

# REPORT OF THE WORKING GROUP

## WAYS TO BRUSSELS

### EAJ –YEREVAN MEETING – MAY 2025

#### **INTRODUCTION**

The “Ways to Brussels” working group was established by the EAJ for the purpose of monitoring legislative initiatives, and implementing actions, by institutions of the European Union that have the potential to impact on the judiciaries of member states, or more widely. This is with a view to making timely representations to the legislators or policy makers concerned in the hope that legitimate concerns of EAJ members would be recognised and considered.

I would like to thank each and every member of the working group for their dedicated work and valuable contribution. The work of the working group took place via e-mail and via online meeting.

The newly elected European Commission, based on its policy: "from security to climate change to competitiveness and simplification", has prepared a very comprehensive programme for 2025, which includes 51 new policy initiatives and 123 legislative proposals. At the same time, it proposed the withdrawal of 37 and the repeal of 4 legislative proposals. We have thoroughly studied the entire normative programme and especially those documents that could have an impact on the work of judges or courts in the EU. An inside look - inspection of the proposed documents revealed that some documents have been slightly amended, but in important respects. For other documents, negotiations and harmonisation between the Member States and the Commission are progressing. We synthesised in this report the projects which seem to be of potential interest on the European level, as far as the judiciary is concerned. We also followed the legislative process of some proposals that we dealt with in previous years.

#### **FOLLOW UPS**

1. From 1 May 2025, in accordance with the amended Regulation on Evidence - Regulation (EU) [2020/1783](#) of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (recast) and the Regulation on the Service of Documents - Regulation (EU) [2020/1784](#) of the European Parliament and of the Council on the service of judicial and extrajudicial documents in civil or commercial matters (recast) of 25 November 2020) in Cross-Border Matters, the service of documents and the sending of requests for the taking of evidence will only take place electronically via the digital platforms SOD and TOE. This will undoubtedly mean a major change and impact on the way judges and courts work, especially in those Member States where they do not yet have electronic files.

2. On 2 August 2024, the Regulation of the European Parliament and of the Council of the EU laying down harmonised rules on artificial intelligence (Regulation - EU - 2024/1689 - EN - EUR-Lex (europa.eu)), briefly the Artificial Intelligence Act, entered into force. It is the first comprehensive legislation in the world to regulate this area and sets clear guidelines for developers, users and regulators of artificial intelligence. The Act aims to improve the functioning of the internal market by establishing a single legal framework, in particular for the development, placing on the market, putting into service and use of artificial intelligence systems in the Union, in line with the values of

the Union, in order to promote the deployment of human-centric and trustworthy AI systems while ensuring a high level of protection of health, safety and fundamental rights as set out in the Charter of Fundamental Rights of the European Union, including democracy, the rule of law and environmental protection. Generative AI such as ChatGPT, for example, will have to comply with transparency requirements, such as disclosing that content is created by AI, developing a model to prevent the creation of illegal content and publishing summaries of copyrighted data used for training. The AI Act will fully apply from 2 August 2026, with the provisions on notified bodies and governance structures applying from 2 August 2025. This means that Member States must implement the AI Act into their national legislation within one year of its entry into force.

On 5 February 2025, the European Commission published guidelines on prohibited AI practices, i.e. practices that pose an unacceptable risk to the security and fundamental rights of citizens.

## **LEGISLATIVE PROPOSALS**

### **1. CRIMINAL LAW**

Corruption is still a serious threat to democratic institutions, economic growth and the rights of individuals. The new proposal for the directive envisages the consolidation and update of existing provisions on combating corruption. The Regulation and Directive proposals aim to enhance the legal framework for combating child sexual abuse. The European Commissions objectives in the criminal field are to expand the EU list of criminal offenses in the context of hate speech and hate crime, take measures to prevent violence against women and domestic violence, measures to prevent and eliminate human trafficking and protect victims.

