contains two EFC opinions from November 2016, which put a stronger focus on the expenditure benchmark, while the structural balance indicator remains an essential part of the fiscal surveillance framework.

1. Preventive arm of the SGP

The aim of the preventive arm is to ensure sound public finances by multilateral surveillance, based on Article 121 TFEU, the amended Regulation (EC) No 1466/97 and the new Regulation (EU) No 1173/2011.

A key concept in surveillance and guidance is the country-specific medium-term budgetary objective (MTO). The MTO of each country has to be in a range of between -1% of GDP and balance or surplus, corrected for cyclical effects and one-off temporary measures. This objective has to be revised every three years, or when major structural reforms are implemented which impact on the fiscal position. Core instruments in the preventive arm of the SGP are the SCPs.

Stability and Convergence Programmes (SCPs)

Submission: As part of the multilateral surveillance under Article 121 TFEU, in April of each year, each Member State has to submit a stability programme (in the case of euro area Member States) or a convergence programme (for non-euro area Member States) to the Commission and the Council. The stability programmes must contain, inter alia, the MTO, the adjustment path thereto and a scenario analysis examining the effects of changes in the main underlying economic assumptions on the fiscal position. The basis for the calculations must be the most likely macro-fiscal (or more prudent) scenarios. These programmes are published by the Commission.

Assessment: The Council examines the programmes on the basis of an assessment by the Commission and the EFC. In particular, progress made towards achieving the MTO is scrutinised. A new element in the amended SGP is the explicit consideration of the development of expenditure in the assessment.

Opinion: On the basis of a Commission recommendation and after consulting the EFC, the Council adopts an opinion on the programmes. In its opinion, the Council can ask the Member States to adjust their programmes. The opinion forms an integral part of the country-specific recommendations adopted by the Council at the end of each European Semester.

Monitoring: The Commission and the Council monitor the implementation of the SCPs.

Early warning: In the case of major deviations from the adjustment path to the MTO, the Commission addresses a warning to the Member State concerned in accordance with Article 121(4) TFEU (Articles 6 and 10 of amended Regulation (EC) No 1466/97). This warning is given in the form of a Council recommendation requesting the necessary policy adjustments by the Member State concerned.

Sanctions: For those euro area Member States that do not take suitable adjustment action, the amended SGP also provides for the possibility of imposing sanctions in the form of an interest-bearing deposit amounting to 0.2% of the previous year's GDP. Provision is also made for fines for the manipulation of debt or deficit data.

European Semester: The submission and assessment of the SCPs form part of the European Semester, which is a broader process of economic policy coordination within the European Union that includes the preventive arm of the SGP.

2. Corrective arm of the SGP

Excessive deficit procedure (EDP)

The purpose of the EDP is to prevent excessive deficits and to ensure they are swiftly rectified. The EDP is governed by Article 126 TFEU, Protocol No 12 to the Treaties, the amended Regulation (EC) No 1467/97 and the new Regulation (EU) No 1173/2011.

In accordance with the amended SGP, an EDP is triggered by the deficit criterion or the debt criterion:

— Deficit criterion: a general government deficit is considered to be excessive if it is higher than the reference value of 3% of GDP at market prices;

— Debt criterion: debt is higher than 60% of GDP and the annual debt reduction target of one twentieth of the debt in excess of the 60% threshold has not been achieved over the last three years.

The amended regulation also contains provisions clarifying when, if a deficit is higher than the stated reference value, it will be considered exceptional (resulting from an unusual event or a severe economic downturn, etc.) or temporary (when forecasts indicate that the deficit will fall below the reference value following the end of the unusual event or downturn).

Articles 126(3) to 126(6) TFEU lay down the procedure for assessing and deciding on an excessive deficit. The Commission prepares a report if a Member State does not comply with, or if there is a risk that it will not comply with, at least one of the two criteria. The EFC formulates an opinion on this report. If the Commission sees an excessive deficit as a given (or as a possible occurrence), it addresses an opinion to

the Member State concerned and informs the Council. On the basis of a Commission proposal, the Council has the final decision on whether an excessive deficit exists (Article 126(6) TFEU). Subsequently, on the basis of a Commission recommendation, it adopts a recommendation addressed to the Member State concerned (Article 126(7) TFEU) to demand that effective action be taken to reduce the deficit, setting a deadline of no longer than six months. Where the Council establishes that no such action has been taken, its recommendation may be made public (Article 126(8) TFEU). After persistent failure to comply with the recommendations, the Council may give notice to the Member State concerned to take appropriate measures within a specified time limit (Article 126(9) TFEU).

Sanctions: The EDP also provides for sanctions in cases of non-compliance (Article 126(11) TFEU). For euro area Member States, as a rule, this sanction is a fine, consisting of a fixed component (0.2% of GDP) and a variable component (up to a maximum of 0.5% of GDP for both components taken together).

Provision is made for additional sanctions for euro area Member States in Regulation (EU) No 1173/2011 on the effective enforcement of budgetary surveillance in the euro area. The sanctions are imposed at different stages of the EDP and entail non-interest-bearing deposits of 0.2% and a fine of 0.2% of previous years' GDP. Under the same regulation, provision is also made for sanctions for statistical manipulation.

3. General escape clause of the SGP

Given the 'severe economic downturn in the euro area or the Union as a whole' created by the COVID-19 crisis, the Council (on the basis of a proposal by the Commission) activated the general escape clause under the SGP for the first time in March 2020, in order to provide leeway for the Member States to adopt emergency measures with major budgetary consequences. Once activated, the clause allows a Member State under the preventive arm to temporarily depart from the adjustment path towards the MTO, provided that this does not endanger fiscal sustainability in the medium term. If a Member State is under the corrective arm, the clause implies that the Council may decide, on a recommendation from the Commission, to adopt a revised fiscal trajectory. In short, the general escape clause does not suspend the procedures of the SGP, but it allows the Commission and the Council to depart from the budgetary requirements that would normally apply. In March 2021, the Commission adopted a communication entitled 'One year since the outbreak of COVID-19: fiscal policy response', which includes, inter alia, the following statement: the decision on whether to deactivate the general escape clause or continue it for 2022 should be taken as an overall assessment of the state of the economy based on quantitative criteria. The level of output in the EU or euro area compared to pre-crisis levels would be the key quantitative criterion. Current preliminary indications would suggest to continue applying the general escape clause in 2022 and to deactivate it as of 2024.

B. Fiscal Compact

At the European Council meeting in March 2012, the TSCG, the fiscal component of which is the Fiscal Compact, was signed by all Member States except the UK and Czechia (Croatia also did not sign this Treaty, neither before nor after its EU accession on 1 July 2013). The Fiscal Compact provides for the balanced budget 'golden rule', with a lower limit of structural deficit of 0.5% of GDP (if public debt is lower than 60% of GDP, this lower limit is set at 1% of GDP), to be enshrined in national law, preferably at constitutional level (the 'debt brake'). Member States may bring proceedings against

other Member States before the Court of Justice of the European Union in cases where this rule has not been properly implemented. Additional provisions include, inter alia, automatic triggering of the correction mechanism and enforced rules for countries under the EDP. In addition, financial assistance from the European Stability Mechanism will only be provided to Member States that have signed the Fiscal Compact.

C. Further reforms strengthening economic governance in the euro area

The 2011-2013 reforms of the economic governance of the Union and of the fiscal policy framework includes, in addition to the revised SGP rules and the intergovernmental TSCG, two regulations whose purpose is to further strengthen economic governance in the euro area (the 'Two Pack'):

— Regulation (EU) No 473/2013 of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area; and

— Regulation (EU) No 472/2013 of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability.

The main elements of the first regulation are to provide for common budgetary timelines for all euro area Member States and for rules on the monitoring and assessment by the Commission of Member States' budgetary plans. In cases of serious non-compliance with the SGP rules, the Commission can request that the plans be revised. Furthermore, the regulation stipulates that euro area Member States which are subject to an EDP must present an economic partnership programme detailing the policy measures and structural reforms needed to ensure an effective and lasting correction of the excessive deficit. The Council, acting on a proposal from the Commission, adopts opinions on the economic partnership programmes.

The second regulation concerns Member States experiencing or threatened with serious difficulties with respect to their financial stability. It sets out rules for enhanced surveillance, financial assistance and post-programme surveillance (as long as a minimum of 75% of the financial assistance received has not been repaid).

D. Reviews of the key legislation

In accordance with the 'Six Pack' and 'Two Pack' Regulations, the Commission published a communication entitled 'Economic governance review' in February 2020. The purpose of this communication was to start a public debate on the extent to which the different surveillance elements introduced or amended by the 2011 and 2013 reforms have been effective in achieving their key objectives.

On 19 October 2021, the Commission presented a communication relaunching the public debate on the review of the EU economic governance framework, taking stock of the changed circumstances following the COVID-19 crisis. The Commission published the outcome of the public consultation in March 2022.

On 9 November 2022, the Commission finally outlined in a communication its orientations for the reform of the EU economic governance framework, addressing the key economic and policy issues that will shape the EU's economic policy coordination and surveillance for the next decade. The Commission has proposed moving to a risk-based EU surveillance framework that differentiates between countries by taking into account their public debt challenges, i.e. risks to debt sustainability. National

medium-term fiscal-structural plans are the cornerstone of the Commission's proposed framework. They would integrate fiscal, reform and investment objectives, including those to address macroeconomic imbalances where necessary, into a single holistic medium-term plan, thus creating a coherent and streamlined process. A single operational indicator – net primary expenditure, i.e. the expenditure which is in a government's control – would serve as a basis for setting the fiscal adjustment path and carrying out annual fiscal surveillance. Member States would be required to present national medium-term fiscal-structural plans adapted to their national circumstances. These plans would cover a period of four years, during which their public finances would have to comply with a gradual, but continuous, reduction path of excessive government debt or, for low-debt countries, maintain a prudent fiscal policy. A Member State could apply for a more flexible path by extending the duration of its national medium-term fiscal-structural plan to a maximum of seven years. In exchange, it would have to commit to more reforms and investments. As regards the governance structure, these plans would have to be agreed with the Commission and approved by the Council, similar to the national recovery and resilience plans under NextGenerationEU.

As a starting point, the Commission would present a reference fiscal adjustment path to each Member State based on a commonly agreed framework, covering a period of four years, based on its debt sustainability analysis methodology.

A distinction would be made according to a country's level of public debt:

— For countries with moderate or high levels of public debt, the Commission would propose a multi-annual adjustment path in terms of net public expenditure covering four years;

— Member States with a substantial public debt challenge would have to complete their budgetary adjustment over the life of their plan;

— Member States with a 'moderate public debt challenge' would have to complete their adjustment at the latest three years after the life of their plan.

In the event of an unforeseen downturn in the macroeconomic situation, the Commission has suggested introducing a general escape clause specific to each Member State. This would be in addition to the general escape clause of the SGP, activated at the outbreak of the pandemic in spring 2020 and active until the end of 2023. The activation of such a clause would allow a Member State facing exceptional circumstances beyond its control to deviate from the agreed path.

In an attempt to improve the enforcement of the framework's provisions, the Commission has also proposed to make the opening of a debt-based EDP more automatic and to revise the sanctions regime applicable.

