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4.1. INDIVIDUAL AND COLLECTIVE RIGHTS



4.1.1. THE CITIZENS OF THE UNION AND THEIR RIGHTS

Individual citizens' rights and European citizenship are enshrined in the Charter of Fundamental Rights of the European Union (EUCFR), the Treaty on the Functioning of the European Union (TFEU) and Article 9 of the Treaty on European Union (TEU). They are essential factors in the formation of a European identity. In the event of a serious breach of basic values of the Union, a Member State can be sanctioned.

LEGAL BASIS

Articles 2, 3, 7 and 9 to 12 TEU, 18 to 25 TFEU and 39 to 46 of the EUCFR ([4.1.2](#)).

OBJECTIVES

EU law creates a number of individual rights directly enforceable in the courts, both horizontally (between individuals) and vertically (between the individual and the state). Inspired by the freedom of movement for persons envisaged in the Treaties, the introduction of a European form of citizenship with precisely defined rights and duties was considered as long ago as the 1960s. Following preparatory work, which began in the mid-1970s, the TEU, adopted in Maastricht in 1992, made it an objective for the Union 'to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union'. A new part of the EC Treaty (ex Articles 17 to 22) was devoted to this citizenship, and was maintained when the Treaty became the TFEU.

Like national citizenship, EU citizenship refers to a relationship between the citizen and the European Union, which is defined by rights, duties and political participation. This is intended to bridge the gap between the increasing impact that EU action is having on EU citizens, and the fact that the enjoyment of (fundamental) rights, the fulfilment of duties and participation in democratic processes are almost exclusively national matters. Article 15(3) TFEU gives every natural or legal person in a Member State the right of access to documents of the Union's institutions, bodies, offices and agencies. Article 16 TFEU enshrines the right to the protection of personal data ([4.2.8](#)). Article 2 TEU provides that 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'.

Article 7 TEU takes over a provision from the earlier [Treaty of Nice](#) ([1.1.4](#)), which establishes both a prevention mechanism, where there is 'a clear risk of a serious breach' by a Member State of the values referred to in Article 2 TEU, and a sanction mechanism, in the event of a 'serious and persistent breach' by a Member State of those values. In the first instance, the Commission would call upon the European Council to conclude, by unanimity, that there was such a risk (Article 7(2)). This would then set in motion a procedure that could lead to a Member State losing its right to vote in the Council. This mechanism was activated for the first time in 2017 against Poland because of the reform of its Supreme Court.

Moreover, there is to be stronger protection of the rights and interests of Member States' nationals/EU citizens in the Union's relations with the wider world (Article 3(5) TEU).



ACHIEVEMENTS

For a long time, the legal basis for citizens' rights at EU level consisted essentially of the case-law of the Court of Justice of the European Union (CJEU). Since the entry into force of the Treaty of Lisbon and the EUCFR, the legal basis has been expanded to true European citizenship.

A. Definition of EU citizenship

Under Article 9 TEU and Article 20 TFEU, every person holding the nationality of a Member State is a citizen of the Union. Nationality is defined according to the national laws of that State. Citizenship of the Union is complementary to, but does not replace, national citizenship. EU citizenship comprises a number of rights and duties in addition to those stemming from citizenship of a Member State. In Case C-135/08 *Janko Rottmann v Freistaat Bayern*, Advocate General Poiares Maduro at the CJEU explained the difference (paragraph 23 of the Opinion):

'Those are two concepts which are both inextricably linked and independent. Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. [...] It is based on their mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale.

It does not require the existence of a people, but is founded on the existence of a European political area from which rights and duties emerge. In so far as it does not imply the existence of a European people, citizenship is conceptually the product of a decoupling from nationality. As one author has observed, the radically innovative character of the concept of European citizenship lies in the fact that 'the Union belongs to, is composed of, citizens who by definition do not share the same nationality'. On the contrary, by making nationality of a Member State a condition for being a European citizen, the Member States intended to show that this new form of citizenship does not put in question our first allegiance to our national bodies politic. In that way, that relationship with the nationality of the individual Member States constitutes recognition of the fact that there can exist (in fact, does exist) a citizenship which is not determined by nationality.

That is the miracle of Union citizenship: it strengthens the ties between us and our States (in so far as we are European citizens precisely because we are nationals of our States) and, at the same time, it emancipates us from them (in so far as we are now citizens beyond our States). Access to European citizenship is gained through nationality of a Member State, which is regulated by national law, but, like any form of citizenship, it forms the basis of a new political area from which rights and duties emerge, which are laid down by Community law and do not depend on the State. [...] That is why, although it is true that nationality of a Member State is a precondition for access to Union citizenship, it is equally true that the body of rights and obligations associated with the latter cannot be limited in an unjustified manner by the former.'



Following the UK's withdrawal from the EU, a decision on the acquired rights of British nationals resident in Member States, and of EU citizens living in the UK, was agreed. Over the years, each Member State has vested its nationals with a legal heritage of rights, and EU law also creates a number of individual rights directly enforceable in the courts, according to the case-law of the CJEU (*Van Gend & Loos*). Limits of that legal heritage could be seen as resting with the national law that gives them effect.

B. Substance of citizenship (Article 20 TFEU)

For all EU citizens, citizenship implies:

- The right to move and reside freely within the territory of the Member States (Article 21 TFEU) ([4.1.3](#));
- The right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections (Article 22(1) TFEU) in the Member State in which they reside, under the same conditions as nationals of that State (for the rules on participation in municipal elections see Directive 94/80/EC of 19 December 1994, and for the rules governing election to the European Parliament, see Directive 93/109/EC of 6 December 1993) ([1.3.4](#));
- The right to diplomatic protection in the territory of a third country (non-EU state) by the diplomatic or consular authorities of another Member State, if their own country does not have diplomatic representation there, to the same extent as that provided for nationals of that Member State;
- The right to petition the European Parliament and the right to apply to the Ombudsman (both Article 24 TFEU) appointed by the European Parliament concerning instances of maladministration in the activities of the EU institutions or bodies. These procedures are governed respectively by Articles 227 and 228 TFEU ([1.3.16](#) and [4.1.4](#));
- The right to write to any EU institution or body in one of the languages of the Member States and to receive a response in the same language (Article 24(4) TFEU);
- The right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 15(3) TFEU).

C. Scope

With the exception of electoral rights, the substance of Union citizenship achieved to date is, to a considerable extent, simply a systematisation of existing rights (particularly as regards freedom of movement, the right of residence and the right of petition), which are now enshrined in primary law on the basis of a political idea.

By contrast, with the constitutional understanding in European states since the French Declaration of Human and Civil Rights of 1789, no specific guarantees of fundamental rights are associated with citizenship of the Union. Article 6 TEU states that the Union recognises the rights set out in the EUCFR and that it will accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but it does not make any reference to the legal status of Union citizenship.

Union citizenship does not as yet entail any duties for citizens of the Union, despite the wording to that effect in Article 20(2) TFEU. This constitutes a major difference between EU citizenship and citizenship of a Member State.



However, in a recent judgment, the CJEU ruled ([in Case C-689/21](#)) that it is for each Member State to lay down the conditions for acquisition and loss of its nationality. EU law did not preclude the permanent loss of, for example, Danish nationality and therefore of citizenship of the Union in a specific case. Denmark was therefore allowed to make the retention of Danish nationality dependent on the existence of a genuine connection with that country. However, where the person concerned did not hold the nationality of another EU Member State, due regard must be had to the principle of proportionality.

Moreover, following 'Brexit', the Court of Justice decided on 15 June 2023 that the loss of the status of citizen of the EU is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, and not of the withdrawal agreement or the Council's decision approving that agreement ([Cases C-499/21 P, Silver and Others v Council, C-501/21 P, Shindler and Others v Council, and C-502/21 P, Price v Council](#)).

The Commission reports every three years on the application of EU legal provisions on EU citizenship and non-discrimination. The upcoming [2023 report](#) will take stock of developments in that area since the last [EU Citizenship Report in 2020](#), including developments in the CJEU.

D. European Citizens' Initiative ([4.1.5](#))

Article 11(4) TEU provides for a new right for EU citizens: 'Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'. The conditions governing the submission and admissibility of any such initiative by citizens are set out in [Regulation \(EU\) No 211/2011 of the European Parliament and of the Council](#). Its main provisions are described in [4.1.5](#).

ROLE OF THE EUROPEAN PARLIAMENT

In electing the European Parliament by direct suffrage, EU citizens are exercising one of their essential rights in the European Union: that of democratic participation in the European political decision-making process ([Article 39 of the EUCFR](#)). As regards the procedures for the election of its Members, Parliament has always called for the implementation of a uniform electoral system in all the Member States. Article 223 TFEU provides that Parliament will draw up a proposal to that effect ('to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States'). The Council will then lay down the necessary provisions (acting unanimously and after obtaining the consent of the majority of MEPs), which will enter into force following their approval by the Member States, in accordance with their respective constitutional requirements ([1.3.4](#)).

Parliament has always wanted to endow the institution of EU citizenship with comprehensive rights. It advocated the determination of citizenship on an autonomous Union basis, so that EU citizens would have an independent status. In addition, from the start it advocated the incorporation of fundamental and human rights into primary law and called for EU citizens to be entitled to bring proceedings before the CJEU



when those rights were violated by EU institutions or a Member State (its [resolution of 21 November 1991](#)).

Following the UK's departure from the EU and regarding the acquired rights of around 3.2 million citizens from the remaining 27 Member State residing in the United Kingdom, in its [resolution of 15 January 2020](#), Parliament insisted that adequate protection of citizen's rights 'with regard to past experience and assurances' must be guaranteed. The adopted text also urges EU-27 governments to make generous arrangements for the approximately 1.2 million UK citizens in the EU.

In accordance with Parliament's requests, the fourth paragraph of Article 263 TFEU stipulates that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

As regards the right of access to documents, on [17 December 2009](#), [Parliament adopted a resolution on improvements needed in the legal framework for access to documents](#) following the entry into force of the Lisbon Treaty. Among other things, it stressed the need to widen the scope of [Regulation \(EC\) No 1049/2001](#) to encompass all of the institutions and bodies not covered by the original text.

As regards the [European Citizens' Initiative \(ECI\)](#), three months after the submission of a citizens' initiative, Commission representatives meet the organisers, and the organisers also have the opportunity to present their initiative at a public hearing in the European Parliament. The hearing is organised by the committee responsible for the subject matter of the ECI ([Rule 222 of Parliament's Rules of Procedure](#)).

Parliament, in joint presidency with the Council and the Commission, and acting as equal partners with the Member States, co-organised the [Conference on the Future of Europe](#), which aimed to give European citizens a new space to debate Europe's challenges and priorities. The Conference's conclusions and recommendations on the future of Europe were presented in a [report](#) to the joint presidency in May 2022. Parliament has committed to following up on the recommendations made in the report, which fall within its sphere of competences. On 17 June 2022, the Commission published a [communication entitled 'Conference on the Future of Europe: Putting Vision into Concrete Action'](#).

On the controversial issue of 'golden passports', whereby some Member States are selling their national citizenship, and hence EU citizenship, in order to attract foreign investors, Parliament asserted in its [resolution of 16 January 2014](#) that the values and achievements associated with EU citizenship cannot have a 'price tag' attached. In a [resolution adopted on 10 July 2020](#), Parliament reiterated its call for Member States to phase out all existing citizenship by investment or residency by investment schemes, as they are often linked to money laundering, which could lead to the mutual trust and integrity of the Schengen area being undermined. On 29 September 2022, the Commission decided to refer Malta to the CJEU for its investor citizenship scheme, also referred to as the 'golden passport' scheme ([infringement procedure](#) at the CJEU under [Article 258\(2\)](#) TFEU). The Commission considers that granting nationality – and thereby EU citizenship – in exchange for a pre-determined payment or investment and without a genuine link with the Member States concerned, is not compatible with the principle of sincere cooperation enshrined in Article 4(3) TEU. It also undermines the integrity of the status of EU citizenship provided for in



Article 20 TFEU. On 9 March 2022, Parliament adopted a [resolution on citizenship and residence by investment schemes](#) requesting the Commission to submit, before the end of its current mandate, a proposal for a regulation to comprehensively govern various aspects of residency by investment schemes with the aim of harmonising standards and procedures and strengthening the fight against organised crime, money laundering, corruption and tax evasion. On 28 March 2022, in the context of the Russian invasion of Ukraine, the Commission adopted a [recommendation](#) on immediate steps in relation to investor citizenship schemes and investor residence schemes.

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

Udo Bux / Mariusz Maciejewski
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4.1.2. THE PROTECTION OF ARTICLE 2 TEU VALUES IN THE EU

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as laid down in Article 2 of the Treaty on European Union (TEU). In order to ensure that these values are respected, Article 7 TEU provides for an EU mechanism to determine the existence of, and possibly sanction, serious and persistent breaches of EU values by a Member State. It was recently activated for the first time in relation to Poland and Hungary. The EU is also bound by its Charter of Fundamental Rights and is committed to acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Following the emergence of threats to EU values in some Member States, the EU institutions are strengthening their toolbox to counter democratic backsliding and protect democracy, the rule of law, fundamental rights, equality and minorities across the Union.

FROM JUDICIAL PROTECTION OF FUNDAMENTAL RIGHTS TO CODIFICATION IN THE TREATIES

The European Communities (EC) (now the European Union) were originally created as an international organisation with an essentially economic scope of action. There was therefore no perceived need for explicit rules concerning respect for fundamental rights, which for a long time were not mentioned in the Treaties, and were anyway considered as guaranteed by the 1950 [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR), to which the Member States were signatories.

However, once the Court of Justice of the European Union (CJEU) had affirmed the principles of direct effect and of primacy of European law, but refused to examine the compatibility of decisions with the national and constitutional law of Member States ([Stork, case 1/58](#); [Ruhrkohlen-Verkaufsgesellschaft, joined cases 36, 37, 38-59 and 40-59](#)), certain national courts began to express concerns about the effects such case law might have on the protection of constitutional values such as fundamental rights. If European law were to prevail even over domestic constitutional law, it would become possible for it to breach fundamental rights. To address this theoretical risk, in 1974 the German and Italian constitutional courts each adopted a judgment in which they asserted their power to review European law in order to ensure its consistency with constitutional rights (Solange I; Frontini). This led the CJEU to affirm through its case law the principle of respect for fundamental rights, by stating that fundamental rights are enshrined in the general principles of Community law protected by the Court ([Stauder, case 29-69](#)). These are inspired by the constitutional traditions common to the Member States ([Internationale Handelsgesellschaft, case 11-70](#)) and by international treaties for the protection of human rights to which Member States are parties ([Nold, case 4-73](#)), one of which is the ECHR ([Rutili, case 36-75](#)).

With the progressive expansion of EU competences to policies having a direct impact on fundamental rights - such as justice and home affairs, which then developed into a fully-fledged area of freedom, security and justice - the Treaties were changed in order



to firmly anchor the EU to the protection of fundamental rights. The Treaty of Maastricht included references to the ECHR and the common constitutional traditions of Member States as general principles of EU law, while the Treaty of Amsterdam affirmed the European 'principles' upon which the EU is founded (in the Treaty of Lisbon, 'values' as listed in Article 2 TEU) and created a procedure to suspend the rights provided for by the Treaties in cases of serious and persistent violations of fundamental rights by a Member State. The drafting of the Charter of Fundamental Rights and its entry into force together with the Treaty of Lisbon are the latest developments in this process of codification intended to ensure the protection of fundamental rights in the EU.

THE EU'S ACCESSION TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

As the ECHR is the leading instrument for the protection of fundamental rights in Europe, to which all Member States have acceded, EC accession to the ECHR appeared as a logical solution to the need to link the EC to fundamental rights obligations. The Commission repeatedly proposed (in 1979, 1990 and 1993) the accession of the EC to the ECHR. Requested for an opinion on the matter, the CJEU found in 1996, in its [Opinion 2/94](#), that the Treaty did not provide for any competence for the EC to enact rules on human rights or to conclude international conventions in this field, making accession legally impossible. The Treaty of Lisbon remedied this situation by introducing Article 6(2), which made the EU's accession to the ECHR obligatory. This meant that the EU (as was already the case for its Member States) would become subject, as regards respect for fundamental rights, to review by a legal body external to itself, namely the European Court of Human Rights (ECtHR). Following accession, EU citizens, but also nationals of non-EU countries present on EU territory, would be able to challenge legal acts adopted by the EU directly before the ECtHR on the basis of the provisions of the ECHR, in the same way as they may challenge legal acts adopted by the EU Member States.

In 2010, right after the entry into force of the Lisbon Treaty, the EU opened negotiations with the Council of Europe on a draft Accession Agreement, which was finalised in April 2013. In July 2013, the Commission asked the CJEU to rule on the compatibility of this agreement with the Treaties. On 18 December 2014, the CJEU issued a negative opinion stating that the draft agreement was liable to adversely affect the specific characteristics and the autonomy of EU law ([Opinion 2/13](#)). After a period of reflection and discussions on how to overcome the issues raised by the CJEU, the EU and the Council of Europe resumed negotiations in 2019, which are still under way.

THE EU CHARTER OF FUNDAMENTAL RIGHTS

In parallel to the 'external' scrutiny mechanism provided for by EC accession to the ECHR to ensure the conformity of legislation and policies with fundamental rights, an 'internal' scrutiny mechanism was needed at EC level to allow for a preliminary and autonomous judicial check by the CJEU. For this to happen, the existence of a bill of rights specific to the EU was necessary, and at the 1999 European Council in Cologne it was decided to convoke a Convention to draft a Charter of Fundamental Rights.

The Charter was solemnly proclaimed by Parliament, the Council and the Commission in Nice in 2000. After being amended, it was proclaimed again in 2007. However, only with the adoption of the Treaty of Lisbon on 1 December 2009 did the [Charter](#) come into



direct effect, as provided for by Article 6(1) TEU, thereby becoming a binding source of primary law.

The Charter, although based on the ECHR and other European and international instruments, was innovative in various ways, notably since it includes, among other issues, disability, age and sexual orientation as prohibited grounds of discrimination, and enshrines access to documents, data protection and good administration among the fundamental rights it affirms.

While the scope of application of the Charter is, on the one hand, potentially very broad, as most of the rights it recognises are granted to ‘everyone’ regardless of nationality or status, Article 51 does on the other hand limit its application to the EU institutions and bodies and, when they act to implement EU law, to the Member States.

ARTICLE 7 TEU, THE COMMISSION RULE OF LAW FRAMEWORK AND MECHANISM

With the Amsterdam Treaty a new sanction mechanism was created to ensure that fundamental rights, as well as other European principles and values such as democracy, the rule of law, equality and the protection of minorities are respected by the Member States beyond the legal limits posed by EU competences. This meant giving the EU the power to intervene in areas otherwise left to Member States, in situations of ‘serious and persistent breach’ of these values. A similar mechanism had been proposed by Parliament for the first time in its [1984 draft EU treaty text](#). The Treaty of Nice added a preventive phase, in cases of ‘clear risk of a serious breach’ of EU values in a Member State. This procedure was aimed at ensuring that the protection of fundamental rights, as well as of democracy, the rule of law and of minorities’ rights, as included among the Copenhagen criteria for accession of new Member States, remains valid also after accession, and for all Member States in the same way.

Paragraph 1 of Article 7 TEU provides for a ‘preventive phase’, empowering one third of Member States, Parliament and the Commission to initiate a procedure whereby the Council can determine by a four-fifths majority the existence of a ‘clear risk of a serious breach’ in a Member State of the EU values proclaimed in Article 2 TEU, which include respect for human rights, human dignity, freedom and equality and the rights of persons belonging to minorities. Before proceeding to such a determination, a hearing of the Member State in question must take place and recommendations may be made to it, while Parliament has to give its consent by a two-thirds majority of the votes cast and an absolute majority of its component members (Article 354(4) TFEU). This preventive procedure was activated for the first time on 20 December 2017 by the Commission in relation to Poland, and on 12 September 2018 by Parliament in relation to Hungary, but remains blocked in Council, where a number of hearings took place but no recommendations - let alone determinations - were adopted. Parliament was furthermore denied the right to present its position at the Council hearings, including on Hungary, notwithstanding its role as initiator of the procedure.

Article 7(2) and 7(3) TEU provide, in the case of the ‘existence of a serious and persistent breach’ of EU values, for a ‘sanctioning mechanism’ that can be triggered by the Commission or by one third of Member States (not Parliament), after the Member State in question has been invited to submit its observations. The European Council determines the existence of the breach by unanimity, after obtaining Parliament’s consent by the same majority as for the preventive mechanism. The Council can decide



to suspend certain membership rights of the Member State in question, including voting rights in the Council, this time acting by qualified majority. The Council can decide to modify or revoke the sanctions, again by qualified majority. The Member State concerned does not take part in the votes in the Council or the European Council. The determination and adoption of sanctions remain difficult to achieve, due to the unanimity requirement, as demonstrated by the fact that the Governments of Hungary and Poland announced they would veto any such decisions concerning the other Member State.