To learn more: see Annex 1

### **2. MIGRATION LAW**

The EU has been striving for an effective migration policy for many years and wants to harmonize this area as much as possible, which is why there are more proposals for directly applicable regulations and fewer directives in this area. An overly rejectionist migration policy paradoxically risks increasing cases of human trafficking and smuggling, irregular stay on national territories and, therefore, illegality. An effective migration policy should also take into account the possible impact of certain regulatory choices on the judicial system and thus on the work of judges. If migration policies are very rigid and difficult to reconcile in practice with the protection of fundamental human rights, this can lead to enormous legal disputes with necessarily long delays in resolution, especially in Member States close to external borders (e.g. Mediterranean). It is essential that any legislative proposal is accompanied by a guarantee of respect for fundamental principles and human rights and that this guarantee is then effective in practice. This is especially the case in crisis situations due to the mass arrival of migrants in a Member State. All the examined proposals ensure respect for fundamental rights and do not seem to have a negative impact on the proper exercise of jurisdiction.

To learn more: see Annex 2

### **3. LABOUR LAW**

In the field of labor law, we examined in more detail the proposals for two directives: the so-called Traineeships Directive and the European Works Councils Directive.

To learn more: see Annex 3

#### **4. CIVIL AND COMMERCIAL LAW**

In the field of civil law, the European Commission, in accordance with the policy of simplifying procedures for citizens and encouraged by the judgments of the Court of Justice of the European Union (CJEU), has set about regulating - harmonizing the personal status of citizens, which until now were considered the exclusive jurisdiction of the Member States, namely parenthood and adult protection (guardianship), and has prepared proposals for two Regulations. In the field of consumer protection law, the Commission has proposed a Regulation on the rights of passengers in the case of multimodal journeys and an amendment to the ADR Directive.

The Commission is proposing by far the most legislative proposals in the field of commercial law, as it wants the European Union to become as economically efficient and competitive as possible on global markets. However, there are few legislative proposals that could potentially have an impact on the work of judges. We present in more detail the proposal for a Regulation on the prevention of late payment in commercial transactions and the proposal for a Directive on insolvency.

To learn more: see Annex 4

#### **5. THE RULE OF LAW WITHIN EU**

The 2025 Rule of Law report is due in July. This annual European Commission' report presents a synthesis of the rule of law situation in the EU, with the objective of promoting and defending the values of the EU. It also includes an assessment of the situation in each Member State and recommendations addressed to Member States to encourage positive developments, needed improvements and reforms.

Janja Roblek  
Chair of the EAJ Working Group Ways to Brussels

**1. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council**

COM(2023)234 final 2023/0135 (COD) 03.05.2023.

*Purpose of the Legislative Proposal:*

The proposal aims to modernise and strengthen the European Union's approach to combating corruption. Corruption is a serious threat to democratic institutions, economic growth and the rights of individuals. In order to root out corruption both preventative and repressive mechanisms are needed.

*Reasons for the Legislative Proposal:*

Current EU legal framework on combating corruption needs to be updated to take into account the evolution of corruption threats. Corruption impedes on economic growth, undermines the efficiency of public spending and deepens social inequality. The Eurobarometer survey data of 2022 suggests that 68% of people in the EU, along with 62% of companies in the EU consider that corruption is widespread in their country. The current instruments in place are not sufficiently comprehensive and further development is needed to ensure a coherent and effective response to corruption.

*Current Protections:*

Council Frameworks Decision 2003/568/JHA sets out requirements on the criminalisation of corruption in the private sector. The 1997 Convention on the fight against corruption involving EU officials addresses certain acts of corruption involving those officials in general. These instruments are not comprehensive enough and there is a need for the existing rules in the Member States to be developed further to ensure an effective response in the Union. There are gaps in enforcement at a national level. Authorities in Member States also face issues linked to the excessive length of prosecution, short statutes of limitations, rules on immunity and privileges and limited availability of resources, training and investigate powers.

The EU is a party to the United Nations Convention Against Corruption which provides the most comprehensive international legal instrument in the area of combatting corruption.

*Main Changes:*

This proposal will update the EU legislative framework by incorporating international standards binding on the EU such as those in the UNCAC. This will ensure that all forms of corruption are criminalised in Member States, that legal persons are held responsible for such offences, and that offences incur effective, proportionate and dissuasive penalties. The proposal also includes measures to prevent corruption in accordance with international standards and facilitate cross-border cooperation.