On 26 April 2023, the Commission presented its legislative proposals for the EU economic governance reform, which are largely based on the principles outlined in the Commission communication of 9 November 2022. The reformed norms aim to increase political ownership, simplify fiscal rules, facilitate investments for EU priorities and promote effective enforcement. The new governance architecture envisaged by the Commission seeks to reconcile the sustainability of public finances with sustainable and inclusive growth, particularly in the light of the green and digital transitions.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament is co-legislator as regards the setting of detailed rules for multilateral surveillance (Article 121(6) TFEU), and is consulted on secondary legislation implementing the EDP (Article 126(14) TFEU). The amended SGP contains a new instrument, the Economic Dialogue, which gives Parliament a prominent role in the current fiscal policy framework in that it entitles Parliament's competent committee to invite the President of the Council, the Commission, the President of the European Council, the President of the Eurogroup and, if appropriate, a Member State, for an exchange of views. Parliament is also kept regularly informed about the application of the regulations. Furthermore, the Commission's powers to impose extra reporting requirements, within the framework of the new regulation on monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, will now have to be renewed every three years, with Parliament or the Council having the power to revoke them.

Samuel De Lemos Peixoto / GIACOMO LOI
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2.6.7. MACROECONOMIC SURVEILLANCE

Over the past decade, the EU has experienced major macroeconomic imbalances (which exacerbated the negative effects of the financial crisis that began in 2008) and serious divergences in competitiveness (which prevented the effective use of common monetary policy measures). In 2011, the EU set up the macroeconomic imbalance procedure (MIP) – a surveillance and enforcement procedure intended to facilitate the early identification and correction of such imbalances in Member States, paying specific attention to imbalances with potential spill-over effects on other Member States.

LEGAL BASIS

— Article 3 of the Treaty on European Union (TEU);

— Articles 119, 121 and 136 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The macroeconomic imbalance procedure (MIP) is a surveillance and enforcement mechanism that aims to prevent and correct macroeconomic imbalances in the EU. The surveillance undertaken is part of the European Semester for economic coordination (2.6.4).

This surveillance relies on:

1. An alert mechanism report (AMR), which is prepared by the Commission and is based on a scoreboard of indicators and thresholds. The scoreboard indicators refer to external imbalances (current accounts, net international investment position, real effective exchange rate, changes in export shares, unit labour cost) and internal imbalances (house prices, private sector credit flow, private sector debt, public debt, unemployment rate and changes in financial sector liabilities, as well as other indicators relating to employment and unemployment). Each indicator is associated with a threshold that signals that a specific problem might arise; some thresholds are differentiated for euro-area and non-euro-area Member States. If a Member State exceeds several thresholds, the Commission performs an in-depth review, i.e. further economic analysis intended to determine whether macroeconomic imbalances are likely to emerge, or already exist, and whether existing imbalances have been corrected;
2. Preventive recommendations. If, based on the outcomes of the in-depth review, the Commission finds that macroeconomic imbalances exist, it must inform Parliament, the Council and the Eurogroup. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned, in accordance with the procedure set out in Article 121(2) of the TFEU. These preventive MIP recommendations form part of the country-specific recommendations addressed to each Member State in July each year by the Council as part of the European Semester;

3. Corrective recommendations under the excessive imbalance procedure (EIP). If, based on the in-depth review, the Commission finds that the Member State concerned is affected by excessive imbalances, it must inform Parliament, the Council, the Eurogroup, the relevant European supervisory authorities and the European Systemic Risk Board (ESRB). The Council, on a recommendation from the Commission, may, in accordance with Article 121(4) of the TFEU, adopt a recommendation establishing the existence of an excessive imbalance and recommending that the Member State concerned take corrective action. The Council's recommendation must set out the nature and implications of the imbalances and specify a set of policy recommendations to be followed and a deadline within which the Member State concerned must submit a corrective action plan;
4. Corrective action plans. The Member State for which an EIP is opened must submit a corrective action plan within the deadline specified in the Council's recommendation. The Council, on the basis of a Commission report, must assess the corrective action plan within two months of its submission;
5. Assessment of corrective action. The Council must assess, based on a Commission report, whether the Member State concerned has taken the recommended corrective action. Where it considers that the Member State has not taken such action, the Council, on a recommendation from the Commission, must adopt a decision (based on reverse qualified majority voting (RQMV)) establishing non-compliance, together with a recommendation setting new deadlines for taking corrective action;
6. Potential financial sanctions. Euro-area Member States that do not follow recommendations made under the EIP may be subject to graduated sanctions, ranging from an interest-bearing deposit to annual fines. The interest-bearing deposit or fine should amount to 0.1% of national GDP.

The proposal for replacing Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies published by the Commission on 26 April 2023 interacts with Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances in that the Council may adopt a recommendation establishing the existence of an excessive imbalance in the event that a Member State fails to implement the reform and investment commitments included in its medium-term fiscal-structural plan to address the country-specific recommendations that are relevant for the MIP. Moreover, if a Member State is under an excessive imbalance procedure, it has to submit a revised medium-term fiscal-structural plan under the proposed **r**egulation, which will serve as the corrective action plan under Regulation (EU) No 1176/2011.

ACHIEVEMENTS

Since the inception of the MIP in 2012, the number of Member States:

— Considered as experiencing imbalances increased from 12 to 16 between 2012 and 2015, but fell to 11 in 2018, to 10 in 2019, to 9 in 2020 and in 2021, and to 7 in 2022 before increasing to 9 in 2023;

— Considered as experiencing excessive imbalances increased from 0 to 6 between 2012 and 2017, but then fell to 3 in 2018, where it remained from 2019to 2022 before decreasing to 2 in 2023.

The Commission has not yet proposed initiating the excessive imbalance procedure, despite the Council and the European Central Bank having called for the procedure to be used to its full potential, with the corrective arm applied where appropriate.

All countries with imbalances are subject to specific monitoring, which is tighter for countries with excessive imbalances and involves dialogues with the national authorities, visits from experts and regular progress reports. This should also help monitor the implementation of the country-specific recommendations in the Member States concerned.

If a Member State is considered to be at risk of macroeconomic imbalances, then some or all of the country-specific recommendations adopted by the Council in the context of the European Semester may be underpinned by the MIP. Over the years, the number of these recommendations has increased, but their level of implementation has not.

ROLE OF THE EUROPEAN PARLIAMENT

With the entry into force of the Treaty of Lisbon, Parliament has become a co-legislator in setting rules for multilateral surveillance (Article 121(6) of the TFEU).

The legislative acts relating to macroeconomic surveillance provide for economic dialogue. In order to enhance the dialogue between the institutions of the Union – in particular Parliament, the Council and the Commission – and to ensure greater transparency and accountability, Parliament's competent committee may invite the President of the Council, the Commission, the President of the European Council and/or the President of the Eurogroup to discuss their decisions or present their activities within the European Semester. As part of this dialogue, Parliament may also provide an opportunity to participate in an exchange of views with a Member State which is the subject of a Council recommendation under the EIP.

In late autumn, Parliament expresses its opinion on the ongoing European Semester cycle (including the country-specific recommendations adopted by the Council), also taking into account the outcome of a joint meeting with representatives of the competent committees of national parliaments.

Under the MIP, the Commission cooperates with Parliament and the Council in defining the set of macroeconomic indicators to be included in the scoreboard used for monitoring possible macroeconomic imbalances in the Member States. In February 2020, the Commission launched a review of the EU economic governance framework, including an evaluation of the effectiveness of the MIP regulations and the progress made towards closer coordination of economic policies and towards continued convergence of the economic performances of the Member States.

Parliament promotes the involvement of national parliaments through annual meetings with members of the relevant committees of those parliaments. Furthermore, and in line with the legal and political arrangements of each Member State, the national parliaments should be duly involved in the European Semester and in the preparation of stability programmes, convergence programmes and national reform programmes, in order to increase the transparency and ownership of, and accountability for, the decisions taken.

Samuel De Lemos Peixoto / MAJA SABOL
10/2023

2.6.8. FINANCIAL ASSISTANCE TO EU MEMBER STATES

European financial assistance mechanisms are intended to preserve the financial stability of the EU and the euro area, as financial distress in one Member State can have a substantial impact on macro-financial stability in other Member States. Financial assistance is linked to macroeconomic conditionality (it is a loan rather than a fiscal transfer), to ensure that Member States receiving such assistance implement the necessary fiscal, economic, structural and supervisory reforms. The reforms are agreed and set out in specific documents (memoranda of understanding) published on the Commission website and, when relevant, on the European Stability Mechanism website. As part of the EU response to the COVID-19 crisis, a number of additional financial instruments were put forward to help the Member States recover and make their economies more resilient to shocks.

PRIMARY LEGAL FRAMEWORK

— Article 3 of the Treaty on European Union (TEU);

— Articles 2-5, 119-144 and 282-284 of the Treaty on the Functioning of the European Union (TFEU);

— Protocols 4, 12, 13 and 14 annexed to the TFEU.

OBJECTIVES

Mechanisms for the provision of financial assistance to Member States are designed to preserve the financial stability of the EU and the euro area. They are fundamental elements of a stronger economic and governance framework for Economic and Monetary Union (2.6.4).

ACHIEVEMENTS

A. In May 2010, the EU Member States set up a temporary stabilisation mechanism to preserve their financial stability in the context of the sovereign debt crisis. It comprises the following two loan programmes:

1. The European Financial Stabilisation Mechanism (EFSM)

Under the EFSM, the Commission is allowed to borrow up to a total of EUR 60 billion on financial markets on behalf of the Union under an implicit EU budget guarantee. The EFSM can provide assistance to all EU Member States.

The mechanism has been activated for Ireland, Portugal and Greece (as bridge financing).

Since the creation of the European Stability Mechanism (ESM), the EFSM remains in place to address, in particular, exceptional situations where practical, procedural or financial reasons call for its use, generally before or alongside ESM financial assistance.

2. The European Financial Stability Facility (EFSF)

The EFSF, which was established by euro area Member States as a temporary mechanism, has a total effective lending capacity of EUR 440 billion. Loans are financed by the EFSF's bonds and other debt instruments on capital markets, and are guaranteed by the shareholders (euro area Member States).

The facility was activated for Ireland, Portugal and Greece. Since the creation of the ESM, the EFSF does not provide any further financial assistance.

B. October 2012 saw the creation of the permanent support mechanism in the shape of the European Stability Mechanism (ESM), which was established by an intergovernmental treaty (i.e. outside the EU legal framework).

The ESM is currently the sole and permanent instrument for financial assistance to euro area Member States. It has an effective lending capacity of EUR 500 billion. Loans are financed by the ESM's borrowings on financial markets and are guaranteed by the shareholders (euro area Member States).

The ESM has provided financial assistance to Spain, Cyprus and Greece. The Commission and the ESM have established detailed procedures for their working relationship in providing assistance to euro area Member States.

The ESM offers financial assistance through different lending instruments. As part of the EU response to the COVID-19 crisis, the euro area Member States agreed on a new temporary instrument – the Pandemic Crisis Support instrument.

In November 2020, euro area Member States reached an agreement on a reform of the ESM Treaty with a view to strengthening its toolbox and mandate. Key changes include the establishment of a common backstop to the Single Resolution Fund (SRF) as a safety net for bank resolution, a stronger role in the definition and monitoring of financial assistance programmes as well as additional instruments to promote debt sustainability. The amended Treaty is currently pending ratification in Italy before it can enter into force.

C. On 6 December 2017, the Commission made a proposal to transform the ESM into a European Monetary Fund (EMF).

This new body would be anchored within the EU's legal framework, while at the same time essentially preserving the financial and institutional structures of the ESM. In addition, the EMF would provide the common backstop to the Single Resolution Fund (SRF) as part of the Banking Union. In March 2019, Parliament adopted a resolution on the Commission proposal. May 2013 saw the entry into force of the 'Two-Pack', which consists of two EU regulations ((EU) No 472/2013 and (EU) No 473/2013) applicable to Member States whose currency is the euro. It is one of the building blocks of a stronger economic and governance framework within the EMU.