In order to fill the gap between the politically difficult activation of the Article 7 TEU procedures (used to address situations outside the remit of EU law) and infringement procedures with limited effect (used in specific situations falling within the scope of EU law), the Commission, in 2014, launched an [EU framework to strengthen the rule of law](#). This framework was aimed at trying to ensure effective and coherent protection of the rule of law, as a prerequisite for ensuring respect for fundamental rights and democracy in situations of systemic threat to them. Intended to precede and complement Article 7 TEU, it provides for three stages: Commission assessment, i.e. a structured dialogue between the Commission and the Member State, followed if need be by a rule of law opinion; a Commission rule of law recommendation; and follow-up by the Member State to the recommendation. This rule of law framework was applied to Poland in 2016 and was followed up, due to a lack of success, by the Commission [decision](#) to launch an Article 7 procedure on 20 December 2017.

In July 2019, the Commission made a further step forward in its communication entitled '[Strengthening the rule of law within the Union: A blueprint for action](#)' and launched a rule of law mechanism, comprising an annual review cycle based on a rule of law report monitoring the situation in the Member States, which forms the basis of interinstitutional dialogue. The first such [report](#) was published in September 2020, accompanied by 27 country chapters, covering the justice system (and notably its independence, quality and efficiency), the anti-corruption framework (legal and institutional setup, prevention, repressive measures), media pluralism (regulatory bodies, transparency of ownership and governmental interference, protection of journalists) and other institutional issues related to checks and balances (legislative process, independent authorities, accessibility, judicial review, civil society organisations). The report substantially strengthens EU monitoring by encompassing, in comparison to the EU Justice Scoreboard and other monitoring and reporting instruments, not only civil but also criminal and administrative justice, addressing judicial independence, corruption, media pluralism, separation of powers and civil society space. A network of national contact points to gather information and ensure dialogue with Member States was set up, and dialogue promoted with stakeholders, including Council of Europe bodies, the Organization for Security and Co-operation in Europe, the Organisation for Economic Co-operation and Development, judicial networks and non-governmental organisations. The [third annual report](#), published in July 2022, also contained a series of recommendations addressed to each Member State, whose follow up is to be examined in subsequent annual reports on the rule of law.

OTHER INSTRUMENTS FOR THE PROTECTION OF EU VALUES

The EU has other instruments at its disposal aimed at protecting EU values.



When proposing a new legislative initiative, the Commission addresses its compatibility with fundamental rights by means of an impact assessment, an aspect which is also subsequently examined by the Council and Parliament.

The Commission furthermore publishes an [annual report on the application of the Charter of Fundamental Rights](#), which is examined and debated by the Council, which adopts conclusions on it, and by Parliament, in the framework of its annual report on the situation of fundamental rights in the EU. In December 2020, the Commission launched a new [strategy to strengthen the implementation of the Charter in the EU](#), including in relation to EU funds through the Charter-specific ‘enabling condition’ introduced in the [2021 Common Provisions Regulation](#). Cohesion funds for Poland and Hungary have not been disbursed on this basis.

Since 2014, the Council has also held an annual dialogue among all Member States within the Council to promote and safeguard the rule of law, focusing on a different subject each year. From the second semester of 2020, the Council decided to focus on the examination of the situation of the rule of law in five Member States every semester, based on the Commission rule of law report.

Furthermore, in the context of the European Semester, issues connected to EU values are monitored and can be the subject of country-specific recommendations. The areas concerned include justice systems (on the basis of the Justice Scoreboard), as well as disability, social rights and citizens’ rights (in relation to protection from organised crime and corruption).

Bulgaria and Romania are also subject to the Cooperation and Verification Mechanism, which contains aspects relating to EU values.

Infringement proceedings are an important instrument to sanction violations of EU values in the Union, and the CJEU is developing its jurisprudence on the matter. Infringements can be launched in cases of non-compliance of a national law with EU law and EU values in individual and specific cases (whereas Article 7 also applies to situations which fall outside the scope of EU law and in which fundamental rights violations are systematic and persistent) and financial penalties can be imposed by the CJEU for failure to comply with orders or judgments.

The [EU Agency for Fundamental Rights \(FRA\)](#), established in 2007 in Vienna, plays an important role in monitoring the situation of fundamental rights in the EU. The FRA is tasked with the collection, analysis, dissemination and evaluation of information and data related to fundamental rights. It also conducts research and scientific surveys, and publishes annual and thematic reports on fundamental rights.

The Commission is also strengthening equality and the protection of minorities – two of the pillars of Article 2 TEU – through specific strategies, proposals and action to promote gender equality and to combat violence against women and domestic violence, racism, hate speech, hate crime and anti-semitism and to protect the rights of LGBTIQ people, Roma, persons with disabilities and children, under the overarching concept of ‘A Union of Equality’. The Commission, supported by Parliament and 15 Member States, recently referred Hungary to the CJEU over its [anti-LGBTIQ law](#) on grounds of violating, inter alia, Article 2 TEU. It also proposed directives to strengthen [equality bodies](#) through common standards.

After a blockage caused by the vetoes of the Governments of Hungary and Poland, an agreement was finally reached at the European Council of 10-11 December 2020 on a



[regulation on a general regime of conditionality for the protection of the Union budget](#).

The regulation makes it possible to protect the EU budget where it is established that breaches of the principles of the rule of law in a Member State affect, or seriously risk affecting, the sound financial management of the EU budget or the protection of the financial interests of the EU in a sufficiently direct way. An action brought by the Hungarian and Polish Governments against the regulation was [dismissed by the CJEU](#), which opened the way for the Commission and the Council to trigger the mechanism against [Hungary](#), leading to the suspension of EUR 6.3 billion.

The Commission is currently discussing the implementation of the Recovery and Resilience Facility national plans with a number of Member States' governments and monitoring whether they are achieving agreed milestones and targets, which are a prerequisite for the disbursement of the funds. These aim at addressing the challenges identified in the [European Semester country-specific recommendations](#) adopted by the Council, and in the rule of law reports and related recommendations issued by the Commission, as well as in the Article 7 procedures against Poland and Hungary.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always supported the strengthening of respect for and protection of fundamental rights in the EU. Already in 1977, it adopted, together with the Council and the Commission, a [Joint Declaration on Fundamental Rights](#), in which the three institutions committed to ensuring respect for fundamental rights in the exercise of their powers. In 1979, Parliament adopted a resolution advocating that the European Community accede to the ECHR.

The [1984 draft treaty establishing the European Union](#), proposed by Parliament, specified that the Union must protect the dignity of the individual and recognise for everyone falling within its jurisdiction the fundamental rights and freedoms derived from the common principles of the national constitutions and the ECHR. It also envisaged accession of the Union to the ECHR. In its [resolution of 12 April 1989](#), Parliament proclaimed its adoption of the Declaration of Fundamental Rights and Freedoms.

Every year since 1993, Parliament has held a debate and adopted a resolution on the situation of fundamental rights in the EU, on the basis of a report produced by its Committee on Civil Liberties, Justice and Home Affairs. In addition, it has adopted a growing number of resolutions addressing specific issues concerning the protection of Article 2 TEU values in the Member States.

Parliament has always supported the EU as regards equipping itself with its own bill of rights, and has called for the Charter of Fundamental Rights to be binding. This was finally achieved in 2009 with the Lisbon Treaty.

More recently, Parliament has repeatedly expressed serious concerns about the gradual erosion of Article 2 TEU standards in some Member States. To address this problem, Parliament made a number of suggestions to strengthen the protection in the EU not only of fundamental rights, but also of democracy and the rule of law, and more widely all the EU values covered by Article 2 TEU, by proposing new mechanisms and procedures to fill the existing gaps. In various resolutions since 2012, Parliament has called for the creation of a 'Copenhagen Commission', as well as of a European fundamental rights policy cycle, an early warning mechanism, a freezing procedure and the strengthening of the FRA.



In a 2016 landmark resolution on the subject, Parliament consolidated its former proposals and requested that the Commission submit an interinstitutional agreement for the establishment of an [EU mechanism on democracy, the rule of law and fundamental rights](#), which would be based on a Union Pact with the Commission and the Council. This would include an annual policy cycle based on a report monitoring the respect of EU values in the Union drafted by the Commission and by an expert panel, followed by a parliamentary debate and accompanied by arrangements to address risks or breaches^[1]. Parliament also called for a new draft agreement for EU accession to the ECHR, and for Treaty changes such as the elimination of Article 51 of the Charter of Fundamental Rights, its conversion into a Union Bill of Rights, and the removal of the unanimity requirement for equality and non-discrimination. In a [2020 resolution](#), Parliament proposed the text for an interinstitutional agreement on reinforcing EU values, developing previous proposals and adding a possibility for urgent reports and the creation of an interinstitutional working group. In a [2021 resolution](#), Parliament also called on the Commission to broaden its annual rule of law report to cover all Article 2 TEU values and include country-specific recommendations.

In 2018, Parliament adopted a resolution welcoming the Commission decision to activate Article 7(1) TEU in relation to [Poland](#), as well as a resolution on launching the Article 7(1) TEU procedure in relation to [Hungary](#), by submitting a reasoned proposal to the Council inviting it to determine whether there could be a clear risk of a serious breach of the values referred to in Article 2 TEU, and to address appropriate recommendations to Hungary in this regard^[2]. In 2020 and 2022, Parliament also adopted resolutions on [Poland](#) and [Hungary](#) respectively, widening the scope of the concerns to be examined in the Article 7(1) TEU procedures. It also [called](#) on the Commission to use all available tools, including the rule of law conditionality regulation, to address breaches of Article 2 TEU values by Hungary and Poland.

Following the murders of journalists Daphne Caruana Galizia in Malta and Ján Kuciak and his fiancée in Slovakia, and in an effort to strengthen Parliament's monitoring and action as regards Article 2 TEU values, the [Committee on Civil Liberties, Justice and Home Affairs](#) created a [Monitoring Group on Democracy, Rule of Law and Fundamental Rights](#). The group is tasked with addressing threats to EU values that emerge across the Union and issuing proposals for action to the Committee on Civil Liberties, Justice and Home Affairs.

Ottavio Marzocchi
04/2023

[1]The Commission took over many of Parliament's suggestions in its 2019 communication (establishment of an interinstitutional cycle, with an annual report, monitoring Member States, on rule of law and connected issues), but not those related to covering the whole of Article 2 TEU (not only the rule of law, but also democracy, fundamental rights, equality and minorities), establishing a committee of independent experts and an interinstitutional agreement on the cycle, issuing Member State-specific recommendations and re-starting the publication of anti-corruption reports.

[2]For more information on Parliament's activities on fundamental rights during the previous term, see '[The protection of fundamental rights in the EU: European Parliament achievements during the 2014-2019 legislative term and challenges for the future](#)'.



4.1.3. FREE MOVEMENT OF PERSONS

Freedom of movement and residence for persons in the European Union is the cornerstone of EU citizenship, established by the Treaty of Maastricht in 1992. The gradual phasing-out of internal borders under the Schengen agreements was followed by the adoption of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU. Notwithstanding the importance of this right, substantial implementation obstacles persist.

LEGAL BASIS

Article 3(2) of the Treaty on European Union; Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V of the TFEU; Article 45 of the Charter of Fundamental Rights of the European Union.

OBJECTIVES

The concept of the free movement of persons has changed in meaning since its inception. The first provisions on the subject, in the [1957 Treaty establishing the European Economic Community](#), covered the [free movement of workers](#) and [freedom of establishment](#), and thus individuals as employees or service providers. The [Treaty of Maastricht](#) introduced the notion of EU citizenship to be enjoyed automatically by every national of a Member State. It is this EU citizenship that underpins the right of persons to move and reside freely within the territory of the Member States. The [Lisbon Treaty](#) confirmed this right, which is also included in the [general provisions on the Area of Freedom, Security and Justice](#).

ACHIEVEMENTS

A. The Schengen area

The key milestone in establishing an internal market with free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) was based on intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the '[Schengen acquis](#)' into the Treaties. Today, under the [Lisbon Treaty](#), it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible, since the EU enlargement of 1 May 2004, for accession countries to 'opt out' (Article 7 of the Schengen Protocol).

1. Participating countries

There are currently 26 full Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Liechtenstein (which have associate status). Ireland is not party to the Convention but can 'opt in' to selected parts of the Schengen body of law. Denmark, while part of Schengen since 2001, enjoys an opt-out for any new justice and home affairs measures, including on Schengen, although it is bound by certain



measures under the common visa policy. Bulgaria, Romania and Cyprus are due to join, though there are delays for differing reasons. Croatia began the application process to accede to the Schengen area on 1 July 2015.

2. Scope

The Schengen area's achievements include:

- a. The abolition of internal border controls for all persons;
- b. Measures to strengthen and harmonise external border controls ([4.2.4](#)): all EU citizens need only show an identity card or passport to enter the Schengen area;
- c. A common visa policy for short stays: nationals of third countries included in the common list of non-member countries whose nationals need an entry visa (see Annex II to Council Regulation (EC) No 539/2001) may obtain a single visa, valid for the entire Schengen area;
- d. Police ([4.2.7](#)) and judicial cooperation ([4.2.6](#)): police forces assist each other in detecting and preventing crime and have the right to pursue fugitive criminals into the territory of a neighbouring Schengen state; there is also a faster extradition system and mutual recognition of criminal judgments;
- e. The establishment and development of the Schengen Information System (SIS) ([4.2.4](#)).

3. Challenges

While the Schengen area is widely regarded as one of the primary achievements of the European Union, it has recently faced an existential threat due to the COVID-19 pandemic, with Member States closing borders to control the virus's spread, before introducing the EU Digital COVID Certificate in July 2021. Before that, the main challenges have been the considerable influx of refugees and migrants into the EU, as well as terrorist attacks.

B. Free movement of EU citizens and their family members

1. First steps

In a bid to transform the Community into an area of genuine freedom and mobility for all its citizens, directives were adopted in 1990 in order to grant residence rights to persons other than workers: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and for members of their families).

2. Directive 2004/38/EC

In order to consolidate different pieces of legislation (including those mentioned above) and take account of the large body of case law linked to the free movement of persons, a new comprehensive directive was adopted in 2004 – [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The directive is designed to encourage EU citizens to exercise their



right to move and reside freely within the Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, and to limit the scope for refusing entry or terminating the right of residence. Under Directive 2004/38/EC, family members include:

- The spouse (also of the same sex, as clarified by the Court of Justice of the European Union (CJEU) in its [Coman judgment C-673/16](#));
- The registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage;
- Direct descendants who are under the age of 21 or are dependants, and those of the spouse or registered partner;
- Dependent direct relatives in the ascending line and those of the spouse or registered partner.

A large majority of Member States also apply the directive to guarantee free movement rights to same-sex registered partners and partners in a durable relationship.

a. Rights and obligations:

- For stays of under three months: the only requirement for EU citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country.
- For stays of over three months: EU citizens and their family members – if not working – must have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. EU citizens do not need residence permits, although Member States may require them to register with the authorities. Family members of EU citizens who are not nationals of a Member State must apply for a residence permit, valid for the duration of their stay or a five-year period.
- Right of permanent residence: EU citizens acquire this right after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with an EU citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.
- Restrictions on the right of entry and the right of residence: EU citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Guarantees are provided to ensure that such decisions are not taken on economic grounds, comply with the proportionality principle and are based on personal conduct, among other considerations.

Finally, the directive enables Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred in the event of abuse of rights or fraud, such as marriages of convenience.

b. The implementation of Directive 2004/38/EC

The directive has been beset by problems and controversy, with evidence emerging of serious shortcomings in implementation and continuing obstacles to free movement, as highlighted by Commission reports and Parliament studies on the application



of the directive, infringement proceedings against Member States for incorrect or incomplete transposition, the large volume of petitions submitted to Parliament and the considerable caseload before the CJEU. The criticism raised by some Member States in 2013-2014 on the alleged abuse of free movement rules by EU citizens for the purposes of 'benefits tourism' led to discussions at EU level on possible reforms, in the meantime set aside after the decision of the UK to leave the EU.

c. Third-country nationals

Provisions applying to third-country nationals who are not family members of an EU citizen are explained ([4.2.3](#)).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has long fought hard to uphold the right to free movement, which it regards as a core principle of the European Union. In its resolution of 16 January 2014 on respect for the fundamental right of free movement in the EU, Parliament rejected efforts to curtail free movement rights and called on the Member States to comply with the Treaty provisions on EU rules governing freedom of movement and to ensure that the principles of equality and the fundamental right of freedom of movement are upheld for all Member States. In its resolutions of 15 March 2017 on obstacles to EU citizens' freedom to move and work in the internal market, and of 12 December 2017 on the EU Citizenship Report of the same year, Parliament called once more for the removal of obstacles to the right to free movement. The decision by the UK to leave the European Union has deprived free movement of one of its main critics.

With regard to the Schengen area, in its resolution of 30 May 2018 on the annual report on the functioning of the Schengen area, Parliament condemned 'the continued reintroduction of internal border checks', as they are 'detrimental to the unity of the Schengen area and harmful to the prosperity of European citizens and the principle of freedom of movement'.

The COVID-19 pandemic led the majority of Member States to reintroduce internal border controls, close borders and apply temporary restrictions on travel from other EU countries, although these were partially eased with the introduction of the EU Digital COVID Certificate. In various resolutions, Parliament repeatedly expressed its concerns and called for improved coordination at EU level and for a swift return to a fully functional and reformed Schengen area.

More recently, in a [resolution](#) adopted in October 2022, Parliament called on the Council to agree to the full application of the provisions of the Schengen acquis to Bulgaria and Romania.

Ottavio Marzocchi
04/2023



4.1.4. THE RIGHT TO PETITION

Since the entry into force of the Treaty of Maastricht, every EU citizen and all natural or legal persons residing in the Member States have had the right to submit a petition to the European Parliament, in the form of a complaint or a request on an issue that falls within the European Union's fields of activity. Petitions are examined by Parliament's Committee on Petitions, which takes a decision on their admissibility and is responsible for dealing with them.

LEGAL BASIS

Articles [20](#), [24](#) and [227](#) of the Treaty on the Functioning of the European Union (TFEU), Article [44](#) of the Charter of Fundamental Rights of the European Union.

OBJECTIVES

The right to petition aims to provide EU citizens and residents with a simple means of contacting the EU institutions with complaints or requests for action.

ACHIEVEMENTS

A. Eligibility and requirements (Article [227](#) of the TFEU)

The right to petition is open to any EU citizen and any natural or legal person resident or having a registered office in a Member State, either individually or in association with others.

In order to be admissible, petitions must concern matters which fall within the EU's fields of activity and which affect the petitioners directly. The latter condition is interpreted very broadly.

B. Procedure

The procedure for dealing with petitions is laid down in Rules 226 to 230 of, and Annex VI (XX) to, [Parliament's Rules of Procedure](#), which confer responsibility on a parliamentary committee, the Committee on Petitions.

1. Formal requirements

Petitions must state the name, nationality and address of each petitioner and be written in one of the official EU languages. They can be tabled either by electronic means through the Parliament's Petitions Web Portal or by post on paper.

2. Material admissibility

Petitions that meet these formal requirements are referred to the Committee on Petitions, which must first decide whether they are admissible. The Committee does this by ascertaining that their subject falls within the EU's fields of activity. Where this is not the case, the petition is declared inadmissible. The petitioner is informed of this and of the reasons for the decision. Petitioners are often encouraged to contact another national, EU or international body. The main reasons why petitions are declared inadmissible are that petitioners confuse EU competences, responsibilities and possibilities for action and redress with those of Member States and other



international organisations and bodies (such as the UN and the Council of Europe), including in relation to the applicability of the EU Charter of Fundamental Rights.

3. Examination of petitions

Depending on the circumstances, the Committee on Petitions may take one or more of the following actions:

- Ask the European Commission to conduct a preliminary investigation on a petition and provide information regarding compliance with relevant EU legislation;
- Refer the petition to other Parliament committees for information or further action (a committee might, for example, provide the Committee on Petitions with an opinion, discuss or take account of a petition in its legislative, policy or scrutiny activities);
- If the petition concerns a specific case requiring individual attention, the Committee may contact the appropriate institutions or authorities or intervene through the permanent representation of the Member State concerned to settle the matter;
- Take any other action considered appropriate to try to resolve an issue or deliver a suitable response to the petition.

The Committee also decides whether to place petitions on its meeting agenda. In this case, the petitioner, the Commission and Member State representatives are invited. At this meeting, the petitioners – if they so wish – present their petition, the Commission gives its opinion orally and comments on its written response to the issues raised in the petition, and the representatives of the Member States concerned can be invited to take the floor. Members of the Committee on Petitions then have the opportunity to exchange views on issues raised during the debate and to propose further actions to be taken.

In specific cases, the Committee can decide to hold a hearing or a workshop, conduct a fact-finding visit to the country or region concerned, adopt a mission report containing its observations and recommendations, or prepare and submit a full report or a short motion for a resolution to be voted on by Parliament in plenary. It can also decide to submit oral questions to the Commission and/or the Council and to hold a debate in plenary.

If a petition relates to a matter of general interest revealing incorrect transposition or application of EU law, it can lead the Commission to take action with the Member State in question, including through infringement proceedings.