The proposal also encourages Member States to take preventative measures to inhibit corruption, such as combatting failings in integrity, undisclosed conflicts of interest or breaches of ethical rules. The proposal will provide for a new and strengthened asset recovery framework, giving authorities better tools to deprive organised crime groups of the financial means to carry out corruption. The proposal will include robust protection of whistleblowers, in order to strengthen enforcement within the Union.

**2. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules to prevent and combat child sexual abuse**

COM(2022)209 final 2022/0155 (COD) 11.05.2022

*Purpose of the legislative Proposal:*

The proposal aims to enhance the legal framework for combating online child sexual abuse. It aims

to introduce obligations for providers to detect, report, block and remove child sexual abuse material from their services, in addition to establishing the EU Centre to support these efforts and coordinates with Europol and national law enforcement authorities.

The proposal aims to ensure that providers can meet their responsibilities, by establishing a European Centre to prevent and counter child sexual abuse to facilitate and support implementation of the Regulation and help to remove obstacles to the internal market. The EU Centre will create, maintain and operate databases of indicators of online child sexual abuse that providers will be required to use to comply with the detection obligations.

#### *Reason behind the Legislative Proposal:*

The European Commission adopted the EU Strategy for a More Effective Fight Against Child Sexual Abuse in July of 2020, which sets out a comprehensive response to the growing threat of child sexual abuse both online and offline. It includes eight initiatives to put in place a string legal framework for the protection of children and facilitate a coordinated approach across the actors involved. In March 2021 the European Commission adopted its comprehensive EU Strategy on the rights of the Child which proposes reinforced measures to protect children against all forms of violence, including online abuse. In addition, it invites companies to continue their efforts to detect, report and remove illegal online content, including online child sexual abuse, from their platforms and services. Certain providers voluntarily use technologies to detect, report and remove online child sexual abuse material from their services, however the measures taken by providers vary widely with a significant number of providers taking no action.

Uniform Union rules on the detection, reporting and removal of online child sexual abuse material are necessary to complement the Digital Services Act, remove existing barriers to the Digital Single Market and prevent their proliferation.

#### *Current Protections:*

Current EU legal framework in this area consists of Union legislation relating to child sexual abuse, such as the Child Sexual Abuse Directive and Regulation (EU) 2021/1232 on combating online child sexual abuse. This mandates providers to detect and report known child sexual abuse material. This provision applied until 3 August 2024. The current protections lack comprehensive measures for detecting new material and addressing grooming activities online.

#### *Main Changes Proposed:*

The main changes proposed include mandatory detection and reporting by providers. Providers will be required to detect, report, block and remove known and new child sexual abuse material including grooming activities perpetrated online.

The establishment of the EU Centre will assist in creating, maintaining and operating databases of indicators of online child sexual abuse. The Centre will verify reports, provide detection technology and will coordinate with Europol and national authorities in Member States.

The proposal will include stringent oversight mechanisms, to ensure that detection and reporting activities are conducted in a manner that respects fundamental rights, particularly the right to privacy and freedom of expression.

### **3. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)**

COM(2024)60 final 2024/0035 (COD) 6.02.2024

#### Reasons for and objectives of the proposal:

assess whether the Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography (hereinafter 'the Directive') is fit for purpose considering the societal and technological changes.

A wide consultation was conducted in the context of the back-to-back evaluation of the Child Sexual Abuse Directive and impact assessment of potential initiatives to fill the gaps identified in such an

evaluation. The Commission also carried out an open public consultation that showed that children are affected by the shortcomings of the current Directive in relation to emerging trends enabled or facilitated by technological development and the increased online presence of children and predators. It confirmed that these new trends come with new investigative challenges that need addressing. It also pointed to the need to better account for the specificities of child sexual abuse and exploitation offences, including the challenges encountered by victims in reporting, the need for targeted prevention and victim assistance, and to address the difficulties caused by phenomena such as that of travelling sex offenders

After an evaluation of the Commission to assess the implementation of the Directive, a targeted revision of the Directive is necessary:

1. to ensure that all forms of child sexual abuse and exploitation, including those enabled or facilitated by technological developments, are criminalised;
2. to ensure that national rules on investigation and prosecution provide for an effective fight against child sexual abuse and exploitation by taking into account recent technological developments;
3. to improve both prevention and assistance to victims;
4. to promote better coordination in preventing and combatting child sexual abuse across Member States and, at national level, among all parties involved.