In particular, Regulation (EU) No 472/2013 strengthens the monitoring and surveillance procedures for Member States experiencing, or threatened with, severe difficulties with regard to their financial stability or the sustainability of their public finances.

Under this regulation, the Commission may decide to subject a Member State to enhanced surveillance if its financial stability difficulties are likely to have spillover effects on the rest of the euro area. A Member State that requests financial assistance has to prepare a draft macroeconomic adjustment programme in agreement with the Commission (acting in liaison with the ECB and, where appropriate, the IMF).

The provision of financial assistance is thus linked to macroeconomic conditionality – a set of measures intended to address the sources of instability. This ensures that Member States receiving such assistance implement the necessary fiscal, economic, structural and supervisory reforms.

Financial assistance is disbursed in tranches and may therefore be suspended if the beneficiary Member State does not comply with the obligations specified in the adjustment programme.

D. The balance of payments assistance facility

Since February 2002, the balance of payments (BoP) assistance facility has been available to non-euro area Member States experiencing, or seriously threatened with, external financing constraints.

The loans usually take the form of medium-term financial assistance, typically in cooperation with the IMF. Financial assistance is conditional on the implementation of policies designed to address underlying economic problems. Balance of payments financial assistance has been granted to Hungary, Romania and Latvia.

E. EU COVID-19 response

As a response to the COVID-19 crisis, the EU put forward a comprehensive response that included a number of financial instruments to support the Member States' efforts in fighting the crisis and its effects. These include the European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE) and the NextGenerationEU (NGEU), in particular through the Recovery and Resilience Facility (RRF).

ROLE OF THE EUROPEAN PARLIAMENT

By adopting the 'Two-Pack', Parliament has helped to establish an EU legal framework for enhanced economic governance in the euro area, in terms of both budgetary surveillance and the decision-making and surveillance procedure for Member States under a macroeconomic adjustment programme.

Moreover, the 'Two-Pack' gives Parliament a tighter scrutiny role in that the competent committee can invite the institutions concerned (the Commission, the Council, the Eurogroup, the ECB and the IMF) to engage in economic dialogues with Parliament. The competent committee in Parliament has the right to be informed at various instances, namely when a macroeconomic adjustment programme is being prepared and on its implementation.

In its resolution on the Commission proposal to transform the ESM into an EMF, Parliament proposed the establishment of a protocol for an interim Memorandum of Cooperation (MoC) between the ESM and Parliament. The MoC would aim to improve interinstitutional dialogue between the ESM and Parliament and enhance the ESM's transparency and accountability.

What is more, Parliament has the mandate to scrutinise the RRF, notably through regular recovery and resilience dialogues with the Commission and through its ad hoc RRF Working Group.

MAJA SABOL / GIACOMO LOI

10/2023

2.6.9. GENERAL TAX POLICY

Taxation is a prerogative of the Member States, the EU having only limited competences. As EU tax policy is geared towards the smooth running of the single market, the harmonisation of indirect taxation was addressed before direct taxation. A fight against harmful tax evasion and tax avoidance has followed. EU tax legislation must be adopted unanimously by the Member States. The European Parliament has the right to be consulted on tax matters; for budgetary-related issues it is even co-legislator.

LEGAL BASIS

The tax provisions chapter (Articles 110-113) of the Treaty on the Functioning of the European Union (TFEU), which relates to the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation; the chapter on the approximation of laws (Articles 114-118 TFEU), which covers taxes that have an indirect effect on the establishment of the internal market, with fiscal provisions not subject to the ordinary legislative procedure; other provisions relevant to tax policy, referring to the free movement of persons, services and capital (Articles 45-66 TFEU), the environment (Articles 191-192 TFEU) and competition (Articles 107-109 TFEU).

Enhanced cooperation (Articles 326-334 TFEU) can be applied in respect of tax matters. The main feature of EU tax provisions with regard to the adoption of acts is the fact that the Council decides on a Commission proposal by unanimity, with Parliament being consulted. Provisions adopted in the tax field include directives approximating national provisions, and Council decisions. Firm in the conviction that retaining unanimity for all taxation decisions makes it difficult to achieve the level of tax coordination that Europe requires, the Commission submitted proposals for a move to qualified majority voting in certain tax areas. However, these were rejected by the Member States.

Direct taxation denotes taxes levied on income, wealth and capital, whether personal or corporate. Personal income tax is not covered as such by EU provisions (rather, EU activity in this field is based on the case-law of the Court of Justice). EU action on corporate income tax is more developed, although it focuses only on measures linked to the principles of the single market. Indirect taxation consists of taxes that are not levied on income or property. It includes value-added tax (VAT), excise duties, import levies, and energy and other environmental taxes. As the development of EU tax provisions is geared towards the smooth running of the single market, the harmonisation of indirect taxation was addressed at an earlier stage and in greater depth than that of direct taxation.

OBJECTIVES

The EU's strategy on tax policy is explained in the Commission communication 'Tax policy in the European Union – Priorities for the years ahead' and, slightly more recently, in the publication 'Taxation – promoting the internal market and economic growth: towards simple, fair and efficient taxation in the European Union'. The power to introduce, remove or adjust taxes remains in the hands of the Member States. Provided

it complies with EU rules, each Member State is free to choose the tax system it deems most appropriate. Within this framework, the main priorities for EU tax policy are the elimination of tax obstacles to cross-border economic activity, the fight against harmful tax competition and tax evasion, and the promotion of greater cooperation between tax administrations in ensuring control and combating fraud. Increased tax policy coordination would ensure that the Member States' tax policies support wider EU policy objectives, as set out in the Single Market Act. Furthermore, taxation is one of the key policies monitored through the European Semester, the yearly cycle of economic policy coordination; a number of country-specific recommendations issued to the Member States regularly touch upon the fight against aggressive tax planning, tax evasion or tax avoidance.

INITIATIVES AND PROGRESS

The Commission's annual report on taxation presents the state of play regarding taxation in the EU. The report aims to describe, in a clear and accessible manner, the most recent reforms that have been undertaken and the main indicators that are used by the Commission to assess progress on taxation policies in EU Member States and at EU level. It also presents EU initiatives such as 'Business in Europe: Framework for Income Taxation ("BEFIT")' and the Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER).

Tackling tax avoidance, tax evasion and tax fraud at both EU and global level remains high on the agendas of the EU institutions. Elsewhere, work has continued on making corporate taxation in the EU fairer and better adapted to a modern digital economy in the internal market. Key initiatives have included the following:

— The Anti-Tax Avoidance Directive (adopted in 2016 and amended in 2017) lays down rules against tax avoidance practices that directly affect the functioning of the internal market and addresses hybrid mismatches with non-EU countries;

— The Directive on Administrative Cooperation (DAC), introduced in 2011 to enhance the exchange of tax information, has been amended several times in recent years, most recently on 22 March 2021 by DAC 7, which still needs to be implemented (see below). Prior to that, the most recent changes were made through DAC 6, adopted on 25 May 2018. This directive includes a requirement for intermediaries, such as consultants, lawyers or financial institutions, to report certain tax arrangements to local tax authorities, which should then automatically exchange the information collected across the EU;

— On 15 July 2020, the Commission adopted a tax package for fair and simple taxation, consisting of three separate but complementary initiatives: (1) an action plan for fair and simple taxation supporting the recovery: a set of 25 initiatives due to be adopted and implemented by the Commission between now and 2024 in order to make taxation fairer, simpler and better adapted to modern technologies; (2) a revision of the Directive on Administrative Cooperation (DAC7), which was formally adopted by the Council on 22 March 2021, and is aimed at ensuring that Member States automatically exchange information on the revenues generated by sellers on digital platforms, whether the platform is located in the EU or not; a proposal for a further revision of the Directive on Administrative Cooperation (DAC8) to address the exchange of information on crypto-assets and e-money,

which is still pending; and (3) a communication on tax good governance in the EU and beyond;

— As of 1 January 2018, new rules entered into force obliging Member States to give tax authorities access to data collected under anti-money laundering legislation. The anti-money laundering directives – AMLD4 and AMLD5 – aim to prevent the use of the European financial system for money laundering and terrorist financing purposes. The purpose of this is to ensure that national tax authorities have direct access to information on the beneficial owners of companies, trusts and other entities, as well as companies' customer due diligence records. The rules also seek to enable tax authorities to react quickly and efficiently to cases of tax evasion and avoidance.

— In September 2023, the Commission adopted a proposal entitled 'Business in Europe: Framework for Income Taxation (or BEFIT)', which will provide a single corporate tax rulebook for the EU, based on apportionment and a common tax base. It will reduce compliance costs for businesses that operate in more than one Member State and make it easier for national tax authorities to determine which taxes are rightly due. After being adopted by the Council, the proposal should come into force on 1 July 2028. Also in September 2023, the Commission published two other proposals for Council Directives: one on transfer pricing and one for a head office tax system for small and medium-sized enterprises. After being adopted by the Council, these two proposals should entry into force in January 2026.

The legislative proposal on anti-money laundering presented by the Commission in July 2021 encompasses:

— A new proposal on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;

— A proposal on establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism;

— A proposal on information accompanying transfers of funds and certain crypto-assets. The proposal was adopted by Parliament and the Council on 31 May 2023.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has generally endorsed the broad lines of the Commission's programmes on taxation, with the fight against tax fraud and evasion and money laundering being a policy priority of the current and past legislative terms. Parliament's recommendations in this area have benefited from the work of several ad hoc committees.

The first of these, the Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE), drew attention to a conspicuous paradox: that free competition in tax matters and a lack of cooperation between Member States has led to disconnects between the places where value is created and profits are taxed, resulting in corporate tax base erosion and revenue losses in different countries, some of which have also been subjected to austerity measures.

Against the backdrop of the Panama Papers and LuxLeaks revelations, which had laid bare the need for greater cooperation and transparency worldwide, the TAXE 2 Committee built on the work of TAXE. Its final report was adopted by Parliament as

a resolution on 6 July 2016, which called for sanctions against non-cooperative tax jurisdictions included on a blacklist of tax havens to also be applied to companies, banks, and accountancy and law firms, with the possibility of revoking their business licences. It emphasised the negative consequences of patent boxes, which in most cases are used by multinational companies for tax avoidance purposes.

The Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA) built on the work of TAXE and TAXE 2 and on Parliament's resolution from December 2015 on bringing transparency, coordination and convergence to corporate tax policies, which identified regulatory and monitoring challenges when addressing tax issues.

The aim of TAX3 – the Committee on Financial Crimes, Tax Evasion and Tax Avoidance – was to continue the work of TAXE, TAXE 2 and PANA, and to investigate issues relating to digital taxation, national citizenship programmes and VAT fraud.

Its final report was adopted by Parliament in plenary on 26 March 2019. It emphasised the urgent and continuous need for reform of the rules, so that international, EU and national tax systems are fit for the new economic, social and technological challenges of the 21st century. It reached the assessment that current tax systems and accounting methods are not equipped to keep up with these developments or to ensure that all market participants pay their fair share of taxes. Members welcomed the fact that over the last term the Commission had put forward 26 legislative proposals aimed at closing some of the loopholes, improving the fight against financial crimes and aggressive tax planning, and enhancing the efficiency of tax collection and tax fairness. They deeply regretted, however, the lack of progress in the Council on major initiatives in relation to corporate tax reform that had still not been finalised owing to a lack of genuine political will. They called for the EU initiatives that had not yet been finalised to be swiftly adopted and for implementation to be monitored closely in order to ensure efficiency and proper enforcement and keep pace with the versatility of tax fraud, tax evasion and aggressive tax planning.