4. Closure

A petition may be closed by the Committee at various stages of the procedure, such as after a decision on admissibility has been taken by the Committee, after a discussion in a Committee meeting, when no further action can be taken on the petition, when a petition is withdrawn by the petitioner, or when the petitioner does not respond within a given deadline to a request for further information.

5. Transparency

Petitions submitted to Parliament become public documents. Summaries of petitions are published in all the official EU languages on Parliament's [Petitions Web Portal](https://petitions.europa.eu/) after a decision on admissibility has been taken by the Committee on Petitions, together with other relevant documents.



The petitioners are informed in writing of all Committee decisions concerning their petition and of the reasons for these decisions, and they are provided with relevant information and documentation where appropriate once the decisions become available.

ROLE OF THE EUROPEAN PARLIAMENT

According to the Treaties, Parliament is the addressee of petitions, and therefore has the responsibility of ensuring that the concerns expressed in those petitions are taken into full account in the EU. To do so in the best possible way, it has given a dedicated committee, the [Committee on Petitions](#), the task of dealing with petitions and coordinating the institution's follow-up activities. As highlighted in its annual reports on the deliberations of the Committee in the preceding year^[1], Parliament has always considered petitions as a key element of participatory democracy. It has also underlined their importance in revealing instances of incorrect transposition and implementation of EU law by Member States. In fact, a number of petitions have led to legislative or political action, EU pilot cases, preliminary rulings or infringement proceedings.

The Committee on Petitions is particularly active in the fields of fundamental rights (including children's rights, discrimination, the rights of minorities, justice, free movement, voting rights and Brexit), the environment and animal welfare, the internal market, social rights, migration, trade agreements and public health. The Committee notably plays a special role in the protection of the rights of persons with disabilities within the EU Framework for the implementation of the UN Convention on the Rights of Persons with Disabilities, and it also organises an annual workshop on disabilities-related issues.

A number of instruments are available for ensuring that issues raised in petitions are addressed and resolved: fact-finding visits, public hearings, workshops, the commissioning of studies, a Petitions Network established in 2016 to ensure greater cooperation with the other committees in relation to petitions, and cooperation and dialogue with national parliaments and authorities, as well as with other EU institutions (notably the Commission and the European Ombudsman).

In 2014, Parliament also launched the [Petitions Web Portal](#), which has improved the public profile and transparency of petitions. The portal allows the participation of citizens, natural persons and legal residents in the EU, who can also interact with the EU through the portal, including by supporting an admissible petition^[2]. Parliament's Petitions Web Portal also signposts a number of [alternatives to petitions](#) that are available to European citizens.

Georgiana Sandu
10/2023

[1]Annual reports on the deliberations of the Committee on Petitions include information on the number of petitions received, their format, status, outcome, country, language, nationality and subject; the web portal; relations with the Commission, Council and Ombudsman; fact-finding visits, public hearings, studies commissioned and further key issues.

[2]For more information about the Committee on Petitions and its activities, see [Achievements of the Committee on Petitions during the 2014-2019 parliamentary term and challenges for the future](#).



4.1.5. EUROPEAN CITIZENS' INITIATIVE

The European Citizens' Initiative (ECI) is an important instrument of participatory democracy in the EU, allowing one million citizens residing in one quarter of the Member States to invite the Commission to submit a proposal for a legal act to implement the EU Treaties. Since the application of a 2011 Regulation establishing detailed procedures for the ECI, ten initiatives have been successfully submitted to the Commission. As of January 2020, new rules apply to make the ECI more accessible.

LEGAL BASIS

- Article 11(4) of the Treaty on European Union (TEU);
- Article 24(1) of the Treaty on the Functioning of the European Union (TFEU);
- Regulations (EU) No 211/2011 and (EU) 2019/788;
- Rules 222 and 230 of Parliament's Rules of Procedure.

BACKGROUND

Citizens' initiatives are instruments available to citizens in a majority of the Member States, be it at national, regional or local level, although they differ considerably in scope and procedure. The concept of EU citizenship, from which the European Citizens' Initiative (ECI) was derived, was first introduced in the Maastricht Treaty ([1.1.3](#)). Back in 1996, in the run-up to the Amsterdam Intergovernmental Conference, the Austrian and Italian foreign ministers proposed that the right to submit such initiatives be introduced alongside the right to petition the European Parliament, but the proposal was not retained by the Conference. Provisions for a citizens' initiative very similar to the current regime were originally included in the draft Constitutional Treaty. Although the Convention Praesidium rejected the inclusion of these provisions in the final text, concerted efforts on the part of civil society organisations allowed them to be maintained. Following the failure of the ratification process for the Constitutional Treaty, similar provisions were reinserted during the drafting of the Lisbon Treaty.

Today, the right to submit a citizens' initiative is enshrined under Title II of the TEU (provisions on democratic principles). Article 11(4) TEU establishes the basic framework for that right, and Article 24(1) TFEU sets out the general principles for a regulation defining concrete procedures and detailed conditions. The proposal for a regulation was the result of an extensive consultation^[1]. Negotiation and settlement of the final text took several months – a draft proposal was submitted to Parliament and the Council on 31 March 2010, and a political agreement was reached on 15 December 2010, enabling formal adoption of the text by Parliament and the Council on 16 February 2011. On 1 April 2011, the text agreed by Parliament and the Council entered into force under Regulation (EU) No 211/2011 (ECI Regulation). Owing to a number of technical adaptations needed at Member State level to establish a streamlined verification process, the ECI Regulation only became applicable a

[1] Commission Green Paper ([COM\(2009\)0622](#)).



year later. By 1 April 2015, and by the same date every three years thereafter, the Commission is required to present a report on the application of the ECI Regulation with a view to its possible revision. The Commission adopted such reports on 31 March 2015 as [COM\(2015\)0145](#) and on 28 March 2018 as [COM\(2018\)0157](#). These communications provided a state of play and assessment of the implementation of the ECI and spelled out a list of challenges identified after the first six years of implementation of this new legislative and institutional framework. They highlighted a number of shortcomings and took into account a number of suggestions that Parliament included in its reports, in addition to some of the substantive research carried out at its initiative^[2].

When the ECI Regulation became applicable, significant concerns were raised regarding the instrument's functioning. Parliament repeatedly called for a reform of the ECI Regulation with a view to simplifying and streamlining the procedures. Finally, on 13 September 2017, the Commission presented its [legislative proposal](#) to revise the ECI. Following interinstitutional negotiations held between September and December 2018, Parliament and the Council reached a political agreement on 12 December 2018. The agreed text was adopted by Parliament on 12 March 2019 and by the Council on 9 April. The final act was signed on 17 April and was published in the Official Journal of the European Union (OJ L 130) on 17 May 2019.

The new ECI rules (Regulation (EU) 2019/788) repeal Regulation (EU) No 211/2011 and have applied since 1 January 2020. The right to submit an ECI should be clearly separated from the right to submit a petition, a procedure from which it differs in many substantial respects. Petitions can be submitted by EU citizens or by natural or legal persons that are EU residents ([4.1.4](#)), and must address matters that fall within a field of activity of the EU and affect the petitioner directly. Petitions are addressed to Parliament in its capacity as the direct representative of the citizens at EU level. An ECI is a direct call for a specific EU legal instrument and it must abide by specific rules in order to qualify. What is more, it is ultimately addressed to the Commission, which is the only institution that has the right to submit legislative proposals. In this respect, the ECI is similar in nature to the right of initiative conferred on Parliament (Article 225 TFEU) and on the Council (Article 241 TFEU).

PROCEDURE

A. Citizens' committee

As a minimum, a basic organisational structure is needed for an initiative of such magnitude. The first step in the creation of an ECI is the establishment of an organising committee, called a 'citizens' committee'. This committee must be formed by at least seven people who are residents of at least seven different Member States (but not necessarily of seven different nationalities) and who are of age to vote in the European elections. The committee must name a representative and a substitute to act as contact people for the specific ECI.

Contrary to the Commission's and Parliament's proposals, the new ECI Regulation does not lower the minimum age for supporting an ECI to 16 years, but the Member States are allowed to set the minimum age to 16, should they choose to do so.

[2] 'European Citizens' Initiative – First lessons of implementation', European Parliament, Directorate-General for Internal Policies, Policy Department C – Citizens' Rights and Constitutional Affairs (2014).



B. Registration

Before it can start collecting statements of support from citizens, the committee must register the initiative with the Commission. This involves submitting a document giving the title and subject matter and a short description of the initiative, outlining the legal basis proposed for legal action and providing information on the committee members and on all sources of support and funding for the proposed initiative. The organisers may provide more detailed information and other material, such as a draft of the proposed legislative document, in an annex.

The Commission has two months to decide whether to register the proposed initiative. It will not be registered if the procedural requirements have not been met or if it falls outside the framework of the Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties. Registration will also be refused if the initiative is manifestly frivolous, abusive or vexatious, or is contrary to the values of the EU as set out in Article 2 TEU. The Commission's decision is open to judicial or extrajudicial redress. Registered initiatives are published on the Commission's web portal.

In order to make the ECI more accessible and to ensure that as many initiatives are registered as possible, the new regulation also includes the possibility to partially register initiatives.

C. Collection of statements of support

Once the initiative is registered, the organisers can start collecting statements of support. This must be done within 12 months of registration. Statements of support can be collected on paper or electronically. If they are collected electronically, the online collection system must first be certified by the relevant national authorities. Detailed rules for the technical specifications of online collection systems are laid down in a Commission implementing regulation ([Regulation \(EU\) 2019/1799](#)). Regardless of whether the statements of support are collected on paper or electronically, the same data requirements apply for the purpose of verification. In order to be considered by the Commission, the ECI must gather one million statements of support within 12 months.

The new ECI Regulation enables EU citizens to support an ECI regardless of where they live. It also introduces more flexibility in choosing the start date of the period for collecting signatures, within the six months following registration. Moreover, it further simplifies the personal data requirements for ECI signatories. However, Member States are still allowed to require signatories to provide their full ID numbers.

In addition, the new regulation lays down the Commission's obligation to set up and operate a central online collection system and to phase out individual collection systems after 2022.

Finally, at the insistence of Parliament, the new regulation provides for enhanced support for ECI organisers by means of contact points in each Member State and an online collaborative platform offering information and assistance, practical support and legal advice about the ECI.

D. Verification and certification

Having collected the necessary number of statements of support from a sufficient number of Member States, the organisers must submit them to the [competent national authorities](#), which are tasked with certifying the statements of support compiled by



the Commission based on information communicated by the Member States. The authorities given this task are typically interior ministries, electoral commissions or population registries. The national authorities have three months to certify the statements of support, but are not required to verify the signatures.

E. Submission and examination

At this stage, the organisers are asked to submit relevant certificates from the national authorities concerning the number of statements of support, and must provide information about funding received from any source. In principle, contributions above EUR 500 must be declared.

Having received the submission, the Commission is required to publish it in a register immediately, and to meet with the organisers at the appropriate level to allow them to explain the details of their request. After an exchange of views with the Commission, the organisers are given an opportunity to present the initiative at a public hearing held by Parliament. The hearing is organised by the committee responsible for the subject matter of the ECI (Rule 222 of Parliament's Rules of Procedure).

The new ECI Regulation extends the time period in which the Commission is required to respond to a valid initiative from three to six months. In a communication setting out its legal and political conclusions on each initiative, the Commission has to provide a formal list of actions it intends to take and a clear timeline for their implementation. Moreover, in an effort to ensure full transparency, the regulation makes it a requirement for the organisers to report regularly on the sources of funding and other support provided. It also makes it a requirement for the Commission to make a contact form available on the register and on the ECI public website so that citizens can submit a complaint relating to the completeness and correctness of such information.

Parliament's role is further enhanced through the new ECI Regulation and amendments to its Rules of Procedure. In order to strengthen the political impact of successful initiatives, following the public hearing, Parliament can hold a plenary debate and adopt a resolution in order to assess political support for the initiative. Finally, Parliament will scrutinise the actions taken by the Commission in response to the initiative, which are also outlined in specific Commission communications.

CURRENT INITIATIVES

To date, ten initiatives have reached the requisite number of signatures (Right2Water, One of Us, Stop Vivisection, Ban Glyphosate, Minority SafePack, End the Cage Age, Save bees and farmers, Stop finning – stop the trade, Save cruelty-free cosmetics, and Fur Free Europe) and have been submitted to the Commission. Parliament organised hearings with the representatives of the initiatives. The Commission provided a reply to these setting out its legal and political conclusions. Since the ECI was launched, the Commission has registered a total of 103 initiatives.

ROLE OF THE EUROPEAN PARLIAMENT

The ECI instrument has been of major interest to Parliament. Before the entry into force of the Lisbon Treaty, Parliament adopted a [resolution](#) containing a detailed proposal for the implementation of the ECI. After the entry into force of the Lisbon Treaty, Parliament was actively involved in the negotiation of the ECI Regulation. Parliament contributed successfully to making the ECI a more accessible and citizen-friendly



instrument of participatory democracy. It obtained, inter alia, a reduction in the minimum number of Member States from which the statements of support have to come to one quarter; it insisted that the verification of admissibility must be carried out at the pre-registration stage; and it pressed for the provisions allowing all EU citizens and residents, regardless of nationality, to be granted the right to sign an ECI.

Parliament made a number of political calls to simplify and streamline the procedures for running an ECI, as well as to enhance its impact. Parliament adopted a [resolution on the ECI review process](#) on 28 October 2015, calling, inter alia, for the revision of the regulation with a view to simplifying the personal data requirements and providing funding to support the organisation of ECIs. In 2017, the Committee on Constitutional Affairs launched an own-initiative legislative report with a view to conducting a genuine revision of the ECI Regulation. In September 2017, based on Parliament's requests and a public consultation, the Commission eventually issued its [proposal for a new regulation on the ECI](#). The Committee on Constitutional Affairs adopted its [report](#) on the Commission's proposal on 20 June 2018, which was then followed by a plenary vote on 5 July 2018 to start interinstitutional negotiations on the new ECI Regulation.

On 12 December 2018, Parliament and the Council reached a political agreement. Following Parliament's resolution of 12 March and the Council's approval on 9 April, the final act was signed on 17 April 2019 and published in the Official Journal on 17 May 2019. The new ECI rules (Regulation (EU) 2019/788) repeal Regulation (EU) No 211/2011 and have applied since 1 January 2020.

The new ECI Regulation makes the ECI more accessible, less bureaucratic and easier to use for organisers and supporters, while also strengthening its follow-up.

On 15 July 2020, Parliament and the Council adopted temporary measures to address the effects of the COVID-19 pandemic on the implementation of the ECI. The new rules allow for an extension of the collection periods of citizens' initiatives affected by the pandemic.

On 3 June 2021, the Commission adopted an implementing decision to extend the period for collecting statements of support for ECIs; the maximum duration of the collection period was extended until 31 December 2022.

On 13 June 2023, Parliament adopted a [resolution on the implementation of the Regulations on the European citizens' initiative](#).

Alessandro Davoli
10/2023



4.2. AN AREA OF FREEDOM, SECURITY AND JUSTICE



4.2.1. AN AREA OF FREEDOM, SECURITY AND JUSTICE: GENERAL ASPECTS

The Treaties attach great importance to the creation of an area of freedom, security and justice. In 2009, several important new features were introduced: a more efficient and democratic decision-making procedure that comes in response to the abolition of the old pillar structure; increased powers for the Court of Justice of the EU; and a new role for national parliaments. Basic rights are strengthened by the legally binding Charter of Fundamental Rights of the European Union.

LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU). This article, which sets out the EU's key objectives, attaches greater importance to the creation of an area of freedom, security and justice (AFSJ) than the preceding Treaty of Nice, as this aim is now mentioned even before that of establishing an internal market.

Title V of the Treaty on the Functioning of the European Union (TFEU) – Articles 67 to 89 – is devoted to the AFSJ. In addition to the general provisions, this title contains specific chapters on:

- Policies on border checks, asylum and immigration;
- Judicial cooperation in civil matters;
- Judicial cooperation in criminal matters;
- Police cooperation^[1].

Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU ([Protocol 22](#) – ‘opt-out’ – exempts Denmark from participating in the policy). It has nonetheless been implementing the Schengen acquis since 2001 on an intergovernmental basis. Concerning judicial cooperation in civil matters and the rules regulating which courts have jurisdiction in legal disputes of a civil or commercial nature between individuals residing in different Member States ([‘Brussels I’ Regulation](#)), on 19 October 2005 the Kingdom of Denmark and the EU concluded an [agreement on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters](#). According to Article 3(2) of the agreement, whenever amendments are adopted, Denmark must notify the Commission of its decision whether or not to implement the content of such amendments. Ireland only participates in the adoption and application of specific measures after a decision to ‘opt in’ ([Protocol No 21](#)).

As well as those provisions, mention should also be made of other articles inextricably linked to the creation of an AFSJ. These include Article 6 of the TEU on the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms^[2], Article 8 of the TFEU on the elimination of inequalities, Article 15(3) of the TFEU on access to the institutions’ documents, Article 16 of the TFEU on the protection of personal data^[3], and Articles 18 to 25 of the TFEU on non-

[1] See Fact Sheets [4.2.2](#), [4.2.3](#), [4.2.5](#), [4.2.6](#), [4.2.7](#)

[2] See Fact Sheet [4.1.2](#)

[3] See Fact Sheet [4.2.8](#)



discrimination and citizenship of the Union^[4]. But the TFEU has also introduced a number of 'brake clauses' for when a Member State considers that draft legislation would affect fundamental aspects of its criminal justice system (Article 82(3) of the TFEU), and common minimum rules concerning the definition of criminal offences and sanctions for particularly serious crimes with a cross-border dimension (Article 83(3) of the TFEU). The way in which this works in practice is as follows: A draft directive is submitted to the European Council and the ordinary legislative procedure is suspended. Should a consensus be reached, the European Council will, within a period of four months, refer the draft back to the Council, which will terminate the suspension of the ordinary legislative procedure.

OBJECTIVES

The objectives for the AFSJ are laid down in Article 67 of the TFEU:

- 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States;
- It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals;
- The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws;
- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

ACHIEVEMENTS

A. Main new features introduced by the Lisbon Treaty

1. A more efficient and more democratic decision-making procedure

The Lisbon Treaty abolished the third pillar, which was based on intergovernmental cooperation, thus generalising the Community method in the AFSJ. As a rule, legislative proposals are now adopted under the ordinary legislative procedure set out in Article 294 of the TFEU. The Council acts by a qualified majority, and the European Parliament, as co-legislator, delivers its opinion via the codecision procedure.

2. A new role for national parliaments

Article 12 of the TEU and Protocols No 1 and 2 lay down the role of the national parliaments in the EU. National parliaments now have eight weeks in which to examine any given legislative proposal in the light of the subsidiarity principle; until that period has expired, no decision can be taken at EU level on that proposal. With regard to the

[4] See Fact Sheet [4.1.1](#)



AFSJ, if a quarter of the national parliaments so request, a proposal must be reviewed (Article 7(2) of Protocol No 2).

Proceedings for annulment may be brought before the Court of Justice if the principle of subsidiarity is infringed by a legislative act.

National parliaments are involved in the evaluation of Eurojust and Europol (Articles 85 and 88 of the TFEU).

3. Increased powers for the Court of Justice of the European Union^[5]

The Court of Justice may now give preliminary rulings, without restriction, on all aspects of the AFSJ. Following the end of a five-year transitional period from the entry into force of the Lisbon Treaty (i.e. as of 1 December 2014), acts in the field of police cooperation and judicial cooperation in criminal matters adopted under the previous Treaty can also be the subject of such proceedings. The same system applies to proceedings for failure to fulfil an obligation (Protocol No 36).

4. A more prominent role for the Commission

The fact that the Commission may bring proceedings for failure to fulfil an obligation against Member States which do not comply with provisions concerning the AFSJ is an important new feature conferring a new power in terms of monitoring the application of legislation.

5. Potential involvement of Member States in the evaluation of AFSJ policy implementation

Article 70 of the TFEU states that the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of AFSJ policies by Member States' authorities.

B. The European Council's planning role

Alongside the changes brought about by successive Treaties, the European Council has played a particularly important role in the developments and progress that have taken place in various fields of the AFSJ.

The Tampere European Council in October 1999 included a special meeting to discuss how an area of freedom, security and justice might be established by drawing to the full on the opportunities afforded by the Amsterdam Treaty.

In November 2004, the European Council adopted a new five-year action plan, the Hague Programme.

On 10 and 11 December 2009, the European Council adopted the Stockholm Programme. This multiannual programme for the period from 2010 to 2014 focused on the interests and needs of citizens and other people to whom the EU has a responsibility.

The Lisbon Treaty formally recognises the European Council's preeminent role of '[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice' (Article 68 of the TFEU). In June 2014, the European Council defined these guidelines over the coming years. They are in line

[5] See Fact Sheet [1.3.10](#)



with the priorities set in the strategic agenda for the EU, which was also adopted in June 2014.