The three problem drivers that the proposal aimed to address:

- both the increased online presence of children and the latest technological developments raise challenges for law enforcement while creating new opportunities for abuse;
- the different legal frameworks in place in Member States concerning investigation and prosecution, which do not provide for an effective fight against child sexual abuse and exploitation;
- the shortcomings of Member State efforts to prevent child sexual abuse and to assist victims, namely their limited nature, their unclear effectiveness, and the lack of coordination among relevant stakeholders.

The preferred policy option:

- targeted legislative adjustments to clarify ambiguities of the current framework, ensure coherence with new instruments, and improve the quantity and quality of available information;
- legislative amendments modifying definitions of crimes to take into account current and expected technological developments;
- legislative amendments to ensure more effective prevention, assistance to victims, and investigation and prosecution, taking into account the cross-border dimension of the phenomenon.

The targeted amendments to the Directive are aimed at improving Member State capacity to fight the crime efficiently, in relation to threats and trends that have emerged and evolved in recent years and with new technological developments. New rules applicable to Member States are expected to improve cross-border cooperation, both in terms of investigations and prosecutions, and for victim assistance and support.

Conclusion:

- the initiative will have a positive impact on the fundamental rights of children, including their right to physical and mental health and their right to protection and care as is necessary for their well-being. The initiative will also have a positive impact on the rights of adult survivors of child sexual abuse, by improving compensation, assistance and support to victims;
- the policy option would indeed have an administrative burden (the possible increase in the number of prosecutions and investigations concerning child sexual abuse that might derive from more effective investigative tools and better coordination within and among Member States might entail administrative costs for Member States), but that this would be offset by the positive impact of the measures on the prevention of and fight against child abuse, and

protection of the victims of this crime.

**4. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**  
COM(2023)424 final 2023/0250 (COD) 11.07.2023

*Purpose of Legislative Proposal:*

The primary objective of the proposal is to provide for a set of targeted measures to improve victims' ability to rely on their rights under Directive 2012/29/EU (the Victims' rights Directive or VRD). The VRD has been applicable in all EU Member States (except Denmark) since November 2015.

The objectives of the proposal are as follows:

1. A significant improvement in victims' access to information.
2. A better alignment of protection measures with victims' needs to ensure the safety of vulnerable victims.
3. An improved access to specialist support for vulnerable victims.
4. More effective participation in criminal proceedings for victims.
5. Facilitated access to compensation from the offender in all cases, including national and cross-border cases.

*Reason for Legislative Proposal:*

The shortcomings of the VRD were identified in the evaluation report adopted by the Commission in June 2022. While the Directive has broadly delivered the expected benefits and has had a positive impact on victims' rights, specific problems persist. These problems relate to a lack of clarity and precision with which certain rights are formulated in the Directive, and to the large margin of manoeuvre for Member States to transpose them, which in some cases has led to limitations on the practical application of victims' rights and difference in how Member States have transposed the Directive.

The five main problems identified in the Directive are as follows:

5. Victims do not always receive information about their rights, or receive inadequate information about their rights, making it more difficult or impossible for victims to exercise their rights.
6. Vulnerable victims do not always benefit from a timely assessment of their needs for protection and are subsequently deprived of effective protection measures.
7. Vulnerable victims often cannot rely on specialist support, such as extended psychological treatment, and child victims often cannot rely on a targeted approach based on multi-agency cooperation.
8. Victims' participation in criminal proceedings is often difficult due to a lack of legal advice and guidance on rules on victims' status in these proceedings.
9. Victims' access to compensation in domestic and cross-border cases is difficult due to the lack of state support when enforcing the ordered compensation from the offender, leading to a risk of secondary victimisation.

*Current Protections:*

Under the existing VRD victims of all crimes are entitled to rights including access to information, the right to support and protection based on victims' individual needs, procedural rights and the right to receive a decision on compensation from the offender at the end of criminal proceedings.