The Subcommittee on Tax Matters (FISC) of the Committee on Economic and Monetary Affairs was set up in September 2020 to continue the fight against tax avoidance that Parliament had pursued during its previous mandate. Its objectives are to strive to ensure that Parliament promotes fair taxation at a national, EU and global level. Moreover, in view of the challenge of promoting a sustainable economic recovery in line with the European Green Deal, the committee is tasked with helping to devise a simpler, more efficient and more sustainable EU tax policy. Parliament has adopted a number of resolutions on the basis of FISC reports. These include:

— a resolution of 15 February 2022 on the impact of national tax reforms on the EU economy. Among other conclusions, it welcomed the historic agreement reached by the Organisation for Economic Co-operation and Development (OECD) and G20 on reforming the international tax system to ensure a fairer distribution of profits and taxing rights among countries with respect to the largest multinational companies, including the partial reallocation of taxing rights to the countries where value is created, and establishing a global minimum effective tax rate of 15%;

— a resolution of 21 October 2021 on the Pandora Papers: implications for the efforts to combat money laundering, tax evasion and tax avoidance. With this resolution, Parliament called for the EU to close the loopholes that are allowing tax avoidance, money laundering and tax evasion to be carried out on a massive scale. It also

called for the Commission to take legal action against Member States that fail to implement existing laws properly.

For more information on this topic, please see the website of the FISC Subcommittee.

Jost Angerer
10/2023

2.6.10. DIRECT TAXATION: PERSONAL AND COMPANY TAXATION

The field of direct taxation is not directly governed by European Union rules. Nevertheless, a number of directives and the case law of the Court of Justice of the European Union (CJEU) establish harmonised standards for taxation of companies and private individuals. Moreover, actions have been taken to prevent tax evasion and double taxation.

LEGAL BASIS

The EU Treaty makes no explicit provision for legislative competences in the area of direct taxation. Legislation on the taxation of companies has usually been based on Article 115 of the Treaty on the Functioning of the European Union (TFEU), which authorises the Union to adopt directives on the approximation of laws, regulations or administrative provisions of the Member States which directly affect the internal market; these require unanimity and the consultation procedure.

Article 65 TFEU (free movement of capital) allows Member States to distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested. However, in 1995, the CJEU ruled (in Case C-279/93) that Article 45 TFEU is directly applicable in the field of taxation and social security: that article stipulates that freedom of movement for workers entails 'the abolition of any discrimination based on nationality [...] as regards employment, remuneration and other conditions of work and employment'. Articles 110-113 TFEU require Member States to enter into negotiations on the abolition of double taxation within the EU. Article 55 TFEU forbids discrimination between the nationals of Member States as regards participation in the capital of companies. Most of the arrangements in the field of direct taxation, however, lie outside the framework of EU law. An extensive network of bilateral tax treaties involving both Member States and third countries covers the taxation of cross-border income flows.

OBJECTIVES

Two specific objectives are the prevention of tax evasion and the elimination of double taxation. In general terms, a degree of harmonisation of company taxation is justified in order to prevent distortions of competition (in particular in connection with investment decisions), to prevent 'tax competition' and to reduce the scope for manipulative accounting.

RESULTS

A. Company taxation

Proposals to harmonise corporation tax have been under discussion for several decades (1962: Neumark report; 1970: Van den Tempel report; 1975: proposal for a directive on the alignment of tax rates between 45% and 55%). In 1980, the Commission stated that the attempt at harmonisation was probably doomed to failure (COM(80)0139), and concentrated on measures to complete the internal market: in

the ‘Guidelines on corporation tax’ of 1990 (SEC(90)0601), three proposals were adopted, namely the Merger Directive (90/434/EEC — now 2009/133/EC), the Parent Companies and Subsidiaries Directive (90/435/EEC — now 2011/96/EU), and the Arbitration Procedure Convention (90/436/EEC). The fate of the 1991 proposal for a directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States illustrates the often protracted nature of the negotiations with the Member States: despite being revised and receiving a favourable opinion from Parliament, the Commission withdrew it as a result of the failure to reach agreement in the Council. A new version appeared in 1998 as part of the ‘Monti package’ and was subsequently adopted as Directive 2003/49/EC.

In 1996, the Commission launched a new approach to taxation. In the field of company taxation, the main result was the Code of Conduct for Business Taxation, adopted as a Council resolution in 1998. The Council also established a Code of Conduct Group (known as the ‘Primarolo Group’) to examine cases of unfair business taxation. In 2001, the Commission prepared ‘an analytical study of company taxation in the European Community’ (SEC(2001)1681). The accompanying Commission communication (COM(2001)0582) noted that the main problem faced by companies was that they had to adapt to different national regulations in the internal market. In 2004, a working group was set up, and the results of its work were incorporated into a Commission proposal. The proposed ‘common consolidated corporate tax base’ (CCCTB) would mean that companies benefit from a system with a central contact point to which they could submit their tax refund claims. They would also be able to consolidate all their profits and losses made in the EU. Member States would retain full responsibility for setting their own rates of corporate tax. In April 2012, the European Parliament adopted its legislative resolution on this proposal. In June 2015, to give fresh impetus to the negotiations in the Council, the Commission came up with a strategy for re-launching the CCCTB proposal in 2016. The Commission opted for a two-step process, separating the common base and consolidation elements, with two interconnected legislative proposals: on a common corporate tax base (CCTB) and on a common consolidated corporate tax base (CCCTB). While it would call for the introduction of the CCCTB to be compulsory, there would be provisions for phasing it in. The revamped proposal, adjusted to take account of work by the Organisation for Economic Co-operation and Development (OECD), could also address tax avoidance by closing regulatory gaps between the national systems and thus putting a stop to common tax avoidance arrangements.

In September 2023, the Commission adopted a proposal entitled ‘Business in Europe: Framework for Income Taxation (or BEFIT)’, which will provide a single corporate tax rulebook for the EU, based on apportionment and a common tax base. The proposal will replace the pending proposal for a CCCTB. It will reduce compliance costs for businesses that operate in more than one Member State and make it easier for national tax authorities to determine which taxes are due. After being adopted by the Council, the proposal should come into force on 1 July 2028. Also in September 2023, the Commission published two other proposals for Council directives: one on transfer pricing and one for a head office tax system for small and medium-sized enterprises. After being adopted by the Council, these two proposals should enter into force in January 2026.

B. Fair taxation, tax transparency and measures to combat tax avoidance and harmful tax competition

In the course of the 2008 financial crisis, attention turned to combating tax avoidance and to the equitable taxation of companies. Increased transparency is seen as one of the ways of achieving this, as evidenced in the Tax Transparency Package of March 2015, which included the Council Directive on the automatic exchange of information on tax rulings between Member States (Directive (EU) 2015/2376) and the communication on tax transparency to fight tax evasion and avoidance. In 2015, the Commission adopted an action plan for a fair and efficient corporate tax system in the European Union, with provisions for reforming the corporate tax framework in order to combat tax abuses, ensure sustainable revenue and support an improved environment for business in the internal market. In January 2016, the Commission proposed a package of measures to combat tax avoidance, which included a proposal for a Council directive to combat tax avoidance practices with an immediate impact on the functioning of the internal market (adopted in July 2016). In April 2016, the Commission proposed an amendment to Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches. The proposal requires multinational enterprises to disclose publicly certain parts of the information submitted to the tax authorities. In June 2017, the Commission proposed new transparency rules for intermediaries (e.g. consulting firms, banks, lawyers, tax advisers) that design or sell potentially harmful tax schemes, following a request for a legislative proposal in Parliament's resolution (TAXE 2). This proposal was then adopted by the Council in May 2018. In December 2017, the Council published the first ever EU list of non-cooperative jurisdictions. The list is updated on a regular basis.

The transition to a digital economy has led to a growing disconnect between where value is created and where tax is paid. Discussions on modernising international corporate taxation started a decade ago in the G20, and have been supported by the OECD. On 8 October 2021, members of the OECD/G20 Inclusive Framework on BEPS (base erosion and profit shifting) agreed on the Two-Pillar solution, which is an approach to addressing the tax challenges arising from the digitalisation of the economy. The Two-Pillar solution will ensure that largest and most profitable multinational enterprises will be subject to a minimum tax rate of 15% and re-allocate profits to countries worldwide in the following way:

Pillar 1 is the place of taxation where value is created and where customers are located, regardless of a physical presence in the country. For this, the Commission proposed on 22 December 2021 'the next generation of EU own resources', which includes an own resource equivalent to 15% of the share of the residual profits of in-scope companies, which are to be reallocated to EU Member States. The proposals do not include extensive details, not least because the OECD is still working on practical implementation aspects of the pillar design. Very recently, however, in October 2023, the OECD published the Multilateral Convention (MLC) to Implement Amount A of Pillar 1. This reflects the current consensus achieved among members of the Inclusive Framework (IF). Pillar 1 needs to be signed and will only enter into force when at least 30 jurisdictions accounting for a critical mass of in-scope multinationals ratify the MLC.

Pillar 2 is a global 15% minimum tax, and for this the Commission published a proposal for a Council directive concerning a global minimum level of taxation for multinational groups on 22 December 2021.

Commissioner Paolo Gentiloni commented that the draft proposals are 'fully consistent with the final version of the OECD's model rules which set out the details for the application of the new framework. That means no gold plating; no departure from the international agreement [...]'.

The EU adopted its Pillar 2 Directive at the end of 2022 and Member States are obliged to implement the rules by 31 December 2023. The adoption of the directive means that minimum tax rules have become part of EU law.

C. Personal taxation

1. Income tax

The taxation of individuals who work in, or draw a pension from, one Member State but live or have dependent relatives in another has always been a contentious issue. With bilateral agreements, double taxation can generally be avoided, but this has not resolved issues such as the application of different forms of tax relief available in the country of residence to income in the country of employment. In order to ensure equal treatment between residents and non-residents, the Commission put forward a proposal for a directive on the harmonisation of income tax provisions with respect to freedom of movement (COM(1979)0737), on the basis of which taxation in the country of residence would have been the rule. Following its rejection by the Council, this proposal was withdrawn, and the Commission merely issued a recommendation on the principles that should apply to the tax treatment of non-residents' income. In addition, proceedings were brought against some Member States for discrimination against non-national employees. In 1993, the CJEU ruled (in Case C-112/91) that a Member State cannot treat non-nationals from another Member State less favourably in terms of the collection of direct taxes than it does its own nationals (see Case C-279/93). In general, integration in the field of personal direct taxation can be said to have been furthered more by CJEU rulings than by legislative proposals. In October 2017, the Council adopted a directive (Directive (EU) 2017/1852) aiming to improve existing double taxation dispute resolution mechanisms in the EU.

2. Taxation of bank and other interest paid to non-residents

In principle, taxpayers are required to declare income from interest. In practice, the free movement of capital and banking secrecy have offered scope for tax evasion. Some Member States impose a withholding tax on interest income. In 1989, the Commission proposed the introduction of a common system of withholding tax on interest income, levied at the rate of 15%. This proposal was then withdrawn and replaced by a new one to ensure minimum effective taxation of savings income in the form of interest payments (with a tax rate of 20%). Following lengthy negotiations, a compromise was reached, and Council Directive 2003/48/EC on the taxation of interest income was adopted. It has since been replaced by the more far-reaching Directive 2014/107/EU, which, together with Directive 2011/16/EU, provides for comprehensive exchanges of information between tax authorities.