C. Establishment of specialist AFSJ management bodies: the agencies

Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ: [Europol](#), for police cooperation; the [European Union Agency for Law Enforcement Training](#) (CEPOL); [Eurojust](#), for judicial cooperation in criminal matters; the EU [Fundamental Rights Agency](#) (FRA), which deals with fundamental rights and discrimination; the [European Monitoring Centre for Drugs and Drug Addiction](#) (EMCDDA); the [European Border and Coast Guard Agency](#) (Frontex), which is responsible for coordinating external border control; the [EU Agency for Asylum](#) (EUAA); [the European Public Prosecutor's Office \(EPPO\)](#)^[6] and the [EU Agency for the Operational Management of Large-Scale IT Systems in the AFSJ](#) (eu-LISA).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has a range of tools and powers that enable it to perform its role to the full:

- Legislative competence to the extent that, since the entry into force of the Lisbon Treaty in 2009, Parliament acts as co-legislator under the ordinary legislative procedure. This has become the general rule, but with a number of exceptions. These include measures intended to ensure 'administrative cooperation between the relevant departments of the Member States' (Article 74 of the TFEU), which are still subject to a 'special legislative procedure' with Council acting on a proposal of the Commission or a quarter of the Member States, and after consulting Parliament. What is more, a special legislative procedure (Council acting unanimously after consulting Parliament) applies concerning measures laying down the conditions and limitations for police cooperation (Article 89 of the TFEU) or provisions on passports, identity cards and residence permits (Article 77(3) of the TFEU);
- Budgetary competence, the European Parliament being jointly responsible, with the Council, for laying down the EU budget for programmes in the AFSJ field;
- Scrutiny of activities of the EU agencies operating in this policy field, for example by sending delegations to the Member States or to the EU external borders in order to identify problems and to verify how legislation adopted at EU level is being implemented;
- The power to bring proceedings for annulment before the Court of Justice, which the European Parliament exercised, for instance, in order to request the annulment of certain provisions of legislative acts;
- The power of political initiative, which Parliament exercises by adopting own-initiative reports and resolutions on such subjects as it might choose to address.

The main priorities on which Parliament has constantly laid emphasis over the past years can be summed up as follows:

- Recognising and taking account of the growing importance of the AFSJ in the context of the EU's development;

[6] See Fact Sheet [4.2.6](#)



- Abolishing the third pillar and bringing the areas of police and judicial cooperation in criminal matters within the scope of EU procedures and legislation so as to enable the European Parliament to play its full democratic role in the legislative process;
- Doing away with unanimity in the Council in order to facilitate decision-making;
- Maintaining a fair balance between the protection of citizens' and residents' fundamental rights and security and counterterrorism requirements, and ensuring that this balance is reflected in legislation and in implementation;
- Strengthening the protection and promotion of fundamental rights, in particular through the adoption of the legally binding Charter of Fundamental Rights of the European Union and the establishment of a Fundamental Rights Agency, as well as through the establishment of the [committee of inquiry to investigate the use of Pegasus and equivalent surveillance spyware](#), which evaluated how the use of spyware against EU citizens affected democratic processes and individual rights of citizens in the EU.

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

Udo Bux / Mariusz Maciejewski
11/2023



4.2.2. ASYLUM POLICY

The aim of the EU's asylum policy is to offer appropriate status to any non-EU national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement^[1]. To this end, the EU is striving to develop a Common European Asylum System.

LEGAL BASIS

- Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU);
- Article 18 of the EU Charter of Fundamental Rights.

OBJECTIVES

The EU aims to develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to all non-EU nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol thereto of 31 January 1967. Neither the TFEU nor the EU Charter of Fundamental Rights provides a definition of the terms 'asylum' or 'refugee', but both refer explicitly to the Geneva Convention and its Protocol.

ACHIEVEMENTS

A. Advances under the Treaties of Amsterdam and Nice

Under the 1993 Treaty of Maastricht, previous intergovernmental cooperation on asylum was brought into the EU's institutional framework. As the main actor, the Council was to involve the Commission in its work and inform Parliament about its asylum initiatives; the Court of Justice of the European Union (CJEU) had no jurisdiction on asylum matters.

In 1999, the Treaty of Amsterdam granted the EU institutions new powers to draw up legislation in the area of asylum, using a specific institutional mechanism: a five-year transitional period with a shared right of initiative between the Commission and the Member States and decision by unanimity in the Council after consultation with Parliament; the CJEU also gained jurisdiction in specific instances. The Treaty of Amsterdam also provided that, after this initial five-year phase, the Council could decide that the normal codecision procedure should apply and that it should henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure (now known as the ordinary legislative procedure) has applied since 2005.

With the adoption of the Tampere Programme in October 1999, the European Council decided that the Common European Asylum System should be implemented in two

[1] A core principle of international refugee and human rights law that prohibits states from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.



phases: the adoption of common minimum standards in the short term should lead to a common procedure and a uniform status for those who are granted asylum valid throughout the EU in the longer term.

This resulted in the ‘first phase’ of the Common European Asylum System (CEAS) from 1999-2004, establishing the criteria and mechanisms for determining the Member State responsible for examining asylum applications (replacing the international/intergovernmental 1990 Dublin Convention), including the European Asylum Dactyloscopy Database (Eurodac) for storing and comparing fingerprint data. It also defined common minimum standards to which Member States were to adhere in connection with the reception of asylum seekers, determined qualification criteria for international protection and the nature of the protection granted, and established procedures for granting and withdrawing refugee status. Further legislation covered temporary protection in the event of a mass influx.

In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010, highlighting the EU’s ambition to go beyond minimum standards and develop a single asylum procedure comprising common guarantees and a uniform status for those granted protection. In the 2008 European Pact on Immigration and Asylum, this deadline was postponed to 2012.

B. The Treaty of Lisbon

The Treaty of Lisbon, which entered into force in December 2009, changed the situation by transforming the measures on asylum from establishing minimum standards into creating a common system comprising a uniform status and uniform procedures.

This common system must include:

- A uniform status of asylum;
- A uniform status of subsidiary protection;
- A common system of temporary protection;
- Common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- Criteria and mechanisms for determining which Member State is responsible for considering an application;
- Standards concerning reception conditions;
- Partnership and cooperation with non-EU countries.

Since the Treaty of Lisbon was adopted, Article 80 of the TFEU has also explicitly provided for the principle of solidarity and fair sharing of responsibility, including any financial burdens, between Member States. EU actions concerning asylum should, if necessary, contain appropriate measures to ensure this principle is followed. The treaty also significantly altered the decision-making procedure on asylum matters, by making codecision the standard procedure. In addition, the arrangements for judicial oversight by the CJEU have been improved significantly. Preliminary rulings may now be sought by any court in a Member State, rather than just national courts of final instance, as was previously the case. This has enabled the CJEU to develop a larger body of case law in the field of asylum.

The Stockholm Programme, adopted by the European Council on 10 December 2009 for the 2010-2014 period, reaffirmed ‘the objective of establishing a common area of



protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection'. It emphasised, in particular, the need to promote effective solidarity with those Member States facing particular pressures, and the central role to be played by the new European Asylum Support Office (EASO, currently the European Union Agency for Asylum ([EUAA](#))).

Although the Commission had tabled its proposals for the second phase of the CEAS as early as 2008-2009, negotiations progressed slowly. Accordingly, the 'second phase' of the CEAS was adopted following the entry into force of the Treaty of Lisbon, with a change of emphasis from minimum standards to a common asylum procedure on the basis of a uniform protection status.

C. The main existing legal instruments and current reform efforts

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof ([the Temporary Protection Directive](#)) was developed as a framework for managing an unexpected mass influx of displaced persons and providing them with immediate protection. The aims of this directive are to reduce disparities between the policies of the Member States on the reception and treatment of displaced persons in a situation of mass influx, and to promote solidarity between Member States. It was triggered for the first time by the Council in response to the unprecedented Russian invasion of Ukraine on 24 February 2022 to offer quick and effective assistance to people fleeing the war in Ukraine.

With the exception of the recast [Qualification Directive](#), which entered into force in January 2012, the other recast legislative acts only entered into force in July 2013 (the [Eurodac Regulation](#); the [Dublin III Regulation](#); the [Reception Conditions Directive](#); and the [Asylum Procedures Directive](#)), which meant that their delayed transposition in mid-July 2015 fell at the peak of the migration crisis. In June 2014, the European Council drew up the [strategic guidelines for legislative and operational planning](#) in the area of freedom, security and justice (see Article 68 of the TFEU) for the coming years, based on the March 2014 [Commission communication](#) and building on the progress achieved by the Stockholm Programme. These guidelines stress that the full transposition and effective implementation of the CEAS is an absolute priority.

In view of the migratory pressure since 2014, in May 2015 the Commission issued the [European Agenda on Migration](#) (4.2.3), which proposed several measures to address this pressure, including the hotspot approach – shared between EASO (currently the EUAA), the European Border and Coast Guard Agency (formerly Frontex) and the European Union Agency for Law Enforcement Cooperation (Europol) – which involves working on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The hotspot approach was also meant to contribute to the implementation of the emergency relocation mechanisms for a total of 160 000 people in need of international protection. The mechanisms were proposed by the Commission to assist Italy and Greece and adopted by the Council on [14 and 22 September 2015](#), after consultation with Parliament. The Council decision was later maintained in court in the CJEU [judgment](#) of 6 September 2017. Relocation is meant as a mechanism to implement in practice the principle of solidarity and fair sharing of responsibility set out in Article 80 of the TFEU. However, relocation rates have been [lower than expected](#) and relocations have been implemented slowly.



The European Agenda on Migration also sets out further steps towards a reform of the CEAS, which were presented in two packages of legislative proposals in May and July 2016 and were discussed between Parliament and the Council throughout the legislative term ending in May 2019. However, no legislative acts were adopted during the 2014-2019 term due to the files being blocked in the Council or other specific files being put on hold due to blockages on connected files.

On 23 September 2020, the Commission issued the [New Pact on Migration and Asylum](#) in an attempt to give a fresh start to the stalled CEAS reform. The pact aims to strike a new balance between responsibility and solidarity. The Commission proposes integrating the asylum procedure into overall migration management, linking it with pre-screening and return.

The first of the reform proposals to be approved was on the setting up of the European Union Agency for Asylum (EUAA), replacing EASO. The EUAA was set up via Regulation (EU) 2021/2303, which was [published](#) in the Official Journal on 30 December 2021.

In September 2022, Parliament and five rotating Council Presidencies signed a joint [roadmap](#) on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum. They committed to work together to adopt the reform of the EU migration and asylum rules before the 2024 European Parliament elections.

A political agreement was reached at the end of 2022 on the [reform of the recast Reception Conditions Directive](#), on the proposal for an [EU resettlement framework](#) and on the proposal for a [Qualification Regulation](#).

Trilogues between Parliament, the Council and the Commission are ongoing on the following files: the [Eurodac Regulation](#), the [Asylum Procedure Regulation](#), the [Screening Regulation](#), the [Asylum and Migration Management Regulation](#), and the [Crisis and force majeure Regulation](#).

The Commission, in its [Recommendation on legal pathways to protection in the EU](#), recommended that Member States implement their unfulfilled resettlement pledges, and invited the Member States to introduce and make more use of other pathways for humanitarian admission such as family reunification and community or private sponsorship schemes, as well as complementary pathways linked to education and work.

D. The external dimension

Adopted in 2011 by the Commission, the [Global Approach to Migration and Mobility](#) is the overarching framework of the EU's external migration and asylum policy. It defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities. It is embedded in the EU's overall external action and includes development cooperation. Its main objectives are to better organise legal migration, to prevent and combat irregular migration, to maximise the development impact of migration and mobility, and to promote international protection.

The European Council and Türkiye reached an agreement in March 2016 aimed at reducing the flow of irregular migrants into Europe via Türkiye. According to the [EU-Turkey Statement](#), all new irregular migrants and asylum seekers arriving from Türkiye on the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Türkiye. Also, for each Syrian returned to Türkiye,



another Syrian should be resettled in the EU, in exchange for further visa liberalisation for Turkish citizens and the payment of EUR 6 billion under the Facility for Refugees in Türkiye, until the end of 2018. According to the Commission's last [Progress report on the Implementation of the European Agenda on Migration](#) of 16 October 2019, the statement played a key role in ensuring that the challenge of migration in the eastern Mediterranean was addressed effectively. In October 2021, the European Council [called](#) on Türkiye to ensure the full and non-discriminatory implementation of the EU-Turkey Statement of 2016, including vis-à-vis the Republic of Cyprus. The EU-Türkiye high-level dialogue on migration took place on 23 November 2023.

One of the key initiatives presented in the New Pact on Migration and Asylum was the promotion of tailor-made and mutually beneficial partnerships with non-EU countries in the area of migration. In July 2023, the Commission [signed](#) a Memorandum of Understanding with Tunisia.

On a global level, in September 2016, the United Nations General Assembly unanimously adopted the [New York Declaration for Refugees and Migrants](#), a landmark political declaration aimed at improving how the international community responds to large-scale movements of refugees and migrants and to protracted refugee situations. As a result, two global compacts were adopted in 2018, for refugees and for other migrants. The New York Declaration sets out a Comprehensive Refugee Response Framework, setting out specific actions needed to ease pressure on host countries, enhance refugee self-reliance, expand access to third-country solutions and improve conditions in countries of origin to enable refugees to return in safety and dignity. Based on these four key objectives, on 17 December 2018, the United Nations General Assembly affirmed the [Global Compact on Refugees](#).

E. Funding available for asylum policies

The main funding instrument in the EU budget in the area of asylum is the Asylum, Migration and Integration Fund ([AMIF](#)). AMIF's allocation during the previous long-term EU budget (2014-2020), which coincided with the migration crisis, was increased from EUR 3.31 billion to EUR 6.6 billion. For the current long-term EU budget for the 2021-2027 period, funding has been increased again under AMIF to EUR 9.9 billion, inter alia in order to manage migration, asylum and integration in an effective and humane way, including financial support to Member States for solidarity shown through resettlement and relocation. Other EU funding instruments such as the European Social Fund ([2.3.2](#)), the Fund for European Aid to the Most Deprived ([2.3.9](#)) and the European Regional Development Fund ([3.1.2](#)) also allocate funds, mostly to support the integration of refugees and migrants, although the share of funds allotted to them is not accounted for separately in the budget lines and thus is not clear.

Similarly, the initial 2014-2020 allocation to [EASO \(currently the EUAA\)](#) was increased from EUR 109 million to EUR 456 million. In order to be ready to provide full operational support for asylum procedures in the future, the new multiannual financial framework (MFF) provides for a budget of EUR 1.22 billion for the 2021-2027 period.

The Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe) was established by [Regulation \(EU\) 2021/947](#). It brings together most of the EU's external funding instruments that existed as separate instruments in the previous budget period (2014-2020). It amounts to EUR 79.5 billion and includes an indicative 10% spending target in relation to migration (a flexible incitative approach to migration).



ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always strongly advocated for a CEAS, in accordance with the EU's legal commitments. It has also called for the reduction of irregular migration and for the protection of vulnerable groups.

On 7 September 2022, Parliament and five rotating Council Presidencies [committed](#) to work together to adopt the reforms initiated in 2016 of the EU migration and asylum rules before the 2024 European Parliament elections.

Parliament can bring an action for annulment before the CJEU. This instrument was successfully used (see the [CJEU judgment of 6 May 2008](#)) to obtain the annulment of the provisions concerning the arrangements for adopting the common list of non-EU countries regarded as safe countries of origin and safe non-EU countries in Europe provided for in Council Directive 2005/85/EC.

Visit the European Parliament Homepage on: [EU response to the migrant challenge](#)

Georgiana Sandu
10/2023



4.2.3. IMMIGRATION POLICY

A forward-looking and comprehensive European immigration policy, based on solidarity, is a key objective for the European Union. Immigration policy is intended to establish a balanced approach to dealing with both regular and irregular immigration.

LEGAL BASIS

Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU).

COMPETENCES

Regular immigration: The EU is competent to lay down the conditions governing entry into and legal residence in a Member State, including for the purposes of family reunification, for third-country nationals. Member States retain the right to determine volumes of admission for people coming from third countries to seek work.

Integration: The EU may provide incentives and support for measures taken by Member States to promote the integration of legally resident third-country nationals; EU law makes no provision for the harmonisation of national laws and regulations, however.

Combating irregular immigration: The European Union is required to prevent and reduce irregular immigration, in particular by means of an effective return policy, in a manner consistent with fundamental rights.

Readmission agreements: The European Union is competent to conclude agreements with third countries for the readmission to their country of origin or provenance of third-country nationals who do not fulfil or no longer fulfil the conditions for entry into, or presence or residence in, a Member State.

OBJECTIVES

Defining a balanced approach to immigration: The EU aims to set up a balanced approach to managing regular immigration and combating irregular immigration. Proper management of migration flows entails ensuring fair treatment of third-country nationals residing legally in Member States, enhancing measures to combat irregular immigration, including trafficking and smuggling, and promoting closer cooperation with non-member countries in all fields. It is the EU's aim to establish a uniform level of rights and obligations for regular immigrants, comparable to that for EU citizens.

Principle of solidarity: under the Lisbon Treaty, immigration policies are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU).

ACHIEVEMENTS

A. Institutional developments brought about by the Lisbon Treaty

The Lisbon Treaty, which entered into force in December 2009 (1.1.5), introduced qualified majority voting on regular immigration and a new legal basis for integration measures. The ordinary legislative procedure now applies to policies on both irregular and regular immigration, making Parliament a co-legislator on an equal footing with



the Council. The provisional measures to be taken in the event of a sudden inflow of third-country nationals are adopted by the Council alone, however, after consulting Parliament (Article 78(3) TFEU).

The Lisbon Treaty also made it clear that the EU shares competence in this field with the Member States, in particular as regards the number of migrants allowed to enter a Member State to seek work (Article 79(5) TFEU). Finally, the Court of Justice now has full jurisdiction in the field of immigration and asylum.

B. Recent policy developments

1. The 'Global Approach to Migration and Mobility'

The 'Global Approach to Migration and Mobility' ([GAMM](#)) adopted by the Commission in 2011 establishes a general framework for the EU's relations with third countries in the field of migration. It is based on four pillars: regular immigration and mobility, irregular immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development. The human rights of migrants are a cross-cutting issue in the context of this approach.

2. The June 2014 strategic guidelines

The Stockholm Programme for the area of freedom, security and justice (AFSJ), adopted in December 2009, expired in December 2014 ([4.2.1](#)). In March 2014, the Commission published a new communication setting out its vision on the future agenda for the AFSJ, entitled '[An open and secure Europe: making it happen](#)'. In accordance with Article 68 TFEU, in its conclusions of 26 and 27 June 2014 the European Council then defined the '[strategic guidelines](#) for legislative and operational planning within the area of freedom, security and justice' for the 2014-2020 period. These no longer constitute a programme, but rather guidelines focusing on the objective of transposing, implementing and consolidating the existing legal instruments and measures. The guidelines stress the need to adopt a holistic approach to migration, making the best possible use of regular migration, affording protection to those who need it, combating irregular migration and managing borders effectively. The adoption of new strategic guidelines is still pending.

3. European Agenda on Migration

In May 2015, the Commission published the [European Agenda on Migration](#). The Agenda proposed immediate measures to cope with the crisis in the Mediterranean and measures to be taken over the next few years to manage all aspects of immigration more effectively.

On the basis of this agenda, in April 2016 the Commission published its guidelines on regular migration, as well as on asylum, in a [communication](#). There are four main strands to the guidelines as regards regular migration policies: revising the Blue Card Directive, attracting innovative entrepreneurs to the EU, developing a more coherent and effective model for regular immigration in the EU by assessing the existing framework, and strengthening cooperation with the key countries of origin, with a view to ensuring legal pathways to the EU while at the same time improving returns of those who have no right to stay.

In October 2019, the Commission published its last [progress report](#) on the implementation of the European Agenda on Migration, which examines progress made and shortcomings in the implementation of the Agenda. In September 2021, a year after adopting the New Pact on Migration and Asylum, the Commission adopted its first



[report on migration and asylum](#), covering all aspects of migration management and taking stock of the key developments in migration and asylum policy over the previous period of one year and a half. The [second report on migration and asylum](#) was published on 6 October 2022.

All policy developments are closely monitored by the [European Migration Network](#), established in 2008 as an EU network of migration and asylum experts from all Member States, who work together to provide objective, comparable and policy-relevant information.

4. The New Pact on Migration and Asylum

As announced in its 2020 work programme, the Commission published its New Pact in September 2020, which aims to integrate the asylum procedure in overall migration management, linking it with pre-screening and return, while also covering the management of external borders, stronger foresight, crisis preparedness and response coupled with a solidarity mechanism, and external relations with key third countries of origin and transit (4.2.2). The latter includes a [Commission recommendation](#) to develop complementary legal pathways to protection, such as resettlement and other forms of humanitarian admission such as community sponsorship programmes, but also pathways linked to education and work.

In April 2022, the Commission proposed the [Legal Migration Package](#), which includes proposals recasting the Single Permit Directive and the Long-Term Residents Directive. On 15 November 2023, the Commission proposed the [Skills and Talent Mobility package](#), which includes the creation of an EU Talent Pool, as well as measures simplifying the recognition procedures of qualifications to promote student and labour market mobility.