*Main Changes:*

Member States would be required to establish easily accessible, user-friendly, free and confidential victims' helplines to provide victims with information about their rights. This service would also offer victims emotional support and refer them to specialised support services such as psychological

services as needed. The proposal also suggests that victims should receive a timely individual assessment to identify the specific support required. The proposal also emphasises the need for targeted support services for victims with specific needs to include vulnerable victims and victims of crimes such as sexual violence, gender-based violence, victims of trafficking or victims of organised crime. Member States would be required under the proposal to establish court assistance programmes for victims of crime to provide information and emotional support to victims. The proposal aims to provide for access to compensation for victims by ensuring that victims receive a decision on compensation during criminal proceedings and the proposal mandates that Member States would pay the compensation directly to the victim without undue delays. The use of electronic communication for victims to exercise their right to justice is also highlighted in the proposal as an important step towards vindicating the rights of victims of crime, and would facilitate access to justice in cross-border cases.

## **5. A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime**

COM(2021)777 final 09.12.2021

### *Purpose of Legislative Proposal:*

The Commission issued a proposal to extend the list of EU crimes, as set out under Article 83(1) of the TFEU, to include all forms of hate speech and hate crime. This proposal, if successful, will provide a legal basis enabling the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions applicable in all EU Member States. Furthermore, the Commission may propose the adoption of directives, setting out minimum rules on definitions and sanctions of hate speech and hate crime to be adopted by the European Parliament and the Council.

### *Reason behind the Legislative Proposal:*

The proposal underlines the increase in hate speech and hate crime over recent years, particularly as a result of hate speech perpetrated online. The rise of hate speech and hate crime in Europe is perpetrated against individuals and groups of people who share a “common characteristic”, including race, ethnicity, nationality, religion, sex, sex characteristics, sexual orientation, gender identity, gender expression or any other characteristic that is unchangeable and fundamental to a person.

The use of social media and the online sphere has facilitated the spread of hate speech online, due to the cross-border nature of the internet. Offline hate speech, such as in written media, television shows, sports events or in political speeches, also have a cross border dimension, as they are easily reproduced and spread across borders.

The cross border dimension of hate crime is directly linked to the cross border dimension of hate speech, as hate speech leads to a “spiral of violence” in response to the ideologies spread through hate speech. The effects of hate speech and hate crime creates a climate of fear and social conflict, and the polarisation of public debate and impacts on democratic society.

### *Current Protections:*

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law provides a strong common response among member states to racist and xenophobic hate speech and hate crime. It requires Member States to criminalise hate speech and ensures that, for offences other than hate speech, that racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively, such motivation is taken into account in determination of penalty.

### *Main Changes:*

The proposal aims to provide clear and consistent definitions of hate crime and hate speech and will propose minimum standards of the penalties attached to these offences. The proposal must strike a balance between criminalising these offences and protecting the right to freedom of expression and information as enshrined in Article 11 of the Charter of Fundamental Rights of the European Union.



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**1. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA**

COM(2023)755 final 2023/0439 (COD) 28.11.2023

Reasons for and objectives of the proposal:

- bring about a modern EU criminal law instrument that clearly defines and effectively sanctions the offence of facilitation of unauthorised entry, transit and stay in the EU, in line with the provisions of Article 83 of the Treaty on the Functioning of the European Union and the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air;
- ensuring an effective investigation, prosecution and sanctioning of organised criminal networks responsible for migrant smuggling;
- more harmonised penalties that take account of the seriousness of the offence;
- improving the jurisdictional reach (in particular: 1) the proposed Directive expands the jurisdiction of the Member States to cases in which the facilitation of unauthorised entry into the EU fails and third-country nationals lose their lives, 2) the proposed Directive also expands jurisdiction over offences committed on board of ships or aircrafts registered in a Member State or flying its flag, and offences committed by legal persons doing business but not necessarily established in the EU);
- reinforcing Member States resources to tackle and prevent migrant smuggling;
- improving data collection and reporting.

In accordance with the principles of subsidiarity and proportionality as set out in Article 5(3) of the Treaty on European Union and due to the transnational dimension of migrant smuggling, the objectives of the proposal cannot be sufficiently achieved by Member States and can thus be better achieved at the Union level.