ROLE OF THE EUROPEAN PARLIAMENT

On tax proposals, Parliament's role is generally confined to the consultation procedure. Its resolutions have broadly supported all Commission proposals in the fields of both company and personal direct taxation, while advocating a widening of their scope. In

addition, Parliament's role is to encourage the Commission to submit new legislative proposals for fairer, greener and more efficient taxation.

In its former 'annual tax reports' (the first of which was adopted in February 2012), Parliament dealt with issues of double taxation and combating aggressive tax policy, and advocated for a common approach to effectively tackling tax fraud and tax avoidance, as well as to providing an improved framework for the correct functioning of the single market.

As a follow-up to the work of the temporary Special Committees on Tax Rulings and Other Measures Similar in Nature or Effect, Parliament adopted two resolutions (TAXE and TAXE 2).

In 2016, following the 'Panama Papers' leak, Parliament established a Committee of Inquiry (PANA Committee) to investigate alleged contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion. In October 2017, the PANA Committee adopted its final inquiry report. In December 2017, Parliament adopted a recommendation to the Council and Commission following the work of the Committee of Inquiry.

With a somewhat expanded mandate, the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) was established by Parliament in March 2018. Following the work of the TAX3 Committee, Parliament adopted a resolution in March 2019.

Parliament's Subcommittee on Tax Matters (FISC) is a subcommittee of the Committee on Economic and Monetary Affairs (ECON). It was set up in September 2020 to continue Parliament's fight against tax avoidance begun in the previous parliamentary term. Its objectives are to promote fair taxation at the national, EU and global level. In the light of forthcoming challenges in promoting a sustainable economic recovery in line with the Green Deal, it also wants to contribute to a more simple, efficient and sustainable EU tax policy. Examples of Parliament resolutions prepared at (sub-) committee level are:

— Resolution of 15 February 2022 on national tax reforms, which, inter alia, welcomes the historic agreement reached by OECD/G20 on the reform of the international tax system with the aim of ensuring a fairer distribution of profits and taxing rights among countries with respect to the largest multinational companies (partial reallocation of taxing rights to countries where value is created and establishment of a global minimum effective taxation of 15%).

— Resolution of 21 October 2021 entitled 'Pandora Papers: implications for the efforts to combat money laundering, tax evasion and tax avoidance', which calls on the EU to close loopholes that currently allow tax avoidance, money laundering and tax evasion on a massive scale. It also called for legal action to be taken by the Commission against EU countries that do not properly implement current EU legislation in this field.

— Resolution of 7 October 2021 on reforming the EU policy on harmful tax practices, which, among other things, calls for a revision of the criteria, governance and scope of the Code of Conduct for Business Taxation (which, according to the resolution, has been the Union's primary instrument to prevent harmful tax competition since 1997). It also states that revision of the Code of Conduct should be conducted

using a democratic, transparent and accountable process involving a group of experts from civil society, the Commission and Parliament.

For more information on this topic, please see the website of the Subcommittee on Tax Matters (FISC).

Jost Angerer
10/2023

2.6.11. INDIRECT TAXATION

Indirect taxes include value added tax (VAT) and excise duties on alcohol, tobacco and energy. The common VAT system is generally applicable to goods and services that are bought and sold for use or consumption in the EU. Excise duties are levied on the sale or use of specific products. EU legislative activities are aimed at coordinating and harmonising VAT law and harmonising duties on alcohol, tobacco and energy with the aim of ensuring the proper functioning of the internal market.

1. VALUE ADDED TAX (VAT)

A. Legal basis

Article 113 of the Treaty on the Functioning of the European Union (TFEU).

B. Development

VAT harmonisation has proceeded in various stages with a view to achieving transparency in intra-EU trade. In 1970, the decision was taken to finance the European Economic Community budget from the Communities' own resources. These were to include payments based on a proportion of VAT and obtained by applying a common rate of tax on a uniform basis of assessment. The VAT Directive (2006/112/EC), adopted in 2007, codifies these amendments in a single piece of legislation.

In 1985, the Commission published a white paper on completing the internal market (COM(1985)0310), Part III of which concerned the removal of fiscal barriers. The need for action in the field of VAT arose from the 'destination principle'.

C. Achievements

1. The VAT system

a. The transitional system

In 1987, the Commission proposed changing to the 'origin principle', under which transactions between Member States would bear the tax already charged in the country of origin, which traders could then deduct as input tax. In addition, the Commission proposed the establishment of a clearing system to reallocate the VAT collected in the countries of origin to the countries of consumption. However, these proposals were unacceptable to the Member States. They outlined, as an alternative, the destination principle for transactions involving VAT-registered traders, thereby establishing the basis of the transitional system, which became operational in 1993 (Directives 91/680/EEC and 92/111/EEC).

b. Viable strategy to improve the existing system

Starting in 2000, the Commission pursued measures to improve the transitional rules then in force. The core EU legislative text on VAT is now the VAT Directive (2006/112/EC). This was followed in 2008 by Directives 2008/8/EC and 2008/9/EC. VAT on services between traders was now to be levied in the country where the services were provided.

In 2005, the foundation was laid for a more uniform application of EU rules (Implementing Regulation (EU) No 282/2011). All Member States now had the option

of applying special rules to simplify the application of VAT. The system was improved by the adoption of Regulation (EC) No 37/2009 on administrative cooperation in the field of value added tax in order to combat tax evasion connected with intra-Community transactions.

2. VAT rates

Directive 92/77/EEC provided for a minimum standard rate of 15%, to be reviewed every two years. It was repealed and replaced by Directive 2006/112/EC (the VAT Directive), under which the standard rate of VAT to be applied by all Member States to goods and services is at least 15%. Member States may apply one or two reduced rates of at least 5% to specific goods or services listed in Annex III to the directive. A number of exceptions to these rules (e.g. lower rates on other goods or services) also apply under certain conditions. Considering the need to modernise and update the list of goods and services eligible for reduced rates, Council Directive (EU) 2022/542 notably amends the application of reduced rates for specific policy objectives.

Under Article 397 of the VAT Directive, the Council can, by unanimity on a proposal by the Commission, adopt the measures necessary to implement the directive. On this basis, some of the guidelines agreed on by the VAT Committee have been transformed into binding implementing measures. These measures, which are directly applicable without transposition into national law, can be found in Council Implementing Regulation (EU) No 282/2011.

3. Recent developments

On 8 December 2022, the Commission proposed a series of measures to modernise the VAT system and make it work better for businesses as well as make it more resilient to fraud by embracing and promoting digitalisation. The proposal also aims to address challenges for VAT arising from the development of the platform economy. Member States lost EUR 93 billion in VAT revenues in 2020, according to the Commission's 2022 VAT Gap report. Estimates suggest that one quarter of the missing revenues can be attributed directly to VAT fraud linked to intra-EU trade. In addition, VAT arrangements in the EU can still be burdensome for businesses, especially for small and medium-sized enterprises, scale-ups and other companies with cross-border operations.

D. Role of the European Parliament

In accordance with EU legislation in the field of VAT, Parliament's role is limited to the consultation procedure. In 2014, Parliament adopted a legislative resolution on the Commission's proposal for a directive amending Directive 2006/112/EC on the common system of VAT as regards a standard VAT return (later withdrawn). On 24 November 2016, Parliament adopted a resolution on the Commission's action plan, welcoming the intention to propose a definitive VAT system and additional measures to tackle fraud. In March 2019, Parliament adopted a report stemming from the work of the Special Committee on financial crimes, tax evasion and tax avoidance (TAX3), which reflects on a number of issues related to VAT.

In its resolution of 15 February 2022 on the impact of national tax reforms on the EU economy, Parliament called on the Member States to compromise on a strong, comprehensible and ambitious reform on indirect taxation, mainly on VAT. It also called on the Commission to present concrete proposals to promote a more efficient system for exchanging information on intra-EU VAT transactions and to make it interoperable

with national mechanisms. Furthermore, it called on the Commission and the Member States to analyse and exchange best practices in the Member States that have succeeded in avoiding a large VAT gap.

In its resolution of 10 March 2022, Parliament issued a number of recommendations to the Commission on fair and simple taxation supporting the recovery strategy. It called on the Commission to substantially reduce the VAT gap across the EU, especially in the post-COVID-19 economy, via specific proposed measures, including on the VAT gap associated with the exemption on cross-border EU trade. Other recommendations relate to e-invoicing across the EU and the need to analyse the technological possibilities (for example, linked to Artificial Intelligence), which can be applied to (near) real-time VAT reporting in business-to-business transactions, while taking into consideration data protection and confidentiality.

2. EXCISE DUTIES ON ALCOHOL, TOBACCO PRODUCTS AND ENERGY

A. Legal basis

Article 113 TFEU and, in relation to energy taxation, Article 192 TFEU, in order to pursue the objectives of Article 191 TFEU.

B. Objectives

The rates and structures of excise duties vary between Member States, affecting competition. Very wide disparities in the duties levied on a particular product can result in tax-induced movements of goods, loss of revenue and fraud. Attempts have been made since the early 1970s to harmonise both structures and rates, but progress has been insignificant.

C. Achievements

1. General rules

Common provisions applying to all products subject to excise duties under EU law are set out in Council Directive (EU) 2020/262, which repeals and replaces Council Directive 2008/118/EC as of 13 February 2023. The directive contains a number of measures to streamline and simplify the processes covering the export and import interaction of excise products, business-to-business interaction and exceptional situations. It has digitalised the supervision of the movement of goods between Member States where excise duty has already been charged in the Member State of dispatch (duty paid). As this was already the case for goods in duty suspension, these movements are performed by the exchange of electronic messages through the computerised Excise Movement Control System, as of 13 February 2023. The remaining provisions as regards alignment with customs procedures will come into effect in February 2024.

The directive also aims to improve the freedom of movement for excise goods released for consumption in the single market while ensuring that the correct tax is collected by Member States, and to align EU excise and customs procedures.

2. Alcohol

A fundamental question in relation to alcohol taxation has been the extent to which different products are in competition. The Commission (COM(79)0261) and the Court of Justice of the European Union (Case 170/78, ECR 1985) have traditionally taken

the view that all alcoholic drinks are more or less interchangeable and in competition. Directive 92/83/EEC, through which the products on which excise is to be levied and the method of fixing the duty are defined, was only adopted in 1992. Another important directive (92/84/EEC) followed, which sets out the minimum rates that must be applied to each category of alcoholic beverage and reduced rates for certain Greek, Italian and Portuguese regions. This means that the Member States are free to apply excise duty rates above these minimum levels of taxation, according to their own national needs.

On 29 July 2020, the Council adopted a series of new rules (Council Directive (EU) 2020/1151) amending Directive 92/83/EEC, which have been applicable since 1 January 2022. The new rules were developed following an evaluation conducted by the Commission of Directive 92/83/EEC.

3. Tobacco products

The basic structure of tobacco excise rates has been brought together in a consolidated directive (2011/64/EU). In contrast to the original Commission proposals, only minimum rates have been set. Different categories exist for taxable tobacco products. Taxes on cigarettes must comprise a proportional (ad valorem) rate, combined with a specific excise duty. Other tobacco products are subject to an ad valorem, a specific or a so-called mixed excise duty.