On 7 September 2022, the European Parliament and five rotating Council presidencies [committed](#) to work together to adopt the reform initiated in 2016 of the EU migration and asylum rules before the 2024 EU elections.

C. Recent legislative developments

Since 2008, a number of significant directives on immigration have been adopted and several have already been revised.

1. Regular immigration

Following the difficulties encountered in adopting a general provision covering all labour immigration into the EU, the current approach consists of adopting sectoral legislation, by category of migrants, in order to establish a regular immigration policy at EU level.

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment created the 'EU blue card', a fast-track procedure for issuing a special residence and work permit, on more attractive terms, to enable third-country workers to take up highly qualified employment in the Member States. In June 2016, the Commission proposed a revision of the system, including less stringent admissions criteria, a lower salary threshold/minimum length of the work contract required, better family reunification provisions, and the abolition of parallel national schemes, which Member States opposed. After the New Pact was published, Parliament and the Council again took up work on this revision, and on 15 September 2021 Parliament [validated](#) the agreement that had been reached with the Council. The new rules provide for more flexible admission criteria (a valid work contract or a binding six-month job offer is sufficient), while lowering the minimum wage



threshold that applicants must earn to be eligible for the Blue Card and making it easier for Blue Card holders to travel between EU countries and reunite with their families. [Directive \(EU\) 2021/1883](#) was published in the Official Journal on 20 October 2021.

The [Single Permit Directive 2011/98/EU](#) sets out a common, simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants. The [implementation report](#), adopted in March 2019, found that third-country nationals lacking information about their rights hampers the directive's objective of promoting their integration and non-discrimination. In April 2022, the Commission [proposed](#) to recast the directive in order to simplify and clarify its scope, including admission and residence conditions for low- and medium-skilled workers. The co-legislators are currently working on the [dossier](#).

[Directive 2014/36/EU](#), adopted in February 2014, regulates the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers. Migrant seasonal workers are allowed to stay legally and temporarily in the EU for a maximum period of between five and nine months (depending on the Member State) to carry out an activity dependent on the passing of seasons, while retaining their principal place of residence in a third country. The directive also clarifies the set of rights to which such migrant workers are entitled. In July 2020, the Commission issued [guidelines on seasonal workers in the context of the COVID-19 outbreak](#), where it also announced the first implementation report for 2021.

[Directive 2014/66/EU](#) on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer was adopted on 15 May 2014. The directive makes it easier for businesses and multinational corporations to temporarily relocate their managers, specialists and trainee employees to their branches or subsidiaries located in the European Union. The first implementation report was due by November 2019.

[Directive \(EU\) 2016/801](#) on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing was adopted on 11 May 2016, and was to be transposed by 23 May 2018. It replaces the previous instruments covering students and researchers, broadening their scope and simplifying their application.

Lastly, the status of third-country nationals who are long-term residents in the European Union is still regulated by Council [Directive 2003/109/EC](#), as amended in 2011 to extend its scope to refugees and other beneficiaries of international protection. The March 2019 [implementation report](#) found that, rather than actively promote the European long-term residence status, Member States issue mainly national long-term resident permits instead; and only a few third-country nationals use their right to move to other Member States. In April 2022, the Commission [proposed](#) a recast of the directive, with the objective of creating a true EU long-term resident status, in particular by strengthening the right of long-term residents to move to and work in other Member States. The European Parliament adopted its negotiating mandate in April 2023. The co-legislators are currently working on the [dossier](#).

2. Integration

Council [Directive 2003/86/EC](#) sets out provisions on the right to family reunification, which go beyond the right to respect for private and family life of Article 8 of the



European Convention on Human Rights. Given that the 2008 implementation report concluded that Directive 2003/86/EC had not been fully and correctly applied in the Member States, the Commission published a [communication](#) in April 2014 providing guidance to the Member States on how to apply it. The Commission's [legal migration fitness check](#) also covers the family reunification directive.

The EU's competence in the field of integration is limited. In July 2011, the Commission adopted the [European Agenda for the Integration of Third-Country Nationals](#). More recently, in November 2020, the Commission put forward an [action plan](#) on integration and inclusion for 2021-2027, setting out a policy framework and practical steps to help Member States integrate and include the 34 million non-EU nationals who are legally resident in the EU in education, employment, healthcare and housing. The plan brings together monitoring measures and the use of new digital tools, and efforts to foster migrants' participation in society, increase opportunities for EU funding and build multi-stakeholder partnerships at various levels of governance. Existing instruments include the [European Migration Forum](#); the [European Website on Integration](#); the [European Integration Network](#); and the newly created Expert Group on the views of migrants in the field of migration, asylum and integration, which met for the [first time](#) in November 2020 and has held regular meetings ever since.

Specialised funding instruments to support national integration policies are based on the Asylum, Migration and Integration Fund ([AMIF](#)) and the European Social Fund ([ESF](#)+) under the new multiannual financial framework (MFF) 2021-2027.

3. Irregular immigration

The EU has adopted some major pieces of legislation to combat irregular immigration:

- The so-called 'Facilitators Package' comprises Council [Directive 2002/90/EC](#), setting out a common definition of the crime of facilitating unauthorised entry, transit and residence, and [Framework Decision 2002/946/JHA](#), establishing criminal sanctions for this conduct. The package is complemented by Council [Directive 2004/81/EC](#), which provides for the granting of a residence permit to trafficked or smuggled persons who cooperate with the competent authorities (on trafficking, see also the fact sheet on 'Judicial cooperation in criminal matters' [4.2.6](#)). In May 2015, the Commission adopted the [EU action plan against migrant smuggling \(2015-2020\)](#), and, in line with the action plan, the Commission conducted a [REFIT evaluation](#) on the application of the existing legal framework, which was preceded by a [public consultation](#). The Commission found that, at that point in time, there was not sufficient evidence pointing to actual and repeated prosecution of individuals or organisations for humanitarian assistance, and concluded that the EU legal framework addressing migrant smuggling remains necessary in the current context. Parliament's [resolution](#) of 5 July 2018 called on the Commission to develop guidelines for Member States to prevent humanitarian assistance from being criminalised, and a [hearing](#) was held on the topic in September 2018. As part of its New Pact, the Commission issued a [communication](#) providing guidance on interpreting the Facilitation Directive, in which it stated that carrying out the legal obligation to rescue people in distress at sea could not be criminalised, but stopped short of calling for additional efforts, leaving search and rescue activities in the hands of NGOs and private vessels. After a [public consultation](#), in September 2021 the Commission adopted a renewed [EU action plan against migrant smuggling for 2021-2025](#). Trafficking is addressed by



[Directive 2011/36/EU](#) on preventing and combating trafficking in human beings and protecting its victims. In December 2022, the Commission [proposed](#) a revision of Directive 2011/36/EU. The co-legislators are currently working on the [dossier](#).

- The [Returns Directive 2008/115/EC](#) sets out common EU standards and procedures for returning irregularly resident third-country nationals. The first report on its implementation was adopted in March 2014. In September 2015, the Commission published the [EU action plan on return](#), which was followed by the adoption, in October 2015, of the Council conclusions on the future of the return policy. In March 2017, the Commission supplemented the action plan with a [communication](#) on ‘a more effective return policy in the European Union – a renewed action plan’ and a [recommendation](#) on making returns more effective. In September 2017, it published its updated ‘[Return Handbook](#)’, providing guidance relating to the performance of duties of national authorities competent for carrying out return-related tasks. Additionally, in 2016, Parliament and the Council adopted [Regulation \(EU\) 2016/1953](#) on the establishment of a European travel document for the return of illegally staying third-country nationals. The recently revamped and strengthened [European Border and Coast Guard Agency](#) (Frontex) increasingly assists Member States in their return-related activities. In September 2018, the Commission proposed to recast the Returns Directive to accelerate procedures, including a new border procedure for asylum applicants, clearer procedures and rules to prevent abuses, efficient voluntary return programmes to be set up in Member States, and clearer rules on detention. A targeted [Parliament impact assessment](#) found that the proposal would entail substantial costs for Member States through increased detention. There was no clear evidence that the proposal would lead to more effective returns, but it was likely to result in breaches of the fundamental rights of irregular migrants. Parliament’s resolution of 17 December 2020 on the [implementation of the Returns Directive](#) stressed that the effectiveness of the EU’s return policy must not only be measured in terms of return rates but must also take into consideration respect for fundamental rights and procedural guarantees. The rapporteur (Tineke Strik (Greens/EFA) published her [draft report](#) on 21 February 2020. The co-legislators are currently working on the [dossier](#). In its New Pact, the Commission moves towards a common EU system for returns, with more operational support for Member States, and Frontex as the operational arm of EU return policy, together with the appointment of a return coordinator supported by a new High Level Network for Return. The first EU return coordinator, Mari Juritsch, was appointed in March 2022. The Commission has published its [strategy on voluntary return and reintegration](#) (April 2021), the policy document ‘[Towards an operational strategy for more effective returns](#)’ (January 2023) and its [recommendation](#) on mutual recognition of returns decisions and expediting returns (March 2023). Return sponsorship is also proposed as a solidarity measure under the proposed Asylum and Migration Management Regulation ([4.2.2](#)) through which Member States can support other Member States that are under pressure.
- The **Employers Sanctions** [Directive 2009/52/EC](#) specifies sanctions and measures to be applied in Member States against employers of illegally resident third-country nationals. The first report on the implementation of the directive was submitted on 22 May 2014. Following its announcement in the New Pact, the Commission adopted a [communication on the application of the directive](#) in



September 2021, with the aim of strengthening implementation while protecting the rights of irregular migrants.

- Since 2001, Member States have mutually recognised their respective expulsion decisions ([Directive 2001/40](#)), whereby a decision by one Member State to expel a non-EU national present in another Member State is respected and complied with.

At the same time, the EU is negotiating and concluding [readmission agreements](#) with countries of origin and transit with a view to returning irregular migrants and cooperating in the fight against trafficking in human beings. These agreements provide for Joint Readmissions Committees to monitor their implementation. They are also linked to visa facilitation agreements, which aim to provide the necessary incentive for readmission negotiations in the third country concerned without increasing irregular migration.

The Commission has also concluded informal arrangements on return and readmission, which have drawn heavy criticism from Parliament for falling outside of its scrutiny, and raised questions of accountability and transparency.

The Commission has proposed EU Actions Plans for the [Central Mediterranean](#) (November 2022), for the [Western Balkan Route](#) (December 2022), for the [Western Mediterranean and Atlantic routes](#) (June 2023) and for the [Eastern Mediterranean](#) route (October 2023).

ROLE OF THE EUROPEAN PARLIAMENT

Since the entry into force of the Lisbon Treaty, Parliament has been actively involved, as a full co-legislator, in the adoption of new legislation dealing with both irregular and regular immigration.

Parliament has adopted numerous own-initiative resolutions addressing migration, inter alia its [resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, its [resolution of 20 May 2021](#) on new avenues for legal labour migration and its legislative own-initiative [resolution of 25 November 2021](#) with recommendations to the Commission on legal migration policy and law.

Read more on this topic:

- [Migration in Europe](#)
- [EU asylum policy](#)

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4.2.4. MANAGEMENT OF THE EXTERNAL BORDERS

The EU's border management policy has needed to adapt to significant developments, such as the unprecedented arrival of refugees and irregular migrants, and since mid-2015 a series of shortcomings in EU policies on external borders and migration have come to light. The challenges linked to the increase in mixed migration flows into the EU, the COVID-19 pandemic and heightened security concerns have triggered a new period of activity in EU external border protection, which also has an impact on its internal borders.

LEGAL BASIS

Article 3(2) of the Treaty on European Union (TEU).

Articles 67 and 77 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

A single area without internal border checks – the Schengen Area – also requires a common policy on external border management. Article 3(2) of the TEU calls for 'appropriate measures with respect to external border controls'. The EU therefore aims to establish common standards for controls at its external borders, and to gradually put in place an integrated system for managing them.

ACHIEVEMENTS

The first step towards a common external border management policy was taken on 14 June 1985 when five of the then ten Member States of the European Economic Community signed an international treaty, the so-called Schengen Agreement, near the Luxembourgish border town of Schengen, which was supplemented five years later by the Convention implementing the Schengen Agreement^[1]. The Schengen Area, the borderless zone created by the Schengen *acquis* (as the agreements and rules are collectively known), currently comprises 27 European countries^[2].

A. The Schengen external borders *acquis*

Today's Schengen external borders *acquis* builds on the original *acquis* incorporated into the EU legal order by the Treaty of Amsterdam (1.1.3). Its rules can be found across a broad range of measures, which can be roughly divided into five topics:

1. The Schengen Borders Code

The Schengen Borders Code^[3] is the central pillar of external border management. It lays down rules on external border crossings and conditions governing the temporary

[1] [The Schengen acquis](#): Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.

[2] The countries do not include EU members Cyprus, Ireland, Bulgaria and Romania. The Schengen Area does, however, include four non-EU Member States: Iceland, Switzerland, Norway and Liechtenstein. Denmark has an opt-out from Title V of the TFEU (Protocol 22), but takes part on an intergovernmental basis.

[3] [Regulation \(EU\) 2016/399](#) of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L



reintroduction of internal border checks. It obliges Member States to carry out systematic checks against relevant databases on all persons, including those with the right to free movement under EU law (i.e. EU citizens and members of their families who are not EU citizens) when they cross the external borders. The databases used for checks include the Schengen Information System (SIS) and Interpol's database on stolen and lost travel documents. These obligations apply at all external borders (air, sea and land), both for entry and exit. The Schengen Evaluation Mechanism, Council Regulation (EU) No 1053/2013^[4], entered into force in November 2014 and established a five-year multiannual evaluation programme for the period up to 31 December 2019. This mechanism was intended to examine all components of the Schengen *acquis*, including by reviewing and assessing how Member States carry out external border controls, as well as all relevant laws and operations. The mechanism pays particular attention to respect for fundamental rights. Evaluations can also cover related measures pertaining to external borders, visa policy, police and judicial cooperation (for criminal issues), SIS and data protection.

2. The Schengen Information System (SIS)

SIS is an information sharing system and database that helps to ensure international security in the Schengen area, where there are no internal border checks. It is the EU's most widely used and efficient IT system in the area of freedom, security and justice (AFSJ) (4.2.1). Authorities across the EU use SIS to input or consult alerts for wanted or missing people and objects. It contains over 80 million alerts, and authorities consulted it over 5 billion times in 2017, with more than 240 000 hits for foreign alerts (alerts issued by another country). SIS has recently been reinforced by updated rules that will address potential gaps in the system, and introduce several essential changes to the types of alert entered.

After the most recent reform in 2018, the scope of SIS is now defined in three legal instruments, which take the form of three separate regulations (replacing SIS II):

- Police and judicial cooperation in criminal matters^[5];
- Border checks^[6];
- The return of illegally staying third-country nationals^[7].

These three regulations create categories of alert in the system, such as on unknown suspects or wanted persons, preventive alerts for children at risk of parental abduction,

77, 23.3.2016, p. 1, amended by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, OJ L 74, 18.3.2017, p. 1.

[4] [Council Regulation \(EU\) No 1053/2013](#) of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

[5] [Regulation \(EU\) 2018/1862](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, 7.12.2018, p. 56.

[6] [Regulation \(EU\) 2018/1861](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14.

[7] [Regulation \(EU\) 2018/1860](#) of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, p. 1.



for the purpose of return and an alert in relation to return decisions issued to illegally staying third-country nationals.

3. Internal Security Fund: Borders and Visa

Not all EU Member States have external borders, and not all are equally affected by border traffic flows. The EU therefore allocates funds to attempt to offset some of the costs for the Member States whose own borders are also the EU's external borders. This burden-sharing mechanism was set up with funding totalling EUR 3.8 billion for the 2014-2020 seven-year financial programming period. The fund's main objective is to contribute to ensuring a high level of security in the Union while facilitating legitimate travel. Beneficiaries of the programmes implemented under this fund can be state and federal authorities, local public bodies, non-governmental organisations, humanitarian organisations, private and public law companies, and education and research organisations.

4. The Entry/Exit System (EES)

The Entry/Exit System (EES)^[8] is an information system that speeds up and reinforces border checks for non-EU nationals travelling to the EU. The EES replaces the manual stamping of passports at the border with electronic registration in the database.

The main objectives of the EES are:

- Reducing border check times and improving the quality of border checks by automatically calculating the authorised stay for each traveller;
- Ensuring systematic and reliable identification of over-stayers;
- Strengthening internal security and assisting the fight against terrorism by allowing law enforcement authorities access to travel history records.

Access to the EES is granted to national law enforcement authorities and Europol, but not to asylum authorities. The possibility of transferring data for law enforcement or return purposes to third countries and EU Member States not participating in the EES is provided for, but under certain conditions. The EES will record travellers' data (name, type of travel document, fingerprints, visual image and the date and place of entry and exit) when crossing Schengen external borders. It will be used for all non-EU nationals, both those who require a visa and those who are exempt. It will also be used by consular and border authorities.

5. The European Border and Coast Guard Agency (Frontex)

The European Border and Coast Guard (EBCG) is the European Border and Coast Guard Agency (EBCGA/Frontex) and the national authorities combined^[9].

The EBCG became operational in October 2016. This [decentralised agency](#) is in charge of monitoring the EU's external borders and, together with Member States, identifying and addressing any potential security threats to the EU's external borders. For some years before 2015, Parliament had called for the role of Frontex to be enhanced in

[8] [Regulation \(EU\) 2017/2226](#) of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

[9] [Regulation \(EU\) 2019/1896](#) of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, p. 1.



order to increase its capacity to respond more effectively to changing migration flows. For instance, in its [resolution of 2 April 2014 on the mid-term review of the Stockholm Programme](#)^[10], Parliament called for European border guards to guard Schengen borders. In its conclusions of October 2015, the European Council also expressed its support for the 'gradual establishment of an integrated management system for external borders'. Parliament insisted that the agency's new powers to intervene be activated by a decision of the Member States in the Council, and not by a Commission decision, as originally proposed. The regulation extends the scope of the activities of EBCGA/Frontex to include enhanced support for Member States in the field of migration management, the fight against cross-border crime, and search and rescue operations. It provides for a greater role for Frontex in returning migrants to their countries of origin, acting in accordance with decisions taken by national authorities. On the basis of a Commission proposal, the Council may ask the agency to intervene and assist Member States in exceptional circumstances. This is the case when:

- A Member State does not comply (within a set time limit) with a binding decision of the agency's management board to address vulnerabilities in its border management; and
- There is specific and disproportionate pressure on the external border that is putting the functioning of the Schengen area at risk. If a Member State opposes a Council decision to provide assistance, the other EU countries may temporarily reintroduce internal border checks.

In November 2019, the agency was strengthened with a new mandate and its own means and powers to protect external borders, carry out returns more effectively and cooperate with non-EU countries^[11]. The centrepiece of this reinforced agency will be a standing corps of 10 000 border guards with executive powers to support Member States at any time. It will also have a stronger mandate on returns and will cooperate more closely with non-EU countries, including those beyond the EU's immediate neighbourhood. The standing corps of European Border and Coast Guard became fully operational in 2021, and will reach its full capacity of 10 000 border guards by 2024.

B. Developments in the EU's management of its external borders

The pace of change has increased with the large-scale loss of life in the Mediterranean over recent years, together with the huge influx of refugees and migrants since September 2015.

Prior to the refugee crisis, only three countries had resorted to erecting fences at external borders to prevent migrants and refugees from reaching their territories: Spain (building work completed in 2005, extended in 2009), Greece (completed in 2012) and Bulgaria (in response to Greece, completed in 2014). Contrary to Article 14(2) of the Schengen Borders Code, which stipulates that 'entry may only be refused by a substantiated decision stating the precise reasons for the refusal', **an increasing number of Member States have gradually started building border walls or fences** with the aim of indiscriminately preventing migrants and asylum seekers from accessing their national territories. Moreover, without explicit EU rules on the erection of fences

[10] Paragraph 74 of the [European Parliament Resolution of 2 April 2014 on the mid-term review of the Stockholm Programme](#), OJ C 408, 30.11.2017, p. 8.

[11] [Regulation \(EU\) 2019/1896](#) of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.



at external Schengen borders, and in violation of rules on asylum, Member States have also put up barriers with third countries (notably, Belarus, Morocco and Russia), including pre-accession candidates (the Republic of North Macedonia, Serbia and Turkey). Fences have also been built within the Schengen area, such as the fence between Austria and Slovenia, while Spanish practices in Melilla have come under scrutiny from the European Court of Human Rights in Strasbourg. Atrocities committed in areas where fences are erected are [documented](#) by human rights organisations^[12].

The International Organization for Migration's Missing Migrants Project has [recorded](#) more than 29 000 deaths during migration journeys to Europe since 2014.

1. European Travel Information and Authorisation System (ETIAS)

In September 2018, the European Travel Information and Authorisation System (ETIAS) was established.

The purpose of this centralised information system is to collect information on non-EU nationals who do not require a visa to enter the Schengen area, and to identify any potential security or irregular migration risks. The database will conduct advance checks on visa-exempt travellers, and deny them travel authorisation if they are considered a risk. The database will be similar to existing systems already in place, for example in the USA (ESTA), Canada and Australia, among others.