Critical issues in the existing definition of the offence: despite the fact that the current Article 1(2) of the Facilitation Directive leaves the choice to the Member States to exempt from criminal sanctions the facilitation of unauthorised entry and transit when it is conducted on humanitarian grounds, this provision was criticised for its optional character, entailing a lack of clarity and legal certainty.

The proposal is exceptionally presented without an accompanying impact assessment (nonetheless, the present proposal is based: 1) on the elements gathered during the 2017 REFIT evaluation of the Facilitators Package; 2) on the public consultation regarding the renewed EU Action Plan against migrant smuggling (2021–2025); 3) on the information and input provided by Europol, Eurojust and Frontex; 4) on dialogue with Member States and civil society stakeholders in the context of monitoring the implementation of the current legal framework)

This proposal seems to respect the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union and enshrined in the Charter of Fundamental Rights of the European Union:

- this proposal, through the inclusion of aggravated criminal offences, aggravating and mitigating circumstances, the regime of sanctions on legal persons and the requirement of preventive measures, would increase the effectiveness of tackling the crime of migrant smuggling and ensuring a proportionate response (this also increases the protection of all relevant fundamental rights of the third-country nationals concerned);
- the provisions introducing new offences or sanctions or amending the definition of the crime were thoroughly analysed in the light of the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished

twice in criminal proceedings for the same criminal offence (they were also analysed from the perspective of the respect of the freedom of assembly and of association and the right to family life).

**2. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794**

COM(2023)754 final 2023/0438 (COD) 28.11.2023

Reasons for and objectives of the proposal:

- the overall objective of this proposal is to reinforce Europol's role in the fight against migrant smuggling and trafficking in human beings, and, in particular, the role of the European Centre Against Migrant Smuggling;
- strengthening inter-agency cooperation on migrant smuggling and trafficking in human beings;
- strengthening steer and coordination on countering migrant smuggling and trafficking in human beings at EU level;
- improving information sharing on migrant smuggling and trafficking in human beings;
- reinforcing Member States' resources to prevent and combat migrant smuggling and trafficking in human beings;
- reinforcing Europol's support to the prevention and combatting of migrant smuggling and trafficking in human beings through operational task forces and Europol deployments for operational support;

To effectively address all the issues identified in this legislative initiative, it is necessary, in one way or another, for Member States to receive support at the EU level.

Cooperation and coordination between agencies in combating migrant smuggling and human trafficking at the EU level need to be strengthened and intensified (in addition of the proposal objectives, the establishment of the European Centre against Migrant Smuggling and the definition of its tasks and composition will also help to combat migrant smuggling and human trafficking more effectively and efficiently at the EU level rather than at the national level).

This legislative proposal is not supported by an Impact Assessment considering that the Commission had little or no choice available, notably due to the urgent operational needs to improve Europol's support to Member States on countering migrant smuggling (this proposal nevertheless builds on the evidence gathered by the European Court of Auditors special report in 2021 on Europol's support to fight migrant smuggling and the feedback received during the stakeholder consultations).

Conclusion.

This legislative initiative proposes the following:

- establishing in law the European Centre Against Migrant Smuggling within Europol and a governance framework to regulate and support its activities;
- providing for the composition of the European Centre Against Migrant Smuggling;
- defining the strategic and operational tasks of the European Centre Against Migrant Smuggling;
- providing for the designation of specialised services within the competent authorities of the Member States to prevent and combat migrant smuggling and trafficking in human beings;
- providing Europol with the necessary advanced tools to support Member States in preventing and combating migrant smuggling and other crimes falling within the scope of Europol's objectives;
- providing that Europol should be able to deploy officers in the territory of a Member State, upon request of that Member State, to provide analytical, operational, technical and forensic support in liaison and in agreement with the competent authorities of that Member State;
- clarifying the nature of operational support that Europol staff may provide to Member States'

- law enforcement authorities on the ground in operations and investigations;
- enhancing cooperation between Europol and third countries;
- identifying cases of migrant smuggling requiring cooperation with third countries that may require transfers of personal data in individual cases for the purpose of the prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal sanctions;
- strengthening Europol's role in the fight against criminal offences related to the violation of Union restrictive measures.