On 19 October 2020, the Commission announced a revision of Directive 2011/64/EU on excise rules for tobacco (the Tobacco Taxation Directive). The current rules are being reviewed to verify whether they remain fit for purpose to ensure the proper functioning of the internal market and a high level of health protection. This is particularly important in the context of Europe's Beating Cancer Plan, as taxation plays a pivotal role in reducing tobacco consumption, and in particular in deterring young people from smoking. An inception impact assessment was published on 8 January 2021. The Commission considers that the minimum rates set by the Tobacco Taxation Directive have lost their effect as a large number of Member States tax most tobacco products above these minimum rates. Several new types of tobacco products are also not fully covered by the current directive. Furthermore, the Commission notes that the current situation results in the abuse of cross-border purchases. The proposal is expected to be presented in 2023.

4. Energy products (mineral oils, gas, electricity, alternative energy, aviation fuel)

The basic structure of mineral oil excise duties within the Community was established in 1992. Here too, as in the case of alcohol and tobacco, only minimum rates have been set, in contrast to the original plans (full harmonisation). An extensively altered version of the 1997 Commission proposals was adopted (Directive 2003/96/EC, derogations in Directives 2004/74/EC and 2004/75/EC).

Aircraft fuel, other than that used for private pleasure-flying, is exempt from excise duty. This exemption is included in Article 14(1)(b) of Council Directive 2003/96/EC (the Energy Taxation Directive (ETD)). However, Member States can tax aviation fuel for domestic flights and, by means of bilateral agreements, also tax fuel for intra-EU flights. In such cases, Member States may apply a level of taxation below the minimum level set out in the ETD.

In 2001, measures to promote the use of biofuels were proposed, including the possibility of applying a reduced rate of excise duty, and they were adopted in 2003 under Directive 2003/30/EC.

In July 2021, as an integral part of the 'Fit for 55' package, the Commission put forward a proposal to revise the directive. The proposal aims to ensure more coherence with other EU policies and to contribute to achieving the EU's mid- and long- term energy and climate objectives, including the European Green Deal. The proposal does so by reflecting more accurately the climate impact of various energy sources and encouraging consumers and businesses to change their behaviour.

5. Recent initiatives

The European Green Deal is a package of policy initiatives aimed at setting the EU on the path to a green transition, with the ultimate goal of reaching climate neutrality by 2050. It was launched by the Commission in December 2019 and the European Council made note of it during its December meeting. The 'Fit for 55' package aims to translate the ambitions of the Green Deal into law. It comprises a set of proposals to align EU laws with the EU's climate goals, including the ETD. In the Council, a close examination of the proposal has taken place. The Czech Presidency noted that some Member States are not yet in a position to support the Presidency text or have scrutiny reservations. Nevertheless, the majority of Member States have responded positively to the suggested changes and the way forward. The Presidency concluded that further work is still needed (e.g. on the pace of implementation, the abolition of some exemptions for the aviation and maritime sectors, minimum levels of taxation, the interaction of the ETD with other initiatives of the 'Fit for 55' package, etc.).

D. Role of the European Parliament

1. Alcohol and tobacco taxation

In its resolution on EU taxation policy in 2002, Parliament condemned the Commission's policy with regard to duties on tobacco and alcohol products, and, in particular, rejected upward harmonisation. In 2009, although Parliament favoured the gradual increase of taxes on cigarettes and other tobacco products, it did not accept the level of taxes proposed by the Commission.

2. Taxation of mineral oil/energy

In its 2002 resolution on tax policy, Parliament argued that 'the "polluter pays" principle needs to be applied more widely, particularly in the energy products sector'. Parliament issued a favourable opinion on the biofuel proposals in October 2002 and adopted amendments designed to strengthen them. In 2012, Parliament adopted a legislative resolution on the ETD proposal, which was later withdrawn. The Commission proposal of July 2021 on the revision of the ETD, which is part of the 'Fit for 55' package, is being examined by the Committee on Economic and Monetary Affairs in association with the Committee on Industry, Research and Energy. The rapporteur of the Committee on Economic and Monetary Affairs delivered a draft report on 28 February 2022, which was then opened to amendments. A committee vote has not been scheduled yet.

For more information on this topic, please see the website of the Subcommittee on Tax Matters (FISC).

Jost Angerer
10/2023

2.6.12. COMPETITION POLICY

The main objective of the EU competition rules is to enable the proper functioning of the EU's internal market. The Treaty on the Functioning of the European Union (TFEU) aims to prevent restrictions on and distortions of competition, such as the abuse of dominant positions, anti-competitive agreements and mergers and acquisitions should they reduce competition. Furthermore, State aid is prohibited when it leads to distortions of competition, but can be authorised in specific cases.

LEGAL BASIS

— Articles 101 to 109 TFEU and Protocol No 27 on the internal market and competition, which make clear that a system of fair competition forms an integral part of the internal market, as set out in Article 3(3) of the Treaty on European Union;

— The Merger Regulation (Council Regulation (EC) No 139/2004) and its implementing rules (Commission Regulation (EC) No 802/2004);

— Articles 37, 106 and 345 TFEU for public undertakings and Articles 14, 59, 93, 106, 107, 108 and 114 TFEU for public services, services of general interest and services of general economic interest; Protocol No 26 on services of general interest; Article 36 of the Charter of Fundamental Rights of the European Union.

OBJECTIVES

Competition policy is a key instrument for achieving a free, dynamic and functioning internal market and promoting general economic welfare. Competition enables businesses to compete on equal terms across Member States, while at the same time incentivising them to strive to offer the best products at the lowest price for consumers. This, in turn, drives innovation and spurs long-term economic growth. EU competition policy also applies to non-EU businesses that operate in the internal market. Societal, economic, geopolitical and technological changes pose challenges to EU competition policy.

In 2020, the Commission launched a comprehensive review of the EU antitrust, merger and State aid rules. The November 2021 Commission communication on a competition policy fit for new challenges summarises the key elements of that review. It also highlights how the policy review helps to promote the EU's post-pandemic recovery and create a more resilient internal market to foster the implementation of the European Green Deal and to accelerate the digital transition.

In an increasingly digitalised economy, new tools have become necessary to address emerging challenges. The new Digital Markets Act, finalised by the co-legislators in September 2022, aims to keep digital markets fair and contestable and introduces ex-ante regulation for so-called gatekeeper online platforms. A number of other initiatives intended to reinforce the EU's open strategic autonomy in a global context have been launched. For example, the new Regulation on Foreign Subsidies seeks to address potential distortive effects of foreign subsidies in the single market.

COMPETITION POLICY TOOLS

Broadly speaking, the EU competition policy toolbox includes rules on antitrust, merger control, State aid and public undertakings and services. Antitrust aims at restoring competitive conditions, e.g. in case of the formation of cartels or abuse of dominance. Preventive competition policy tools encompass merger control and State aid rules. Merger control pre-empts potential distortions of competition by assessing in advance whether a potential merger or acquisition could have an anti-competitive impact. State aid rules aim to prevent undue state intervention wherever preferential treatment of given undertakings or sectors distorts, or is likely to distort, competition and adversely affects trade between Member States. Services of general economic interest (SGEI) are particularly important to consumers and are subject to specific rules in the context of State aid, with a view to promoting social and territorial cohesion, a high level of quality, safety and affordability, and equal treatment.

A. Comprehensive ban on anti-competitive agreements (Article 101 TFEU)

Collusion between companies distorts the level playing field and causes harm to consumers and other businesses. Agreements between undertakings, such as cartels, are prohibited and automatically void. However, agreements may be exempted if they contribute to improving the production or distribution of goods or if they promote technical or economic progress. The conditions for granting an exemption are that consumers are allowed a fair share of the resulting benefit and that the agreement does not impose unnecessary restrictions or aim to eliminate competition for a substantial part of the products concerned. Rather than such exemptions being granted on a case-by-case basis, they are most commonly governed by the Block Exemption Regulations.

These regulations cover groups of similar specific agreements, which usually have a comparable impact on competition. In May 2022, the Commission adopted the revised Vertical Block Exemption Regulation. It is also reviewing the two Horizontal Block Exemption Regulations together with the relevant guidelines.

Finally, certain agreements are not regarded as infringements if they are of minor importance and have little impact on the market (the de minimis principle). Such agreements are often seen as useful for cooperation between small and medium-sized enterprises.

B. Prohibition of abuse of a dominant position (Article 102 TFEU)

According to the Court of Justice of the EU, a dominant position is ‘a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers’. It is assessed in relation to the internal market as a whole, or at least a substantial part of it.

A dominant position is not in itself an infringement of EU competition law, and the holders of such positions are allowed to compete on merit. However, a position of dominance confers on the undertaking a special responsibility to ensure that its conduct does not distort competition. Examples of behaviours that would amount to abuse of a dominant position include setting prices at below cost level (predation), charging excessive prices, tying and bundling, and refusal to deal with certain counterparts.

In addition, the new Digital Markets Act sets out specific obligations for the so-called gatekeeper online platforms. Once an entity is designated as gatekeeper by the Commission, it will need to comply with certain obligations or bans on certain behaviours as envisaged in the law (such as self-favouring, pre-installation and tying of certain software products, etc.). Those obligations are supplementary to the general competition rules, which continue to apply.

C. Merger control

Under the EC Merger Regulation (EC) No 139/2004, concentrations, which would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position, must be declared incompatible with the common market (Article 2(3)). The Commission must be notified of planned mergers if the resulting company would exceed certain thresholds (so-called concentrations with a Community dimension). Below those thresholds, national competition authorities can review mergers. The merger control rules equally apply to companies based outside the EU, if they do business in the internal market. The review process is triggered when control is acquired over another undertaking (Article 3(1)). After an assessment of the likely impact of the merger on competition, the Commission may approve or reject it, or it can grant an approval, subject to certain conditions and obligations (Article 8). There is no systematic subsequent scrutiny or unbundling of associated companies.

Following a lengthy review process that started in 2014, the Commission amended its Merger Implementing Regulation and the Notice on Simplified Procedure with a view to having the new rules applicable as of September 2023.

D. Prohibition of State aid (Article 107 TFEU)

Article 107 TFEU contains a general prohibition of State aid in order to prevent distortions of competition in the internal market that could result from the granting of selective advantages to certain companies. All direct aid granted by Member States (e.g. non-repayable subsidies, loans on favourable terms, tax and duty exemptions, and loan guarantees) as well as similar advantages are banned.

The TFEU leaves room to grant certain exemptions from this general ban, if they can be justified by specific overarching policy objectives, for example addressing serious economic disturbances or for reasons of common European interest. During the COVID-19 outbreak, the Commission adopted the State Aid Temporary Framework to address serious economic disturbances caused by the pandemic, which has already been phased out. In March 2022, the Commission adopted a Temporary Crisis Framework, which has since been broadened further, to enable Member States to use the flexibility given under State aid rules to support the economy in the context of Russia's invasion of Ukraine. Most recently, in March 2023, the Commission further transformed the temporary framework into the Temporary Crisis and Transition Framework, by adding measures to foster support measures in sectors which are key for the transition to a net-zero economy, in line with the Green Deal Industrial Plan. As a consequence, by adding new aims, the essence of EU competition policy is currently undergoing profound changes, which might be considered a departure from decades of practice.

In the past, similar steps were taken in the context of the global financial crisis to prevent major negative spillover effects for the entire financial system due to the failure of an individual financial institution.

Member States are required to notify the Commission of any planned State aid, unless it is covered by a general block exemption (as set out in Commission Block Exemption Regulation for State aid) or the de minimis principle applies. State aid measures can be implemented only if the Commission has granted approval. It has also deemed preferential tax treatment for certain individual companies in some Member States to constitute prohibited State aid. The Commission has the power to recover incompatible State aid.

Since 2021, the Commission has completed a range of reviews of different aspects of the EU's State aid policy. This includes the new Guidelines on State aid for climate, environmental protection and energy, the revised Communication on State aid rules for important projects of common European interest and the revised Guidelines on State aid to promote risk finance investments, among others.