The advantages of ETIAS include reduced delays at borders, improved internal security, better prevention of illegal immigration, and reduced public health risks. Although the system will conduct prior checks, the final decision on whether to grant or refuse entry, even in cases where the person has a valid travel authorisation, will be taken by the national border guards conducting the border controls, acting in accordance with the rules of the Schengen Borders Code. ETIAS has three main functions:

- Verifying information submitted online by visa-exempt third-country nationals ahead of their travel to the EU;
- Processing applications by checking them against other information systems (such as SIS, VIS, Europol's database, Interpol's database, the EES and Eurodac, the European Asylum Dactyloscopy Database that allows fingerprint datasets to be compared);
- Issuing travel authorisations in cases where no hits or elements requiring further analysis are identified.

Travel authorisations should be obtained in a matter of minutes. In June 2017, the Council decided to split the proposal into two distinct legal acts^[13], because the proposal's (Schengen) legal basis could not cover amendments to the Europol Regulation. ETIAS is developed by the eu-LISA agency, and will become operational in 2025.

[12] [Helsinki Foundation for Human Rights](#).

[13] [Regulation \(EU\) 2018/1240](#) of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, p. 1, and [Regulation \(EU\) 2018/1241](#) of 12 September 2018 amending Regulation (EU) 2016/794 for the purpose of establishing a European Travel Information and Authorisation System (ETIAS), OJ L 236, 19.9.2018, p. 72.



2. eu-LISA

Established in 2011, [eu-LISA](#) is responsible for the operational management of three EU centralised information systems: SIS, VIS and Eurodac^[14]. Its role is to implement the new IT architecture in the area of justice and home affairs. In November 2019, the mandate of eu-LISA was revised and the agency's capacity to contribute to border management, law enforcement cooperation and migration management in the EU was further developed.

3. Interoperability between EU information systems in the field of borders

The EU has been developing large-scale centralised IT systems (SIS, VIS, Eurodac, the EES and ETIAS) for collecting, processing and sharing information that is vital for security cooperation, and for managing external borders and migration. Since 2019, these information systems have been interoperable at EU level, i.e. able to exchange and share data so that the authorities have all the information they need, whenever and wherever they need it. Interoperability means the ability of information technology systems to share information and knowledge, so as to avoid gaps in information caused by the complexity and fragmentation of these systems^[15].

The two regulations in force allow the systems to complement each other, help facilitate the correct identification of persons and contribute to fighting identity fraud. They do not modify the rights of access as set out in the legal basis for each European information system, but establish:

- A European search portal, which would allow competent authorities to search multiple information systems simultaneously, using both biographical and biometric data;
- A shared biometric matching service, which would enable the search and comparison of biometric data (fingerprints and facial images) from several systems;
- A common identity repository, which would contain the biographical and biometric data of third-country nationals currently stored in several different EU information systems;
- A multiple identity detector, which checks whether the biographical identity data contained in the search exists in other systems, to enable the detection of multiple identities linked to the same set of biometric data.

4. The 2020 COVID-19 pandemic

Restrictions on international and intra-EU movements of persons became one of the most visible policy responses to the coronavirus pandemic from early March 2020 onwards. Several EU Member States shut down international passenger transport,

[14] [Regulation \(EU\) 2018/1726](#) of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, OJ L 295, 21.11.2018, p. 99.

[15] [Regulation \(EU\) 2019/817](#) of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, p. 27, and [Regulation \(EU\) 2019/818](#) of the European Parliament and of the Council of 20 May 2019 establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22.5.2019, p. 85.



then followed this up with additional EU international travel restrictions involving the partial closure of the EU's external borders and restriction of entry into the EU from third countries^[16] as well as restrictions on the movement of persons within the EU^[17]. In numerous cases this had an arbitrary, ineffective and discriminatory character and was in violation of privacy and asylum laws, as evidenced in [studies](#) commissioned by the European Parliament^[18].

5. Ukraine crisis

Following Russia's invasion of Ukraine in February 2022, over 6 million people have already been forced to seek refuge, mostly in neighbouring countries^[19]. The European Union decided to grant EU-wide temporary protection to people arriving from Ukraine^[20]. The [EU Temporary Protection Directive](#)^[21] enables EU Member States to act quickly to offer protection and rights to people in need of immediate protection.

ROLE OF THE EUROPEAN PARLIAMENT

In the past, Parliament has had mixed reactions to the development of external border management policy. It has broadly supported the upgraded organisational role of EBCGA/Frontex and the other relevant Union agencies, often calling for their role to be further enhanced as the EU grapples with the migration crisis in the Mediterranean. While Parliament's view of the EBCGA's development has been largely positive, its stance on smart borders has been more cautious. Its reaction to the 2013 Commission proposal was to express misgivings about the huge technological build-up and mass processing of personal data proposed for external borders. Moreover, the anticipated costs of Smart Borders technology, coupled with doubts surrounding its benefits, left Parliament with a number of concerns. In its [resolution of 12 September 2013 on the second report on the implementation of the EU Internal Security Strategy](#), Parliament stated that 'new IT systems in the area of migration and border management, such as the Smart Borders initiatives, should be carefully analysed, especially in the light of the principles of necessity and proportionality'. It followed this up with an [oral question to the Commission and the Council in September 2015](#), asking for their stance on law enforcement access to the system, and their views on the relevance of the Court of Justice of the European Union's ruling of April 2014 on the Data Retention Directive (see [4.2.8](#)). In its resolution on the annual report on the functioning of the Schengen area^[22], Parliament called on Member States, including those with no external land borders, to ensure a high level of control at their external borders by allocating sufficient resources through staffing, equipment and expertise, establishing the necessary command and control for safe, orderly and fluent border crossings.

[16]See the 'Joint statement of the Members of the European Council', Brussels, 26 March 2020.

[17]Tell Cremades, M., *Studies with a 'Covid 19 angle'*, European Parliament Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2021.

[18]Carrera S. et al., *In the name of COVID: An Assessment of the Schengen Internal Border Controls and Travel Restrictions in the EU*, European Parliament Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, September 2020.

[19]<https://data.unhcr.org/en/situations/ukraine>.

[20]Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

[21]Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12.

[22][European Parliament resolution of 30 May 2018](#) on the annual report on the functioning of the Schengen area, OJ C 76, 9.3.2020, p. 106.



Parliament has also insisted on the need for all action in this field to take due account of the EU's borders and asylum *acquis*, as well as the EU Charter of Fundamental Rights. Thus for some time, Parliament has been calling for reliable and fair procedures and for a holistic approach to migration at EU level^[23]. It plays an active role in monitoring the application of and compliance with the Schengen *acquis*. The Working Group on Schengen Scrutiny of Parliament's Committee on Civil Liberties, Justice and Home Affairs liaises with the European Commission and the Council at the relevant stages of the evaluation and monitoring process, such as the final evaluation report, the recommendations adopted and the action plan.

On the COVID-19 pandemic, Parliament adopted a [resolution in June 2020](#) on the situation in the Schengen area following the COVID-19 outbreak in which it deplored the fact that it had been uninformed. It recalled that any temporary travel restrictions applying to all non-essential travel from third countries to the Schengen Area or decisions on refusal of entry at external borders need to be in accordance with the provisions of the Schengen Borders Code^[24]. A study commissioned by Parliament highlighted that the restrictions introduced in response to the pandemic were subject to highly evolving and rapid changes, leading to profound legal uncertainty for individuals and negative repercussions for EU rights and freedoms^[25]. Another recent study pointed to the extensive use of biometric AI technologies by the Member States for the purposes of large-scale surveillance of migrants^[26].

In a [resolution of 1 March 2022](#), Parliament welcomed the activation of the Temporary Protection Directive for the first time since it entered into force in 2001^[27]. On 9 March 2022, MEPs [called](#) for the EU to introduce a proper migration system that shares responsibility for refugees. On 4 April 2023, Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted a [report](#) on the proposal for a regulation of the European Parliament and of the Council addressing situations of crisis in the field of migration and asylum, and on 14 April 2023 it adopted a [report](#) on the proposal for a regulation of the European Parliament and of the Council introducing a screening of third-country nationals at the external borders, as well as a [report](#) on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management.

This fact sheet has been prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Visit the European Parliament [homepage](#) on Schengen.

Mariusz Maciejewski
11/2023

[23] [European Parliament resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, OJ C 58, 15.2.2018, p. 9.

[24] [European Parliament resolution of 19 June 2020](#) on the situation in the Schengen area following the COVID-19 outbreak, OJ C 362, 8.9.2021, p. 77.

[25] Carrera S., Chun Luk, N., *In the Name of COVID-19: An Assessment of the Schengen Internal Border Controls and Travel Restrictions in the EU*, European Parliament Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, September 2020.

[26] Wendehorst, C., Duller, Y., *Biometric Recognition and Behavioural Detection*, European Parliament Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, August 2021.

[27] [European Parliament resolution of 1 March 2022](#) on the Russian aggression against Ukraine, OJ C 125, 18.3.2022, p. 2.



4.2.5. JUDICIAL COOPERATION IN CIVIL MATTERS

Free movement of goods, services, capital and people across borders is constantly on the increase. In civil law matters with cross-border implications, the European Union is developing judicial cooperation, thus building bridges between the different legal systems. Its main objectives are legal certainty and easy and effective access to justice, implying identification of the competent jurisdiction, clear designation of the applicable law and speedy and effective recognition and enforcement procedures.

LEGAL BASIS

Article 81 of the Treaty on the Functioning of the European Union (TFEU); Protocols No 21 and 22 annexed to the Treaties.

OBJECTIVES

In a European area of justice, individuals should not be prevented or discouraged from exercising their rights. The incompatibility and complexity of legal or administrative systems in the Member States should not be a barrier. Legislation in this sensitive field covers classical civil law, which includes a wide range of fields varying from family law to contract law to sales law. It also covers civil procedural law, which until recently was an exclusive prerogative of the Member States. The area of private contract law rules in the EU falls under EU civil law, but it is closely linked to the free movement of goods and services and is therefore governed by the Treaty provisions on the single market (2.1.7).

Private international law (PIL) aims to deal with the cross-border aspects of all issues relating to relationships between private persons, such as family law, property law and contract law. Measures relating to family law with cross-border implications have to be adopted by the Council unanimously (Article 81(3) TFEU, second subparagraph). The main tools for facilitating access to cross-border justice are the principle of mutual recognition, based on mutual trust between Member States, and direct judicial cooperation between national courts.

PIL has a direct influence on EU legal order. The EU has been a Member of the [Hague Conference on Private International Law](#) (HCCH) since 3 April 2007. The Hague Conference is a global, intergovernmental organisation that sets out to progressively unify the rules set out in PIL. It therefore develops and services multilateral legal instruments, which become legally binding in countries that are party to it. The HCCH comprises 91 Members (90 states and the European Union) and adopts conventions that deal with civil law issues such as service of process, taking of evidence abroad, access to justice, international child abduction, intercountry adoption, conflicts of laws relating to the form of testamentary dispositions, maintenance obligations, recognition of divorces and the abolition of legalisation for foreign public documents (i.e. the Apostille Convention).

The EU's action in the area of judicial cooperation in civil matters seeks primarily to achieve the following objectives:



- To ensure a high degree of legal certainty for citizens in cross-border relations governed by civil law;
- To guarantee citizens easy and effective access to civil justice in order to settle cross-border disputes;
- To simplify cross-border cooperation instruments between national civil courts;
- To support the training of the judiciary and judicial staff.

Each legislative act in preparation must be forwarded to the national parliaments (Article 12 of the Treaty on European Union (TEU)). In addition, national parliaments have the right to object to decisions regarding certain aspects of family law with cross-border implications. Such decisions can only be taken under the ordinary legislative procedure if no national parliament opposes them (Article 81(3) TFEU, third subparagraph).

ACHIEVEMENTS

A. The development of primary law in judicial cooperation in civil matters

Judicial cooperation in civil matters was not one of the objectives of the European Community when the founding treaty was adopted. However, Article 220 of the Treaty establishing the European Community stipulated that Member States were bound to simplify ‘formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards’. Judicial cooperation in civil matters, in the intergovernmental context of ‘justice and home affairs’, was officially included within the EU’s sphere of activity by the Treaty of Maastricht (1.1.3). The Treaty of Amsterdam brought judicial cooperation in civil matters within the Community sphere, transferring it from the TEU to the Treaty establishing the European Community, although it did not make it subject to the Community method. The Treaty of Nice (1.1.4) allowed measures relating to judicial cooperation in civil matters – except family law – to be adopted using the legislative codecision procedure.

The Tampere European Council (October 1999) laid the foundations for the European Area of Justice. Following recognition that not enough had been done to implement this, a new action plan for 2005-2010 was launched at the European Council of The Hague (November 2004). The Hague Programme underlined the need to continue the implementation of mutual recognition and to extend it to new areas such as family property, successions and wills. It was followed by the Stockholm Programme, which represents the roadmap for future developments in the area of freedom, security and justice over the five-year period from 2010 to 2014.

The Treaty of Lisbon (1.1.5) makes all measures in the field of judicial cooperation in civil matters subject to the ordinary legislative procedure. However, family law remains subject to a special legislative procedure: the Council acts unanimously after consulting Parliament.

It should be noted that Denmark and Ireland have opt-outs from Title V of Part Three of the TFEU (area of freedom, security and justice) under Protocols No 21 and 22 annexed to the Treaties. Ireland has a flexible opt-out from legislation adopted in this area, which allows it to opt in or out of legislation and legislative initiatives on a case-by-case basis (Protocol No 21 annexed to the Treaties). In contrast, Denmark has a more rigid opt-out from the area of freedom, security and justice, which means that it does not take



part at all in this policy. In the negotiations of the Treaty of Lisbon, Denmark obtained an option to convert its opt-out into a flexible opt-in modelled on the Irish opt-out (Protocol No 22). A referendum was held on 3 December 2015 to approve the exercise of this option ([4.2.1](#)). It was rejected by 53% of voters.

B. Main legislation adopted

1. Determination of the competent court; recognition and enforcement of judgments and of decisions in extrajudicial cases

The main instrument in this area is [Regulation \(EU\) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters](#) ('Brussels Ia Regulation'). Recognition and enforcement of judgments in civil and commercial cases was originally ensured within the European Communities by the 1968 Brussels Convention, a treaty signed by the then six Member States. The Brussels I Regulation seeks to harmonise the rules of conflict of jurisdiction within the EU and to simplify and expedite the recognition and enforcement of decisions in civil and commercial matters. It replaced the 1968 Brussels Convention in 2002 and was recast in 2012. It is supplemented by [Council Regulation \(EC\) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility](#) ('Brussels IIa Regulation').

In order to extend its recognition regime to the European Free Trade Association (EFTA), in 1988, the then 12 member states of the European Communities signed a treaty, the Lugano Convention with the then six members of the EFTA – Austria, Finland, Iceland, Norway, Sweden and Switzerland – as EFTA member states were not eligible to sign the 1968 Brussels Convention. It is now fully superseded by a 2007 version, the [Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters](#) (the Lugano Convention), concluded between the EU, Denmark in its own right and three out of the remaining four members of the EFTA (Switzerland, Norway and Iceland). Liechtenstein, the only state to accede to the EFTA after 1988, has not signed the convention. On 2 April 2020, the UK sought re-admittance to the Lugano Convention after Brexit, in accordance with Article 127 of the Withdrawal Agreement, as it was no longer a party to this Convention. In accordance with Articles 70 and 72(3) of the Convention, unanimous acceptance by the Contracting States is required – which they all gave. But according to the '[Lugano Opinion](#)' of the [European Court of Justice \(Opinion 1/03 of 2006\)](#), any such accession falls entirely within the sphere of exclusive competence of the EU, and it should therefore decide on the UK's request for re-accession. In its assessment ([COM\(2021\)0222](#)), the European Commission refused to grant accession, on the grounds that the Lugano Convention was meant for states with close regulatory integration with the EU. In the view of the Commission, the Hague Convention should be used for relations between the EU and less closely aligned non-EU countries. Consequently, the Hague Convention (i.e. the '[Judgments Convention](#)' of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters) may be a better framework for future cooperation between the EU and the UK in the field of civil judicial cooperation.

Increasing mobility means that family ties are developing among individuals of different nationalities. Binational couples need to know how to name their children and divorced people need to be able to start again in another country without cutting off contact



with their children. Concerning children who are abducted by one of their parents, the [Hague Convention on the Civil Aspects of International Child Abduction](#), which has 103 (as of November 2022) contracting states, including all the EU Member States, is based on a very simple objective: the prompt return of the abducted child. In parallel, the [Brussels IIa Regulation](#) has been recently recast, one of the main objectives of its revision being to improve the legal rules that protect children in cases of cross-border parental responsibility disputes, such as those related to custody, access rights and child abduction.

In order to facilitate international recovery of maintenance obligations, the Council adopted [Regulation \(EC\) No 4/2009](#) in December 2008. This regulation brings together, in a single instrument, uniform rules on jurisdiction, applicable law, recognition and enforcement, as well as on cooperation between national authorities. With a view to improving the efficiency and effectiveness of cross-border insolvency proceedings, [Regulation \(EU\) 2015/848 of the European Parliament and of the Council of 20 May 2015](#) on insolvency proceedings sets out uniform rules on jurisdiction, recognition and applicable law in this area. In order to abolish exequatur for decisions relating to uncontested claims, Parliament and the Council adopted [Regulation \(EC\) No 805/2004](#) creating a European Enforcement Order for uncontested claims. [Regulation \(EU\) No 650/2012 of the European Parliament and of the Council](#) on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession seeks to eliminate obstacles encountered by citizens in the enforcement of their rights in the context of international successions.

Because of the different legal consequences resulting from the distinctive features of marriage and registered partnerships, the Commission presented two separate proposals for regulations in 2011, laying down property regimes for international couples – one for married couples and the other for registered partnerships – on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

2. Harmonisation of conflict-of-law rules

A number of instruments have been adopted at EU level to deal with the most crucial matters related to private international law (namely the Brussels and Rome Regulations). Parliament and the Council adopted [Regulation \(EC\) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations \('Rome I Regulation'\)](#). The adoption of [Regulation \(EC\) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations \('Rome II Regulation'\)](#) has enabled the creation of a uniform set of conflict-of-law rules for non-contractual obligations in civil and commercial matters. It thus seeks to improve legal certainty and the predictability of the outcome of litigation. Conflict-of-law rules relating to maintenance obligations are set out in Council Regulation (EC) No 4/2009 (see above). In the area of the law applicable to divorce and legal separation, in December 2010, the Council adopted [Regulation \(EU\) No 1259/2010](#), which establishes a clear and comprehensive legal framework for divorce and legal separation. With regard to international successions, Regulation (EU) No 650/2012 determines, among other things, the applicable law.

3. Facilitating access to justice

In order to improve access to justice in cross-border disputes, the Council adopted [Directive 2003/8/EC](#) establishing minimum common rules relating to legal aid for such



disputes. The purpose of the directive is to guarantee an ‘adequate’ level of legal aid in cross-border disputes for persons who lack sufficient resources. In order to make access to justice easier and more effective for European citizens and businesses, the European Union has introduced common procedural rules for simplified and accelerated cross-border litigation on small claims and the cross-border recovery of uncontested pecuniary claims throughout the European Union. These are found in [Regulation \(EC\) No 861/2007](#) on establishing a European Small Claims Procedure, and in [Regulation \(EC\) No 1896/2006](#) on creating a European order for payment procedure. These procedures are optional and additional to the procedures provided for by national law. [Directive 2008/52/EC](#) establishes common rules on certain aspects of mediation in civil and commercial matters in order to increase legal certainty and thereby encourage use of this method of dispute resolution.

4. Instruments for cross-border cooperation between national civil courts

Article 81(2)(a) and (c) TFEU also entrust Parliament and the Council with the task of adopting measures aimed at ensuring mutual recognition and enforcement of judgments and the compatibility of national rules with regard to conflict of laws and of jurisdiction. [Regulation \(EU\) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters \(service of documents\) \(recast\)](#) is intended to simplify and expedite the transmission between Member States of judicial and extrajudicial documents and thus to increase efficiency and speed of judicial procedures. In order to simplify and accelerate cooperation between courts in the various Member States in the taking of evidence in civil or commercial matters, the Council adopted [Regulation \(EU\) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters](#). To improve, simplify and expedite judicial cooperation between the Member States and to promote access to justice for citizens engaging in cross-border disputes, a [European Judicial Network in civil and commercial matters](#) was established by [Council Decision 2001/470/EC of 28 May 2001](#). The network is composed of contact points designated by the Member States, the central authorities provided for in some EU instruments, liaison magistrates and any other authority with responsibilities for judicial cooperation between state actors (courts and central authorities). Decision 2001/470/EC was amended by Decision 568/2009/EC of 18 June 2009 on enhancing and reinforcing the role of the European Judicial Network in civil and commercial matters. The decision introduced a major change: professional associations representing legal practitioners, in particular lawyers, solicitors, barristers, notaries and bailiffs, were allowed to join the network.