E. Public services of general economic interest

In some Member States, certain essential services (e.g. electricity, post and rail transport) are still provided by public undertakings or undertakings controlled by public authorities. Such services are considered to be SGEIs and are subject to specific rules in the context of the EU State aid framework. Article 36 of the Charter of Fundamental Rights of the European Union also recognises the access that European citizens should have to SGEIs.

ENFORCEMENT

Rigorous and effective enforcement of the EU competition rules is essential to ensure the achievement of the competition policy objectives. The Commission is the main body responsible for ensuring the correct application of these rules and has wide-ranging inspection and enforcement powers. However, Council Regulation (EC) No 1/2003 allows an enhanced enforcement role of national antitrust authorities and courts, which was reinforced by Directive (EU) 2019/1. Coordination between the levels is supported by the European Competition Network, which consists of the national competition authorities and the Commission.

In the area of antitrust law, the Actions for Damages Directive was adopted in 2014 in order to heighten the deterrent effect against prohibited agreements (cartels and abuse of a dominant position) and to provide better protection for consumers. It facilitates the process for obtaining compensation for harm.

ROLE OF THE EUROPEAN PARLIAMENT

In competition policy, Parliament's principal role is scrutiny of the executive. The Commissioner for Competition appears several times a year before Parliament's Committee on Economic and Monetary Affairs (ECON) to explain the approach taken and discuss individual decisions. With regard to the adoption of competition policy legislation, Parliament is usually involved only through the consultation procedure. However, the ordinary legislative procedure can be applied, such as for the adoption of the above-mentioned directives on actions for damages and measures to strengthen the competition authorities of the Member States.

During the eighth parliamentary term, the Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 1, TAXE 2 and TAXE 3) analysed the measures taken to assess the compatibility of tax rulings in the Member States with State aid rules and the possibility of further clarifying the rules on the reciprocal exchange of information. In September 2020, the Subcommittee on Tax Matters (FISC) was created to continue this work and ensure that Parliament promotes fair taxation at national, EU and global level.

Parliament continues to monitor the developments in competition policy and the Commission's work in this field. The dedicated ECON Working Group on Competition Policy and Parliament's yearly resolutions on the Commission's annual report on competition policy provide policy input and guidance for Parliament's view on addressing the EU's competition policy challenges.

Christian Scheinert
10/2023

2.6.13. FINANCIAL SERVICES POLICY

Financial services form an essential part of the EU's efforts to complete the internal market, under the free movement of services and capital. Progress has come in phases: (1) removal of national entry barriers (1957-1973); (2) harmonisation of national laws and policies (1973-1983); (3) completion of the internal market (1983-1992); (4) creation of the single currency area (1993-2007); and (5) the global financial crisis and post-crisis reform (from 2007 onwards).

LEGAL BASIS

The legal basis is provided by Articles 49 (freedom of establishment), 56 (freedom to provide services), 63 (free movement of capital) and 114 (approximation of laws for the establishment and functioning of the internal market) of the Treaty on the Functioning of the European Union.

MILESTONES ON THE ROAD TOWARDS AN INTEGRATED EU FINANCIAL MARKET

A. Early efforts at removing barriers to entry (1957-1973)

Early efforts to integrate the Member States' financial systems were based on the principles of freedom of establishment and freedom to provide services, with coordination of legislation and policies where necessary. The Treaty of Rome, signed in 1957, created the Common Market, abolishing obstacles to freedom of movement for persons, services and capital between Member States. In 1962, the Council adopted general programmes for the abolition of restrictions on freedom to provide services and freedom of establishment.

B. Harmonisation of national laws and policies (1973-1983)

The process of harmonising Member States' laws, regulations and administrative provisions started, most notably, with three Council directives: the First Non-Life Insurance Directive (73/239/EEC) in 1973, the First Banking Directive (77/780/EEC) in 1977 and the First Life Insurance Directive (79/267/EEC) in 1979.

C. Completion of the internal market (1983-1992)

In June 1985, the Commission published a white paper detailing a programme and timetable for the completion of the internal market by the end of 1992. It included a specific section on financial services. The harmonisation proposed was based on the principles of a single banking licence, mutual recognition and home country control. The 1987 Single European Act incorporated into primary EU law the goal set in the 1985 White Paper, setting a precise deadline of 31 December 1992 for the completion of the internal market.

D. Creation of the single currency area (1993-2007)

The Maastricht Treaty, which came into force in 1993, paved the way for the creation of a single European currency: the euro (originally called ECU). The Commission published a financial services action plan in May 1999, which included 42 legislative and non-legislative measures to be completed by 2004. In July 2000, the Council set up

the Committee of Wise Men on the Regulation of European Securities Markets, led by Alexandre Lamfalussy. The committee's final report identified that the EU's institutional framework was 'too slow, too rigid, complex and ill-adapted to the pace of global financial market change'. It led to the 'Lamfalussy process', a four-level legislative approach first used only for securities legislation, but later expanded to other areas of financial services legislation.

E. Global financial crisis and post-crisis reform (from 2007 onwards)

The period leading up to 2007 was characterised by the increasing integration and interdependence of financial markets, not only within the EU but also globally. This came to an abrupt halt with the outbreak of the global financial crisis in 2007-2008, creating an urgent need for reform of the financial services sector. The Commission proposed more than 50 legislative and non-legislative measures. The most important proposals came under EU flagship initiatives such as the Banking Union and the Capital Markets Union. The post-crisis reforms have brought a certain degree of centralisation, and transferred responsibility for many aspects of financial services regulation and supervision from national to EU level. More recently, the EU financial services policy agenda has reflected the efforts made to address climate change and develop a more sustainable economic path, and addresses the new challenges related to digital transformation.

In view of possible contagion effects, the role of international forums in setting rules and standards increased significantly. Forums and bodies such as the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (Basel Committee), the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO) therefore acquired increasing importance for EU regulators and supervisors.

KEY EU FINANCIAL SERVICES LEGISLATION IN PLACE

A. Banking

The reform of the regulatory framework for banking was at the centre of the post-crisis legislative overhaul of the financial sector. It laid the foundations for the Banking Union that was gradually established in the euro area. The regulatory reform of the banking sector included wide-ranging measures establishing: (1) stronger prudential requirements for banks; (2) an enhanced architecture for bank supervision and resolution; (3) rules for managing failing banks; and (4) improved protection for depositors. These initiatives are collectively referred to as the 'single rulebook'.

1. Prudential requirements for banks

The Capital Requirements Directive (CRD) (2013/36/EU) lays down rules on access to the activity of credit institutions and investment firms, prudential supervision and governance of banks. The Capital Requirements Regulation (CRR) ((EU) No 575/2013) establishes the minimum standards to ensure the financial soundness of banks (i.e. capital requirements, liquidity buffers and leverage ratios). The CRD/CRR framework is updated continually, mainly in order to reflect the latest outcomes of the work of the Basel Committee and the FSB.

2. Enhanced architecture for bank supervision and resolution

Since 2014, under the Single Supervisory Mechanism (SSM) Regulation ((EU) No 1024/2013), the ECB is the central prudential supervisor for large banks in the

euro area and in non-euro Member States that choose to join the SSM. The SSM is complemented by the Single Resolution Mechanism Regulation ((EU) No 806/2014), also adopted in 2014, which aims to ensure efficient management of failure of banks that are part of the SSM.

3. Rules for managing failing banks

Also adopted in 2014, the Bank Recovery and Resolution Directive (2014/59/EU) seeks to prevent bailouts of failing banks using taxpayers' money by introducing a 'bail-in' mechanism, which ensures that the bank's shareholders and creditors are first in line to cover its losses. It requires Member States to establish national resolution funds.

4. Improved protection for depositors

Amid the turmoil of the financial crisis, a key priority was to ensure adequate protection of citizens' bank deposits. As a first response, the minimum amount up to which bank deposits are guaranteed in the event of a bank failure was increased twice. This was followed by a more comprehensive reform of the then very fragmented system of national deposit guarantee schemes through the Deposit Guarantee Schemes Directive (2014/49/EU) in 2014. Proposed in 2015, the European Deposit Insurance Scheme has so far met with political obstacles both in Council and in Parliament. In April 2023, the Commission adopted a legislative package to reform the bank crisis management and deposit insurance framework.

B. Financial markets and market infrastructure

1. Investment services and trading venues

In 2004, the Markets in Financial Instruments Directive (MiFID I) (2004/39/EC) laid down uniform standards governing securities trading with the aim of improving competition and investor protection. In 2014, a revision of the directive (MiFID II) (2014/65/EU) and a regulation (MiFIR) ((EU) No 600/2014) were adopted, significantly updating the legal framework. This framework introduces a number of provisions aimed at enhancing consumer protection and market transparency. Both were revised several times.

2. Derivatives contracts and clearing houses

Derivatives contracts play an important economic role, but also involve certain risks, which were highlighted during the financial crisis. Adopted in 2012, the European Market Infrastructure Regulation (EMIR) ((EU) No 648/2012) sets out rules regarding over-the-counter (OTC) derivative contracts, central counterparties (CCPs, or clearing houses) and trade repositories. It seeks to preserve financial stability, mitigate systemic risk and increase transparency in the OTC market. The regulation is regularly reviewed and updated. CCPs could pose a risk to financial stability were they to fail. In December 2020, the co-legislators adopted the CCP Recovery and Resolution Regulation ((EU) 2021/23) enabling orderly resolution in a crisis scenario.

3. Access to capital market funding

The flagship initiative on building a Capital Markets Union envisaged a substantial review of the EU framework for public offerings of securities (i.e. initial public offerings or IPOs). The Prospectus Directive of 2003, 2003/71/EC, now replaced by Regulation (EU) 2017/1129, aims to facilitate the access of smaller companies to capital market funding, and to improve the quality and quantity of the information to be provided to investors, in particular retail investors. The efforts to improve funding opportunities

for smaller companies were supplemented by the European Crowdfunding Regulation ((EU) 2020/1503), which applies as of November 2021.

C. Insurance

The Solvency II Directive (2009/138/EC) adopted in 2009, harmonised existing piecemeal rules for the non-life insurance, life insurance and reinsurance sectors. The directive set out rules concerning authorisation for the taking up of business, capital requirements, risk management and supervision of direct insurance and reinsurance companies. The Solvency II framework was amended several times.

D. Payment services

The second Payment Services Directive ((EU) 2015/2366) updated the EU framework on payments to adapt it to the new developments in digital payments. It became applicable as of 13 January 2018. It reinforces the security requirements for electronic payments and the standards for the protection of consumers' financial data. It also opens up the market to innovative business models ('open banking') and contains provisions concerning the authorisation and supervision of payment institutions.

E. Sustainable Finance

The financial system has an important role to play in supporting efforts towards a transition to a greener, fairer and more inclusive economy and society. The sustainable finance action plan of March 2018 endeavours to take due account of environmental, social and governance considerations when making investment decisions in the financial sector. The key elements of the current legislative framework include the EU Taxonomy Regulation ((EU) 2020/852), the Regulation on sustainability#related disclosures in the financial services sector ((EU) 2019/2088) and the Regulation on sustainability-related disclosures for benchmarks ((EU) 2019/2089). Further initiatives are under way.