Another tool for simplifying judicial cooperation in civil matters consists of the development of the use of information and communication technologies in the administration of justice. This project was launched in June 2007 and led to a European e-Justice strategy. The e-Justice tools cover: the [European e-Justice portal](#), which aims to facilitate access by citizens and enterprises to justice in Europe; the interconnection of criminal records at European level; better use of videoconferencing during judicial proceedings; innovative translation tools such as automated translation; dynamic online forms; and a European database of legal translators and interpreters. The Commission’s yearly [EU Justice Scoreboard](#) is an information tool that aims to assist the EU and the Member States in achieving more effective justice by providing objective, reliable and comparable data on the quality, independence and efficiency



of justice systems in all Member States. Such data is essential to support reforms in national justice systems.

ROLE OF THE EUROPEAN PARLIAMENT

With the exception of family law, where the Council acts unanimously and Parliament is only consulted, the ordinary legislative procedure is applied to judicial cooperation in civil matters. Parliament has played an active role in defining the content of the legislative instruments described above. It has noted in the past that a genuine European judicial culture is needed if citizens are to gain all the benefits of their rights under the treaties. One of the most important aspects of this is training, in particular in the legal field. In June 2013, Parliament adopted a [resolution on improving access to justice: legal aid in cross-border civil and commercial disputes](#).

In the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, Parliament had given its consent in 2013, but the two acts remained blocked for years in the Council. Therefore, 23 Member States agreed on enhanced cooperation (Article 20 TEU) in order to advance with the draft legislation. In early 2016, the Commission drew up new proposals for acts, the substance of which was based on the Parliament vote and compromises reached earlier. [Council Regulation \(EU\) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes](#) was finally adopted on 24 June 2016.

Concerning civil court procedures in the European Union, Parliament called on the Commission in July 2017, pursuant to Article 225 TFEU, to submit a proposal for a legislative act by 30 June 2018, on the basis of Article 81(2) TFEU, on common minimum standards of civil procedure. The text of the proposed EU directive annexed to Parliament's [resolution](#) seeks to approximate civil procedure systems so as to ensure full respect for the right to a fair trial, as recognised in Article 47 of the Charter of Fundamental Rights of the EU and in Article 6 of the European Convention on Human Rights (4.1.2), by laying down minimum standards concerning the commencement, conduct and conclusion of civil proceedings before Member States' courts or tribunals. The position of European Parliament Mediator for International Parental Child Abduction was created in 1987 in order to help children from binational marriages/relationships who are victims of parental child abduction. The office, which is always held by an incumbent MEP, was re-named '[European Parliament Coordinator on Children's Rights](#)' in April 2018 under Elisabeth Morin-Chartier, in order to reflect the evolution of the mandate granted to the position, to encompass children's rights.

Ewa Kopacz has held the position of European Parliament Coordinator on Children's Rights since July 2019. Her predecessors in the post were Anna Maria Corazza Bildt (2019), Elisabeth Morin-Chartier (2017-2019), Mairead McGuinness (2014-2017), Roberta Angelilli (2009-2014), Evelyn Gebhardt (2004-2009), Mary Banotti (1995-2004) and Marie-Claude Vayssade (1987-1994).

On 27 June 2023, Parliament's Committee on Legal Affairs adopted its report on the proposal for a directive on abusive litigation targeting journalists and rights defenders, which was initiated after [the Parliament resolution](#) of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue



use of actions under civil and criminal law to silence journalists, NGOs and civil society and a [study](#) from Parliament's Policy Department for Citizens' Rights and Constitutional Affairs calling for the introduction of a directive against strategic lawsuits against public participation (SLAPPs) and for reforms of the Brussels Ia Regulation and Rome II Regulation. Interinstitutional negotiations are currently ongoing.

On 23 November 2023, Parliament adopted its position on the proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, in line with the 'digital by default' principle, while ensuring necessary safeguards (specifically acknowledging the need to avoid social exclusion). The proposal aims to improve access to justice and the efficiency and resilience of the communication flows inherent to cooperation between judicial authorities in EU cross-border cases, as the use of digital technologies has the potential to make judicial systems more efficient, by easing administrative burdens, shortening case processing times, making communication more secure and reliable, and partially automating case handling. Adoption of the regulation is expected by the end of 2023.

Parliament commissioned a [study](#) analysing the implications of Brexit in relation to judicial cooperation in civil matters. The study indicates that efforts should be made to conclude new treaties between the EU and the UK in those areas where there is a regulatory gap, particularly in the area of human rights. Further recent research in this area includes studies from Parliament's Policy Department for Citizens' Rights and Constitutional Affairs on [cross-border claims to looted art](#), [European commercial contract law](#) and [buyout contracts imposed by platforms in the cultural and creative sector](#).

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Udo Bux / Mariusz Maciejewski
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4.2.6. JUDICIAL COOPERATION IN CRIMINAL MATTERS

Judicial cooperation in criminal matters is based on the principle of mutual recognition of judgments and judicial decisions, and includes measures to approximate the laws of the Member States in several areas. The Treaty of Lisbon has provided a stronger basis for the development of a criminal justice area, while also stipulating new powers for the European Parliament.

LEGAL BASIS

Articles 82 to 86 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The progressive elimination of border controls within the EU has considerably facilitated the free movement of EU citizens, but has also made it easier for criminals to operate transnationally. In order to tackle the challenge of cross-border crime, the area of freedom, security and justice involves measures to promote judicial cooperation among the Member States in criminal matters. The starting point is the principle of mutual recognition. Specific measures have been adopted to fight transnational crime and terrorism, and to make sure that the rights of victims, suspects and prisoners are protected across the EU.

ACHIEVEMENTS

A. Main EU legislative acts on judicial cooperation in criminal matters

1. Adoption procedures

In accordance with the TFEU, most measures for judicial cooperation in criminal matters are adopted under the ordinary legislative procedure and are subject to judicial review by the Court of Justice of the European Union. Nevertheless, even setting aside the specific features of the area of freedom, security and justice (opt-outs for Ireland and Denmark (see Protocols 21 and 22 annexed to the TFEU) and the privileged role for national parliaments (see Protocols 1 and 2)), judicial cooperation in criminal matters, together with police cooperation, have not been entirely integrated into the EU framework and they retain some of their original features from before the Treaty of Lisbon:

- The Commission shares its power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU);
- Parliament is merely consulted on specific measures for judicial cooperation in criminal matters, which are then adopted unanimously by the Council. In the absence of unanimity in the Council, it is still possible for nine or more Member States to work together on the basis of enhanced cooperation.



- 2. Main legislative acts adopted under the ordinary legislative procedure**
- a. Common minimum standards for criminal proceedings:**
- [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings;
 - [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings;
 - [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;
 - [Directive \(EU\) 2016/343](#) of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings;
 - [Directive \(EU\) 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings;
 - [Directive \(EU\) 2016/1919](#) of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.
- b. The fight against terrorism:**
- [Directive \(EU\) 2016/681](#) of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime;
 - [Directive \(EU\) 2017/541](#) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA;
 - [Regulation \(EU\) 2021/784](#) of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online;
 - [Regulation \(EU\) 2023/2131](#) of the European Parliament and of the Council of 4 October 2023 amending Regulation (EU) 2018/1727 of the European Parliament and of the Council and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases.
- c. The fight against corruption, cybercrime, fraud and money laundering:**
- [Directive 2013/40/EU](#) of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (the Cybercrime Directive);
 - [Directive 2014/42/EU](#) of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;



- [Directive 2014/57/EU](#) of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (the Market Abuse Directive);
 - [Directive 2014/62/EU](#) of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA;
 - [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law;
 - [Directive \(EU\) 2018/843](#) of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
 - [Directive \(EU\) 2018/1673](#) of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law;
 - [Regulation \(EU\) 2018/1805](#) of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;
 - [Directive \(EU\) 2019/713](#) of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA.
- d.** The exchange of information between Member States and EU agencies:
- [Directive 2014/41/EU](#) of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
 - [Regulation \(EU\) 2018/1726](#) of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA);
 - [Regulation \(EU\) 2018/1862](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters;
 - [Regulation \(EU\) 2019/816](#) of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726. This regulation is connected to [Directive \(EU\) 2019/884](#) of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS);
 - [Regulation \(EU\) 2019/818](#) of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration;



- [Directive \(EU\) 2023/977](#) of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA;
 - [Regulation \(EU\) 2023/1543](#) of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings;
 - [Directive \(EU\) 2023/1544](#) of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings.
- e. Protection of victims:**
- [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;
 - [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography;
 - [Directive 2011/99/EU](#) of the European Parliament and of the Council of 13 December 2011 on 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.

B. Agencies for judicial cooperation in criminal matters and other related bodies

1. European Union Agency for Criminal Justice Cooperation (Eurojust)

[Eurojust](#) stimulates and improves the coordination of investigations and prosecutions, and cooperation among the authorities in the Member States. In particular, it facilitates the execution of international mutual legal assistance requests and the implementation of extradition requests. Eurojust supports the Member States' authorities in any way it can, so as to make their investigations and prosecutions of cross-border crime more effective.

Eurojust may assist a Member State, at its request, in investigations and prosecutions concerning the Member State in question and a non-Member State if Eurojust and the non-Member State have concluded a cooperation agreement or if an essential interest has been demonstrated.

Eurojust covers the same types of crimes and offences for which the European Union Agency for Law Enforcement Cooperation (Europol) has competence, such as terrorism, drug trafficking, human trafficking, counterfeiting, money laundering, cybercrime, crime against property or public goods, including fraud and corruption, criminal offences affecting the EU's financial interests, environmental crime and participation in a criminal organisation. Eurojust may, at the request of a Member State, also assist in investigations and prosecutions of other types of offences.

Following Russia's military aggression against Ukraine, which began in February 2022, a [Eurojust-supported joint EU investigation team](#) (JIT) has been active in Ukraine since



March 2022. On 14 April 2023, the seven members of the JIT agreed to investigate not only alleged war crimes, but also crimes of genocide committed in Ukraine. They also welcomed the US Department of Justice's pledge to second a prosecutor to the International Centre for the Prosecution of the Crime of Aggression against Ukraine. Eurojust also hosts a Core International Crimes Evidence Database (CICED) to support the work of the JIT and other investigations into international crimes.

In April 2022, the Commission published a [proposal](#) to expand Eurojust's mandate. [Parliament](#) and the Council reached an agreement a few weeks later on the revised mandate, which is enabling Eurojust to preserve, analyse, store and share evidence of war crimes, genocide and crimes against humanity with the competent judicial authorities of the Member States and with the International Criminal Court. The new Eurojust Regulation was published in the EU Official Journal on 31 May 2022 and entered into force the following day.

The previous legal framework for Eurojust ([Council Decision 2009/426/JHA](#) of 16 December 2008 on the strengthening of Eurojust) entered into force on 4 June 2009. On 12 December 2019, [Regulation \(EU\) 2018/1727](#) started to apply. The current legal basis of Eurojust is [Regulation \(EU\) 2022/838](#) of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences.

Every year, Eurojust publishes an annual report. On 24 May 2023, Eurojust published its [2022 annual report](#). The top three crime types handled by the agency in 2022 were swindling and fraud, drug trafficking and money laundering.

Eurojust is based in The Hague in the Netherlands.

2. The European Public Prosecutor's Office (EPPO)

[Council Regulation \(EU\) 2017/1939](#) of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO) has been in force since 20 November 2017. Parliament gave its consent to the Council's draft regulation in its [legislative resolution of 5 October 2017](#).

The [EPPO](#) is an independent office in charge of investigating, prosecuting and administering justice for crimes against the EU budget, such as fraud, corruption or cross-border VAT fraud of more than EUR 10 million. The list of crimes could be extended in the future to include, for example, terrorism.

Parliament and the Council appointed by common accord the first European Chief Prosecutor, Laura Codruța Kövesi, for a non-renewable term of seven years.

So far, 22 Member States have joined the EPPO and the few Member States that currently do not participate could join at any time. The EPPO central office is located in Luxembourg, along with the offices of the Chief Prosecutor and the College of Prosecutors from all participating Member States. They head the day-to-day criminal investigations carried out by the delegated prosecutors.

The EPPO started its operations on 1 June 2021 and is already carrying out many investigations. Work also continues in a number of areas, including the adaptation of national justice systems to EPPO regulations, the appointment of the European Delegated Prosecutors, and the recruitment of staff.



On 23 March 2023, the EPPO presented its [2022 annual report](#) before the European Parliament's [Committee](#) on Civil Liberties, Justice and Home Affairs. In 2022, the EPPO received and processed 3 318 crime reports and opened 865 investigations. Moreover, judges granted freezing orders for EUR 359.1 million in connection with EPPO investigations (compared to EUR 147.3 million in 2021), which is equivalent to over seven times the organisation's 2022 budget.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a key role in shaping EU legislation in the field of judicial cooperation in criminal matters by making fighting crime and corruption a political priority. It has been working on judicial cooperation in criminal matters on an equal footing with the Council. The ordinary legislative procedure applies to almost all areas of EU criminal law, with a few exceptions, including, most notably, the consent procedure for establishing the EPPO.

The main instrument for achieving judicial cooperation in criminal matters among the Member States is Eurojust. When Eurojust was being reformed, Parliament actively advocated for greater parliamentary scrutiny and improved data protection rules.

On 1 December 2020, Parliament organised (via remote participation due to COVID-19) the first inter-parliamentary committee meeting (ICM) on the evaluation of Eurojust activities. The ICM was dedicated to a first assessment of Eurojust's activities by the European Parliament and national parliaments in accordance with Article 85 TFEU and [Regulation \(EU\) 2018/1727](#). The [second ICM](#) on the evaluation of Eurojust's activities was organised on 1 February 2022, while [the third](#) took place on 30 November 2022. The [fourth ICM](#) was held in Brussels on 7 November 2023 in Brussels.

On 20 January 2021, Parliament adopted a [resolution](#) on the implementation of the European arrest warrant and the surrender procedures between Member States (and also approved an implementation report on Council Framework Decision 2002/584/JHA of 13 June 2002, adopted before the Treaty of Lisbon). In this resolution, Parliament assessed the results of the simplified cross-border judicial surrender procedure that in 2004 replaced the lengthy EU extradition procedures, based on the principle of mutual recognition of court decisions.

On 6 October 2021, Parliament adopted a [resolution](#) on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters.

Parliament is currently preparing reports (and resolutions) on the following issues: preventing and combating violence against women and domestic violence; combating corruption; preventing and combating trafficking in human beings and protecting its victims; the transfer of criminal proceedings; victims' rights; money laundering and the financing of terrorism; confiscation and asset recovery; hate speech online and cyber violence; and the detection and removal of child sexual abuse material.

Parliament will also follow recent and upcoming initiatives by the Commission in the areas of organised crime, drug trafficking, cybercrime, digitalisation of justice, law enforcement cooperation, terrorism and violent radicalisation, intrusive spyware, disinformation and illegal content online, judicial training, rule of law developments in the field of justice, and artificial intelligence.

In May 2022, in the light of the Russian aggression in Ukraine, the [Commission proposed](#) new reinforced rules on asset recovery and confiscation, which would



contribute to the implementation of EU restrictive measures, the violation of which would be added to the list of EU crimes. Parliament is involved in the approval process for these proposals, which were put forward in the context of the [‘Freeze and Seize’ Task Force](#).

Policies for judicial cooperation in criminal matters are still developing, with a special focus on countering pan-EU threats and crime more effectively. Parliament has adopted specific measures to fight terrorism, transnational crime, corruption, fraud and money laundering and to protect the rights of victims, suspects and prisoners across the EU. Several measures intended to improve the exchange of information among the Member States have also been adopted.

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4.2.7. POLICE COOPERATION

The EU Agency for Law Enforcement Cooperation (Europol) is a central plank of the EU's broader internal security architecture. Law enforcement cooperation and policies are still developing, with a special focus on countering terrorism, cybercrime and other serious and organised forms of crime. The main goal is to achieve a safer Europe for the benefit of everyone in the EU, in compliance with fundamental rights and data protection rules, as requested several times by Parliament.

LEGAL BASIS

Articles 33 (customs cooperation), 87, 88 and 89 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Effective police cooperation is a key plank in making the EU an area of freedom, security and justice based on respect for fundamental rights. Cross-border law enforcement cooperation – involving the police, customs and other law enforcement services – is designed to prevent, detect and investigate criminal offences across the EU. In practice, this cooperation mainly concerns serious crime (such as organised crime, drug trafficking, money laundering, euro counterfeiting, human trafficking and cybercrime) and terrorism. Europol is the EU's law enforcement agency.

ACHIEVEMENTS

A. Beginnings

Police cooperation among the Member States began in 1976 through what was known as the 'Trevi Group', an intergovernmental network of representatives from justice and home affairs ministries. The Treaty of Maastricht then set out matters of common interest that gave legitimate grounds for police cooperation (terrorism, drugs and other forms of international crime). It also established the principle of creating a 'European police office' (Europol), which initially took shape as the Europol Drugs Unit. The Europol Convention was signed on 26 July 1995, though the office did not officially begin its work until 1 July 1999, on the basis of the enhanced powers granted by the Treaty of Amsterdam (signed on 2 October 1997). However, police cooperation had already progressed before the advent of Europol. With the creation of the Schengen Area in 1985, which at first involved only a handful of Member States, cross-border police cooperation had already become a reality (see also [4.2.4](#)). With the entry into force of the Treaty of Amsterdam, the Schengen *acquis* – including its police cooperation aspects – was incorporated into EU law, though it fell under the 'third pillar' of intergovernmental cooperation. The same intergovernmental approach was used for police cooperation measures adopted by a small group of Member States under the Prüm Treaty, which contained provisions on the exchange of DNA, fingerprints and vehicle registration details. The Prüm Treaty was fully introduced at the EU level by [Council Decision 2008/615/JHA of 23 June 2008](#).



B. Current institutional framework

The institutional framework has been considerably simplified by the Treaty of Lisbon (TFEU), with most police cooperation measures now adopted under the ordinary legislative procedure (codecision) and subject to judicial review by the Court of Justice of the EU. Nevertheless, even leaving to one side the specific features of the area of freedom, security and justice (i.e. opt-outs for Ireland and Denmark (Protocols 21 and 22 annexed to the TFEU) and a privileged role for national parliaments (Protocols 1 and 2)), police cooperation, together with judicial cooperation in criminal matters, has not been entirely woven into the Community framework and retains some of its original features:

- The Commission shares its power of initiative with the Member States, provided they represent a quarter of the members of the Council (Article 76 TFEU);
- Parliament is merely consulted on operational cooperation measures, which are adopted unanimously by the Council. In the absence of unanimity on the Council, it is possible for nine or more Member States to work together on the basis of enhanced cooperation. In this scenario, the European Council suspends the process in order to seek consensus ('emergency brake' mechanism under Article 87(3) TFEU).

C. Main legislative acts on police cooperation adopted under the ordinary legislative procedure

- [Directive 2013/40/EU](#) of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (known as the 'Cybercrime Directive'). Member States were required to incorporate this directive into national law by 4 September 2015.
- [Regulation \(EU\) 2015/2219](#) of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA, applicable since 1 July 2016.
- [Directive \(EU\) 2016/681](#) of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Member States were required to incorporate the directive into national law by 25 May 2018.
- [Directive \(EU\) 2016/1148](#) of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems (NIS) across the Union. Member States were required to incorporate this directive into national law by 9 May 2018.
- [Directive \(EU\) 2017/541](#) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Member States were required to incorporate this directive into national law by 8 September 2018.
- [Directive \(EU\) 2021/555](#) of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons.



- [Regulation \(EU\) 2018/1726](#) of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, applicable since 11 December 2018.
- [Regulation \(EU\) 2018/1862](#) of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, applicable from 28 December 2021 at the latest.
- [Regulation \(EU\) 2019/818](#) of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.
- [Directive \(EU\) 2019/1153](#) of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA. Member States were required to incorporate this directive into national law by 1 August 2021.
- [Regulation \(EU\) 2021/784](#) of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, applicable from 7 June 2022.
- [Regulation \(EU\) 2022/991](#) of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation, applicable from 28 June 2022.
- [Directive \(EU\) 2022/2555](#) of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive). Member States are required to incorporate this directive into national law by 18 October 2024.
- [Directive \(EU\) 2022/2557](#) of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (CER Directive). Member States are required to incorporate this directive into national law by 18 October 2024.
- [Directive \(EU\) 2023/977](#) of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA. Member States are required to incorporate this directive into national law by 12 December 2024.



- [Regulation \(EU\) 2023/2131](#) of the European Parliament and of the Council of 4 October 2023 amending Regulation (EU) 2018/1727 of the European Parliament and of the Council and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases, applicable from 31 October 2023.

D. Police cooperation agencies and other related bodies

1. European Union Agency for Law Enforcement Cooperation (Europol)

[Europol](#) is an agency whose main goal is to make Europe safer. It supports the Member States in their fight against terrorism, cybercrime and other serious and organised forms of crime. Europol also works with many non-EU partner states and international organisations. Europol serves as a support centre for law enforcement operations and as a hub for information on criminal activities.

Large-scale criminal and terrorist networks pose a significant threat to the internal security of the EU. The biggest security threats come from terrorism, international drug trafficking, money laundering, organised fraud, the counterfeiting of euros and trafficking in human beings.