F. Digital Finance

The use of new technologies in finance (fintech) brings with it the promise of increased competition and new, more efficient or more beneficial products and services. It also adds complexities and poses challenges for regulators and supervisors. In September 2020, the Commission launched the Digital Finance Strategy, which was followed on by several legislative initiatives. In particular, the Regulation on digital operational resilience for the financial sector (DORA) ((EU) 2022/2554) establishes a uniform framework to ensure that financial institutions are able to mitigate and withstand cyber and other ICT-related risks; and the Regulation on markets in crypto-assets (MiCA) sets out standards for issuing crypto-assets and providing related services. The Regulation on a pilot regime for market infrastructures based on distributed ledger technology ((EU) 2022/858) is akin to a regulatory sandbox, i.e. allows for a flexible regulatory environment.

ROLE OF THE EUROPEAN PARLIAMENT

Since the 1957 Treaty of Rome, Parliament's role in decision-making on financial services has grown from the confines of the consultation procedure to its being on an equal footing with the Council, as the ordinary legislative procedure is now used in many policy areas.

Under the ‘Lamfalussy process’ for adopting and implementing EU financial services legislation, Parliament, together with the Council, adopts basic laws (level 1) under the ordinary legislative procedure (EU secondary legislation). Parliament also has a role in scrutinising the adoption of level 2 implementing measures.

Parliament has been actively involved in carrying forward the ambitious legislative projects for developing the EU regulatory framework for the financial sector. Within Parliament, the Committee on Economic and Monetary Affairs (ECON) is the lead committee for financial services.

In the past, in the context of the global financial crisis, Parliament set up the Special Committee on the Financial, Economic and Social Crisis (CRIS). The special committee operated from October 2009 until July 2011 and its work concluded with a Parliament resolution containing a number of recommendations on the measures and initiatives to be pursued in response to the crisis.

Christian Scheinert
10/2023

2.6.14. EUROPEAN SYSTEM OF FINANCIAL SUPERVISION (ESFS)

The European System of Financial Supervision is a multi-layered system of micro- and macro-prudential authorities that aims to ensure consistent and coherent financial supervision in the EU. It includes the European Systemic Risk Board, the three European supervisory authorities (EBA, ESMA and EIOPA) and the national supervisors. The European Central Bank, as part of the Single Supervisory Mechanism (SSM), is the banking supervisor for the largest banks.

LEGAL BASIS

Articles 114 and 127(6) of the Treaty on the Functioning of the European Union.

BACKGROUND AND OBJECTIVES

The financial sector is subject to a strict regulatory and supervisory framework designed to promote financial stability and protect the customers of financial services. EU regulations set out the rules and standards by which financial institutions must abide. Supervision is a process of oversight designed to ensure that financial institutions apply those rules and standards properly. Among other issues, the 2007-08 global financial crisis laid bare the need to improve and strengthen the European regulatory and supervisory architecture. Following the recommendations of the report by the de Larosière expert group on strengthening the European supervisory arrangements, the European System of Financial Supervision (ESFS) was introduced in 2010 and became operational on 1 January 2011. The ESFS consists of the European Systemic Risk Board (ESRB), the three European supervisory authorities (ESAs) – namely the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) – the Joint Committee of the ESAs, and the national supervisors.

The main objective of the ESFS is to ensure that the rules applicable to the financial sector are adequately implemented across Member States in order to preserve financial stability, promote confidence and provide protection for consumers.

The ESFS is a system that combines micro- and macro-prudential supervision. The main objective of micro-prudential supervision is to reduce the probability and limit the impact of the failure of individual financial institutions. Macro-prudential supervision is concerned with the exposure of the financial system as a whole to common risks, and aims to limit its distress in order to protect the overall economy from significant losses in real output.

The 2007-08 global financial crisis demonstrated how the EU's pre-crisis supervisory architecture placed too much emphasis on the supervision of individual financial institutions and too little on the macro-prudential aspects. The ESRB was therefore established, and was handed responsibility for the macro-prudential oversight of the EU financial system and the prevention and mitigation of systemic risk. Micro-prudential oversight is performed by the EBA, ESMA and the EIOPA in each of the relevant sectors of financial services – banking, capital markets and insurance. The three micro-

prudential authorities work together on cross-sectoral and horizontal issues in the Joint Committee.

FRAMEWORK

A. Micro-prudential supervision

In the EU, micro-prudential supervision is characterised by a multi-layered system of authorities separated according to sectoral area (banking, insurance and capital markets) and the level of supervision and regulation (EU and national).

1. European supervisory authorities (ESAs)

The EBA, ESMA and the EIOPA are EU agencies with their own legal personalities and are represented by their respective Chairs. The ESAs must act independently and only in the interests of the EU as a whole. They are accountable to Parliament and the Council for their actions.

The primary objective of the ESAs, as defined in their respective founding regulations (the 'ESAs Regulations'), is to protect the public interest by helping to underpin the stability and effectiveness of the financial system.

The ESAs contribute to the development of a single rulebook by drafting two types of technical standards (regulatory technical standards and implementing technical standards), which are adopted by the Commission (as delegated or implementing acts). With a view to enhancing supervisory convergence, they issue guidelines and recommendations and have certain powers in cases of breaches of EU law by national supervisory authorities, emergencies and disagreements between competent national authorities.

In its relevant sector of activity, each of the ESAs, in consultation with the ESRB, is tasked with developing criteria for identifying and quantifying systemic risk and devising an adequate stress-testing regime for the institutions within its purview. The ESAs also initiate and coordinate EU-wide stress tests to assess the resilience of financial market participants.

In the three ESAs, the Board of Supervisors is the main decision-making body and consists of the Chair, the head of the competent supervisory authority in each Member State and one representative from each of the Commission, the European Central Bank (ECB), the ESRB and the other two ESAs.

a. European Banking Authority (EBA)

Legal basis: Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), as amended by subsequent legislation.

Originally based in London, the EBA relocated to Paris in June 2019. The purview of the EBA encompasses credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions. With the review of 2019, the EBA was also entrusted with preventing the financial system from being used for the purposes of money laundering and the financing of terrorism.

b. European Insurance and Occupational Pensions Authority (EIOPA)

Legal basis: Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), as amended by subsequent legislation.

The EIOPA's seat is in Frankfurt am Main. It is primarily concerned with insurance and reinsurance undertakings, insurance intermediaries, financial conglomerates and institutions for occupational retirement provision (IORPs). It mainly contributes to the single rulebook on insurance and occupational pensions through the Solvency II and IORP regimes, respectively.

c. European Securities and Markets Authority (ESMA)

Legal basis: Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), as amended by subsequent legislation.

ESMA is located in Paris. Its purview covers capital markets and participants (exchanges, traders, funds, etc.). In the EU, ESMA has direct oversight and sole responsibility for the registration, supervision and sanctioning of credit rating agencies and trade repositories. It is also in charge of recognising third-country (i.e. non-EU-country) central counterparties and trade repositories, and certifying and endorsing third-country credit rating agencies.

2. Joint bodies

A Joint Committee of the European Supervisory Authorities (Joint Committee) is responsible for overall and cross-sectoral coordination, with the aim of ensuring supervisory consistency. It is also responsible for the settlement of disputes between the ESAs on cross-sectoral matters.

The Board of Appeal is independent from the three ESAs and is responsible for appeals from parties affected by the decisions of the ESAs. The decisions of the Board of Appeal can be contested before the Court of Justice of the European Union.

3. Competent national supervisory authorities

Each Member State designates its own competent authorities, which form part of the ESFS and are represented in the ESAs.

B. Macro-prudential oversight – European Systemic Risk Board (ESRB)

Legal basis: Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, as amended by subsequent legislation, and Council Regulation (EU) No 1096/2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board.

The ESRB carries out macro-prudential oversight at EU level. Its objective is to prevent and mitigate systemic financial stability risks in the light of macro-economic developments. It is composed of a General Board, a Steering Committee, two advisory bodies (Advisory Scientific Committee and Advisory Technical Committee) and a Secretariat. The ECB provides analytical, statistical, administrative and logistical support to the ESRB. The President of the ECB is also the Chair of the ESRB.

C. Cooperation at various levels

Financial markets are complex, interconnected and increasingly globalised. Coordination and cooperation between the supervisory authorities in charge of the different entities and sectors, both within the EU and globally, is therefore key. In that context, the ESAs play an important coordinating role. The various entities within the ESFS also coordinate with international institutions – including at supervisory

forums such as the International Organization of Securities Commissions (IOSCO), the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS) – and with third-country supervisors.

D. Development of the supervisory framework

During and in the aftermath of the 2007-08 global financial crisis, it became clear that a deeper integration of banking supervision in the euro area was necessary. Consequently, the EU banking union was established in 2013, and became operational in November 2014, introducing new elements and actors. As one of the banking union's main pillars, the Single Supervisory Mechanism (SSM) is a particularly important element of the supervisory framework.

Under the SSM's founding regulation, the ECB is the banking supervisor for the largest banks ('significant credit institutions') in the euro-area Member States, plus any non-euro-area Member States that decide to join. For this purpose, the governance structure of the ECB has been adapted through the establishment of a Supervisory Board. The tasks of the ECB in that capacity include authorising credit institutions, ensuring compliance with prudential and other regulatory requirements, and carrying out supervisory reviews. The national banking supervisors continue to oversee the remaining banks. In addition to these micro-prudential tasks, the ECB also has macro-prudential tasks and tools. In order to ensure consistent supervision, the ECB cooperates closely with the national banking supervisors within the SSM and with the other authorities that make up the ESFS, most notably the EBA.

Moreover, the Single Resolution Mechanism (SRM) was established for banks covered by the SSM and became operational in 2016. The Single Resolution Mechanism allows bank resolution to be managed effectively through a Single Resolution Board (SRB) and a Single Resolution Fund (SRF), financed by the banking sector. It aims to ensure the orderly resolution of failing banks with minimal costs to taxpayers and to the real economy.

In the pursuit of building an EU capital markets union, and as part of a broader range of measures, a 2019 review of the ESFS framework concluded by amending the founding regulations of the ESAs and the ESRB. The amendments aimed to reinforce the powers, governance and funding of the ESAs and strengthen the ESRB's capacity to oversee the financial system and detect risks to financial stability, including in new fields such as financial technology (fintech).

The latest review of the ESAs' operations was envisaged under the 2020 capital markets union action plan and concluded in May 2022. It suggested carrying out targeted amendments to foster supervisory convergence in sectoral legislation and continuing the reflection process on possible further areas for improvement.

ROLE OF THE EUROPEAN PARLIAMENT

As co-legislator, Parliament played an important part in setting up the founding legislation for the ESFS. Moreover, Parliament has a scrutiny role as regards the measures adopted in developing the single rulebook, i.e. delegated acts (including regulatory technical standards) and implementing acts (including implementing technical standards). The Chairs and Executive Directors of the ESAs have to be confirmed by Parliament. Parliament also has extensive information rights, e.g. being entitled to receive the annual work programme, the multiannual work programme and

the annual reports of the ESAs. In addition, Parliament may request opinions from the ESAs. It also votes on the discharge of the budget of the ESAs each year.

Furthermore, Parliament and the ECB have concluded an Interinstitutional Agreement (2013/694/EU) in order to ensure accountability and oversight regarding the tasks conferred on the ECB within the SSM framework. In particular, Parliament decides on the approval of the candidates proposed by the ECB for Chair and Vice-Chair of the Supervisory Board, respectively, through a vote in the Committee on Economic and Monetary Affairs (ECON) and in plenary. Moreover, the Chair of the Supervisory Board attends regular hearings and exchanges of views with MEPs to present the ECB's Annual Report on supervisory activities and explain the ECB's execution of its supervisory tasks, and also answers questions from MEPs.

For more information on this topic please see the website of the Committee on Economic and Monetary Affairs.

Christian Scheinert
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