Europol has set up several specialised units to respond to these threats:

- European Cybercrime Centre strengthens the law enforcement response to cybercrime in the EU and thus helps to protect European residents, businesses and governments from online crime;
- European Migrant Smuggling Centre supports the Member States in targeting and dismantling the complex and sophisticated criminal networks involved in migrant smuggling;
- European Counter Terrorism Centre is an operations centre and hub of expertise that reflects the growing need for the EU to strengthen its response to terror;
- European Serious Organised Crime Centre provides operational support to Member State investigations in priority cases related to serious and organised crime;
- Intellectual Property Crime Coordinated Coalition provides operational and technical support to law enforcement agencies and other partners;
- European Financial and Economic Crime Centre is an operational centre to support Member States in ongoing cases relating to financial and economic crime;
- FIU.net is a decentralised and sophisticated computer network supporting the Financial Intelligence Units in the EU in their fight against money laundering and the financing of terrorism;
- The EU Internet Referral Unit detects and investigates malicious content on the internet and social media networks.

Europol was established under the Europol Regulation. It is based in The Hague, the Netherlands. Europol produces several reports, such as the EU Terrorism Situation and Trend Report ([TE-SAT](#)), the Serious and Organised Crime Threat Assessment ([SOCTA](#)), the Internet Organised Crime Threat Assessment ([IOCTA](#)), and an [annual review](#). Europol published its most recent [SOCTA](#) in April 2021, its most recent [TE-SAT](#) in June 2023 and its most recent [IOCTA](#) in July 2023.



In order to achieve greater accountability for the agency, a Joint Parliamentary Scrutiny Group (JPSG) on Europol was set up under the Europol Regulation. Article 88 TFEU provides for scrutiny of Europol's activities by the European Parliament, together with national parliaments. According to Article 51 of the Europol Regulation, 'the JPSG shall politically monitor Europol's activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons'. The [13th meeting of the JPSG](#) was organised on 20 and 21 September 2023 in Brussels.

In May 2022, [Parliament](#) and the [Council](#) adopted a new Regulation amending Europol's mandate. The [amended Europol Regulation](#) entered into force on 28 June 2022. The new Europol Regulation covers improvements on research and innovation, the processing of large datasets, cooperation with private parties and non-EU countries, cooperation with the European Public Prosecutor's Office, and how new alerts in the Schengen Information System can be entered on the basis of information from non-EU countries, as Europol can now suggest that Member States enter alerts. The Executive Director of Europol can also propose opening a national investigation into non-cross-border crimes that affect a common interest covered by an EU policy.

2. European Union Agency for Law Enforcement Training (CEPOL)

[CEPOL](#) is an agency dedicated to developing, implementing and coordinating training for law enforcement officials. CEPOL contributes to a safer Europe by facilitating cooperation and knowledge sharing among law enforcement officials of the Member States, and to some extent from non-EU countries, on issues stemming from EU priorities in the field of security; in particular, from the EU policy cycle on serious and organised crime. The Law Enforcement Training Agency is established under the CEPOL Regulation. It is based in Budapest, Hungary.

3. Standing Committee on Operational Cooperation on Internal Security (COSI)

Under Article 71 TFEU, 'a standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national parliaments shall be kept informed of the proceedings.' COSI was established by the [Council Decision of 25 February 2010](#) on setting up the standing committee on operational cooperation on internal security (2010/131/EU).

4. EU Intelligence and Situation Centre

The EU Intelligence and Situation Centre (EU INTCEN) is not, strictly speaking, a police cooperation body, since it is a body of the European External Action Service and only deals with strategic analysis. Nevertheless, it contributes to police cooperation by producing threat assessments based on information provided by intelligence services, the military, diplomats and police services. INTCEN is also able to make useful contributions from an operational perspective by providing, for example, EU-wide information on the destinations, motives and movements of terrorists.



ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a key role in shaping EU legislation in the field of police cooperation by making the safety of the EU population a political priority. Furthermore, under the ordinary legislative procedure, it has been working on improving police cooperation on an equal footing with the Council.

The main instrument for police cooperation is Europol, which is a central pillar of the EU's broader internal security infrastructure. As part of the Europol reform, Parliament actively advocated for greater parliamentary scrutiny and improved data protection rules. [Parliament was involved](#) (under the ordinary legislative procedure) in strengthening Europol's mandate, following the [Commission proposal](#) adopted on 9 December 2020. The new mandate allows Europol to process large data sets and to develop new technologies that meet law enforcement needs. It also strengthens Europol's data protection framework and parliamentary oversight. The revised Europol Regulation entered into force in June 2022.

During various debates on fighting terrorism and freedom of expression, Parliament condemned terrorist attacks in Europe and around the world and called for unity and a robust response. Parliament also called for additional efforts to promote fundamental freedoms and referred to the need to urgently tackle the online aspects of radicalisation and hate speech.

On 17 December 2020, Parliament adopted a [resolution](#) on the EU Security Union Strategy for the 2020-2025 period, which was proposed by the [Commission](#) on 24 July 2020. The strategy proposes the development of tools and measures over the next five years to ensure security in our physical and digital environment, including combating terrorism and organised crime, preventing and detecting hybrid threats, increasing the resilience of our critical infrastructure, promoting cybersecurity and fostering research and innovation.

On 6 October 2021, Parliament adopted a [resolution](#) on artificial intelligence (AI) in criminal law and its use by the police and judicial authorities in criminal matters. MEPs pointed to the risk of algorithmic bias in AI applications and emphasised the need for human supervision to prevent discrimination. They also asked for a moratorium on the deployment of facial recognition systems for law enforcement purposes.

Parliament is involved in the evaluation and scrutiny of the following, and is reviewing the relevant legislative proposals:

- The Commission communication entitled '[A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond](#)', adopted on 9 December 2020;
- The Commission's '[New EU Cybersecurity Strategy](#)', published on 16 December 2020, which proposed new rules to make physical and digital critical entities more resilient;
- The Commission's '[Strategy to tackle Organised Crime for 2021 to 2025](#)', presented on 14 April 2021;
- The Commission communication on the [EU roadmap to fight drug trafficking and organised crime](#), adopted on 18 October 2023.

To make sure that law enforcement across the EU can work better together under a modern rulebook, the Commission [proposed](#), on 8 December 2021, an [EU](#)



[police cooperation code](#), which will streamline the current patchwork of various EU tools and multilateral cooperation agreements. The proposed measures include a recommendation on operational police cooperation, new rules on information exchanges between law enforcement authorities across the Member States and revised rules on automated data exchanges for police cooperation under the 'Prüm' framework. Parliament is involved in the approval of the proposed measures.

Parliament is currently preparing reports and resolutions on the following issues: preventing and combating trafficking in human beings and protecting its victims; preventing and combating violence against women and domestic violence; cyber-violence; child sexual abuse online; cybercrime and cybersecurity; money laundering and financing of terrorism; European production and preservation orders for electronic evidence in criminal matters; the reform of e-Privacy and the confidentiality of electronic communications; the revision of the Schengen Borders Code; the digitalisation of visa-issuing procedures; negotiations with Interpol; law enforcement cooperation; automated data exchange for police cooperation (Prüm II); the collection and transfer of advance passenger information; the Artificial Intelligence Act; terrorism and violent radicalisation; intrusive spyware; and the exchange of information and data flows with the United States.

Police cooperation and internal security policies are still in development, with attention focused on countering pan-EU threats and crime more effectively and, particularly for Parliament, doing so in accordance with rules on fundamental rights and data protection. While there has been a complete overhaul of the rules applying to EU police cooperation agencies, concerted efforts will still be needed to further strengthen police cooperation measures, in particular on the exchange of data and evidence between Member States' law enforcement authorities, and between those authorities and EU agencies. Parliament has urged the Member States to make the necessary technical standardisation improvements with regard to data quality and to establish a legal framework for a future approach of 'information sharing by default'. In this context, the EU will carefully have to address challenges related to new technologies, artificial intelligence, encryption and the interoperability of information systems for borders, security and migration.

As the number of tasks increases and expectations grow, adequate financial and human resources for EU agencies need to be ensured.

Parliament is now a fully-fledged institutional actor in the field of internal security policies, and should play a greater role in evaluating and defining police cooperation policies.

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4.2.8. PERSONAL DATA PROTECTION

Protection of personal data and respect for private life are European fundamental rights. The European Parliament has always insisted on the need to strike a balance between enhancing security and safeguarding human rights, including data protection and privacy. New EU data protection rules strengthening citizens' rights and simplifying rules for companies in the digital age took effect in May 2018. Research prepared for the European Parliament indicates that EU legislation related to regulating data flows contributes EUR 51.6 billion annually to GDP in the European Union. Research prepared for the European Parliament's Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware (PEGA Committee) confirms the importance of data protection for defending democracy and individual freedoms in the EU.

LEGAL BASIS

Article 16 of the Treaty on the Functioning of the European Union (TFEU);

Articles 7 and 8 of the EU Charter of Fundamental Rights.

OBJECTIVES

The Union must ensure that the fundamental right to data protection, which is enshrined in the EU Charter of Fundamental Rights, is applied in a consistent manner. In the light of the exponential growth of the volume of data transfers —with the EU, the US and Canada constituting the biggest share of this growth – the EU's stance on the protection of personal data needs to be strengthened in the context of all EU policies.

ACHIEVEMENTS

A. Institutional framework

1. Lisbon Treaty

Before the entry into force of the Lisbon Treaty, legislation concerning data protection in the area of freedom, security and justice (AFSJ) was divided between the first pillar (data protection for private and commercial purposes, with the use of the Community method) and the third pillar (data protection for law enforcement purposes, at intergovernmental level). As a consequence, the decision-making processes in the two areas followed different rules. The pillar structure disappeared with the Lisbon Treaty, which provides a stronger basis for the development of a clearer and more effective data protection system, while at the same time stipulating new powers for Parliament, which has become co-legislator. Article 16 of the TFEU provides that Parliament and the Council lay down rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities that fall within the scope of Union law.



2. The strategic guidelines in the area of freedom, security and justice

Following the Tampere and Hague programmes (of October 1999 and November 2004, respectively), in December 2009 the European Council approved the multiannual programme regarding the AFSJ for the 2010-2014 period, known as the Stockholm programme. In its conclusions of June 2014, the European Council defined the strategic guidelines for legislative and operational planning for the coming years within the AFSJ, pursuant to Article 68 of the TFEU. One of the key objectives is to better protect personal data in the EU.

B. Main legislative instruments on data protection

1. EU Charter of Fundamental Rights

Articles 7 and 8 of the EU Charter of Fundamental Rights recognise respect for private life and protection of personal data as closely related but separate fundamental rights.

2. Council of Europe

a. Convention 108 of 1981

The Council of Europe Convention 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data was the first legally binding international instrument adopted in the field of data protection. Its purpose is to secure, for every individual, respect for their rights and fundamental freedoms, and in particular their right to privacy, with regard to automatic processing of personal data. The Protocol amending the Convention seeks to broaden its scope, increase the level of data protection and improve its effectiveness.

b. European Convention on Human Rights (ECHR)

Article 8 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms establishes the right of everyone to respect for their private and family life, their home and their correspondence.

3. Current EU legislative instruments on data protection

a. General Data Protection Regulation (GDPR)

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), became applicable in May 2018. The rules aim to protect all EU citizens from privacy and data breaches in an increasingly data-driven world, while creating a clearer and more consistent framework for businesses. The rights enjoyed by citizens include a clear and affirmative consent for their data to be processed and the right to receive clear and understandable information about it; the right to be forgotten: a citizen can ask for his/her data to be deleted; the right to transfer data to another service provider (e.g. when switching from one social network to another); and the right to know when data has been hacked. The new rules apply to all companies operating in the EU, even those based outside it. Furthermore, corrective measures can be imposed, such as warnings and orders, or fines on firms that break



the rules. On 24 June 2020, the European Commission presented a [report on the evaluation and review of the regulation](#)^[1].

b. The Data Protection Law Enforcement Directive

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, became applicable in May 2018. The directive protects citizens' fundamental right to data protection whenever personal data is used by law enforcement authorities. It ensures that the personal data of victims, witnesses, and suspects of crime are duly protected and facilitates cross-border cooperation in the fight against crime and terrorism. On 25 July 2022, the European Commission published its delayed [report on application and functioning of the Law Enforcement Directive](#). It was followed by an [evaluation study](#) commissioned by Committee on Civil Liberties, Justice and Home Affairs (LIBE) containing a critical assessment of the implementation of the Law Enforcement Directive^[2].

c. Directive on privacy and electronic communications

[Directive 2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications) was modified by [Directive 2009/136/EC](#) of 25 November 2009. It raises the delicate issue of data retention, which was repeatedly brought to the CJEU and led to a series of rulings, most recently in [2020](#), declaring that EU law precludes the general and indiscriminate retention of traffic and location data.

The 2017 [proposal for a regulation](#) of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (regulation on privacy and electronic communications) is under prolonged discussions. The European Parliament's experts indicated that Parliament should resist the Council's attempts to exclude the applicability of European data protection principles^[3].

d. Regulation on the processing of personal data by the Union institutions and bodies

[Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, entered into force on 11 December 2018.

[1]Commission communication of 24 June 2020 entitled 'Data protection as a pillar of citizens' empowerment and the EU's approach to the digital transition – two years of application of the General Data Protection Regulation'(SWD(2020)0115).

[2]Vogiatzoglou, P. et al., [Assessment of the implementation of the Law Enforcement Directive](#), European Parliament, Directorate-General for Internal Policies of the Union, Policy Department for Citizens' Rights and Constitutional Affairs, 7 December 2022.

[3]Sartor, G. et al., [The impact of Pegasus on fundamental rights and democratic processes](#), European Parliament, Directorate-General for Internal Policies of the Union, Policy Department for Citizens' Rights and Constitutional Affairs, January 2023, pp. 56-57.



e. Articles on data protection in sector-specific legislative acts

In addition to the main legislative acts on data protection referred to above, specific provisions on data protection are also set down in sector-specific legislative acts, such as:

- Article 13 (on the protection of personal data) of Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime;
- Article 6 (on data processing) of [Council Directive 2004/82/EC](#) of 29 April 2004 on the obligation of carriers to communicate passenger data (API);
- on 13 December 2022, the Commission adopted [two legislative proposals](#) on the collection and transfer of API data that will replace the API^[4];
- Chapter VI (on data protection safeguards) of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol);
- Chapter VIII (on data protection) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

4. The EU's main international arrangements on data transfers

a. Commercial data transfers: adequacy decisions

Under Article 45 of the GDPR, the Commission has the power to determine whether a country outside the EU offers an adequate level of data protection, be that on the basis of its domestic legislation or of the international commitments it has entered into.

While data transfers between the EU and North America have increased exponentially, with the US dominating private online advertising and surveillance^[5], Parliament has adopted numerous resolutions raising concerns about transatlantic data flows. In particular, it considered that the EU-US Privacy Shield Decision does not provide the adequate level of protection required by EU law, while the CJEU has repeatedly invalidated the European Commission's adequacy decisions concerning the US (see its rulings of 2015 on Safe Harbour in [Schrems](#) and of 2020 on the EU-US Privacy Shield in [Schrems II](#)).

Despite a lack of reform of the data protection regime in the US, the European Commission reached another agreement with the US and presented a [proposal](#) for yet another EU-US Data Privacy Framework. On a motion from the LIBE Committee, on 11 May 2023, Parliament adopted a [resolution](#) on the adequacy of the protection afforded by the EU-US Data Privacy Framework, concluding that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection and calling on the Commission to continue negotiations with its US counterparts, but to refrain from adopting the adequacy finding until all of the recommendations made in

[4] Vavoula, N. et al., [Advance Passenger Information \(API\) – An analysis of the European Commission's proposals to reform the API legal framework](#), European Parliament, Directorate-General for Internal Policies of the Union, Policy Department for Citizens' Rights and Constitutional Affairs, 8 June 2023.

[5] Maciejewski, M., [Metaverse](#), European Parliament, Directorate-General for Internal Policies of the Union, Policy Department for Citizens' Rights and Constitutional Affairs, 26 June 2023.



Parliament's resolution and the European Data Protection Board (EDPB) opinion are fully implemented.

The Commission adopted its third [EU-US Data Privacy Framework](#) on 10 July 2023.

b. EU-US Umbrella Agreement

Under the consent procedure, Parliament was involved in the approval of the agreement between the US and the EU on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences, also known as the 'Umbrella Agreement'. The aim of this agreement is to ensure a high level of protection of personal information transferred in the framework of transatlantic cooperation for law enforcement purposes, namely in the fight against terrorism and organised crime.

c. EU-US, EU-Australia and EU-Canada passenger name record (PNR) agreements

The EU has signed bilateral passenger name record (PNR) agreements with the United States, Australia and Canada. PNR data includes information provided by passengers when booking or checking in for flights and data collected by air carriers for their own commercial purposes. PNR data can be used by law enforcement authorities to fight serious crime and terrorism.

d. EU-US Terrorist Finance Tracking Programme (TFTP)

The EU has signed a bilateral agreement with the US on the processing and transfer of financial messaging data from the EU to the US for the purposes of the terrorist finance tracking programme.

5. Addressing data protection aspects in sector-specific resolutions

Several Parliament resolutions on different policy areas also address personal data protection in order to ensure consistency with general EU data protection law and the protection of privacy in those specific sectors.

6. EU data protection supervisory authorities

[The European Data Protection Supervisor \(EDPS\)](#) is an independent supervisory authority that ensures that the EU institutions and bodies meet their obligations with regard to data protection. The primary duties of the EDPS are supervision, consultation and cooperation.

[The European Data Protection Board \(EDPB\)](#), formerly the Article 29 Working Party, has the status of an EU body with legal personality and is provided with an independent secretariat. The EDPB brings together the EU's national supervisory authorities, the EDPS and the Commission. The EDPB has extensive powers to determine disputes between national supervisory authorities and to give advice and guidance on key concepts of the GDPR and the Data Protection Law Enforcement Directive.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a key role in shaping EU legislation in the field of personal data protection by making the protection of privacy a political priority. Furthermore, under the ordinary legislative procedure, it has been working on the data protection reform on an equal footing with the Council. In 2017, it concluded its work on the last significant piece in the puzzle, the new regulation on privacy and electronic communications,



and is waiting expectantly for the Council to finally conclude its work in order to start interinstitutional negotiations.

In numerous resolutions, Parliament has expressed doubts as to the adequacy of the protection given to EU citizens under the EU-US Safe Harbour Framework and, subsequently, the EU-US 'Privacy Shield'. After the Schrems II case led to the invalidation of European Commission [Implementing Decision \(EU\) 2016/1250](#) on the adequacy of the protection provided by the EU-US 'Privacy Shield' agreement, on the basis of concerns that the US Government's surveillance powers were not limited, as required by EU law, and that EU citizens did not have effective means of redress, the European Parliament adopted a resolution in which it deplored the fact that the Commission had put relations with the US before the interests of EU citizens^[6].

Following the tabling of LIBE Committee's [motion](#) on 11 May 2023, Parliament [adopted](#) a resolution on the adequacy of the protection afforded by the EU-US Data Privacy Framework, concluding that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection and calling on the Commission to continue negotiations with its US counterparts but to refrain from adopting the adequacy finding until all the recommendations made in the resolution and the EDPB opinion are fully implemented. The Commission adopted its decision on the [EU-US Data Privacy Framework](#) on 10 July 2023.

Parliament has established a [committee of inquiry to investigate the use of Pegasus and equivalent surveillance spyware](#) in the EU's Member States (PEGA). Chaired by [MEP Jeroen Lenaers](#), the PEGA Committee has thoroughly investigated the practices of using spyware to investigate opposition members, journalists, lawyers and civic society activists, as well as how such practices affect democratic processes and individual rights in the EU. During its inquiry, the PEGA Committee consulted [leading academics](#), practitioners and authorities in the EU and worldwide. Parliament's Policy Department prepared reports for the PEGA missions to [Poland](#), [Greece](#) and Cyprus. The PEGA Committee voted on 8 May 2023 to approve its highly critical [final report](#) with recommendations on the investigation into alleged contraventions and maladministration in the application of EU law in relation to the use of Pegasus and equivalent surveillance spyware, and including, among many other points, a recommendation to set up an EU Tech Lab for research and monitoring of the use of spyware against EU citizens. Parliament's recommendation to the Council and the Commission following the PEGA report was adopted by its plenary on 15 June 2023. However, the Commission did not provide a timely response to the recommendation and blocked the pilot project of the EU Tech Lab proposed by MEPs.

Parliament has commissioned a number of research studies in order to have a scientific basis for its legislative activities in the forefront of technological developments and data protection, including a study on [the impact of the General Data Protection Regulation \(GDPR\) on artificial intelligence](#), a study on [Biometric Recognition and Behavioural Detection](#) and a study on the [Metaverse](#).

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

^[6][European Parliament resolution of 20 May 2021 on the ruling of the CJEU of 16 July 2020 – Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems \('Schrems II'\), Case C-311/18](#), paragraph 28.