### **3. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information security in the institutions, bodies, offices and agencies of the Union**

COM(2022)119 final 2022/0084 (COD) 22.03.2022

This initiative aims to streamline the different legal frameworks of the Union institutions and bodies in the field by:

- establishing harmonised and comprehensive categories of information, as well as common handling rules for all Union institutions and bodies;
- setting up a lean cooperation scheme on information security between Union institutions and bodies able to foster a coherent information security culture across the European administration;
- modernising the information security policies at all levels of classification/categorisation, for all Union institutions and bodies, taking into account the digital transformation and the development of teleworking as a structural practice.

Aims:

- the creation of a minimum set of rules on information security across all the Union institutions and bodies, which will trigger mandatory and high common standards for the secure exchange of information;
- the engagement to set, within the European administration, the same level of ambition in the field of security as required from the Member States;
- the establishment of a common baseline of information security to all Union institutions and bodies is necessary to contribute to an independent and efficient administration.

This initiative is exclusively addressed to the Union institutions and bodies and has a limited impact to the Member States and individuals. Therefore, it was not necessary to perform a throughout impact assessment.

This initiative ensures full compliance with the fundamental rights as follows:

- the right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union);
- protection of personal data (Article 8 of the Charter of the Fundamental Rights of the European Union);
- right of access to documents (Article 42 in the Charter of Fundamental Rights of the European Union);
- right to intellectual property (Article 17 of the Charter of Fundamental rights of the European Union);
- freedom of expression and information (Article 11 in the Charter of the Fundamental Rights of the European Union).

### **4. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union**

Objectives of the proposal:

- provide a legal framework allowing the Union to adopt measures that should be addressed against transport operators of any mode of transport (air, sea, inland waterways, rail and road) that facilitate or engage in the trafficking in persons, or the smuggling of migrants in relation to illegal entry into the Union territory;
- ensure that effective and appropriate tools are in place to fight the smuggling of migrants and the trafficking of persons, in particular the use of commercial means of transport in this context;
- ensure appropriate action to protect the lives and safety of people being instrumentalised for political ends.

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***1. Directive on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive')***

The proposal for a directive focuses on supporting Member States in improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships. The proposed directive applies to trainees who have an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, regardless of the type of traineeship.

The proposal aims at improving and enforcing trainees' working conditions and lays down the principle of non-discrimination to ensure that, with regard to working conditions (including pay), trainees are not treated in a less favourable manner than comparable workers in the same establishment, unless a different treatment is justified on objective grounds.

The proposal also aims at combating regular employment relationships disguised as traineeships and take enforcement action.

The proposal sets minimum requirements.

The proposal has no direct impact on the judiciary or the work of judges.

***2. Amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights***

Directive 2009/38/EC lays down minimum requirements for the setting-up and operation of employee representation bodies in certain multinational undertakings, so-called European Works Councils ('EWCs'). The proposal aims to tackle shortcomings of the Directive, and thereby to improve the effectiveness of the framework for the information and consultation of employees at transnational level.

The 2018 evaluation of the 2009 Directive identified several challenges, among others, obstacles to access of EWCs to courts and a lack of effective remedies and effective and dissuasive sanctions in some Member States.

The proposal provides for measures to ensure that employees' representatives have access to justice in relation to transnational information and consultation rights. It can thus promote the right to an effective remedy before a tribunal (Article 47 EU Charter of Fundamental Rights).

Member States' obligation to provide for effective, dissuasive, and proportionate sanctions – currently mentioned in recital 36 of Directive 2009/38/EC by reference to the general principles of Union law – will be laid down in Article 11 of Directive 2009/38/EC. The proposal amends article 11 of the Directive.

In Article 11(3), a reference to EWC and SNB members will be inserted in the first subparagraph, as that provision is relevant for them as well as for employees' representatives. In the same paragraph, it is further clarified that the duration of the appeal procedure applicable when central management requires confidentiality or withholds information is to be compatible with the effective exercise of the information and consultation rights under Directive 2009/38/EC. Moreover, a new provision is added in Article 11 to ensure that possible mandatory prior out-of-court settlement procedures under national law are to be without prejudice to access to justice in respect of the rights under the 2009 Directive.

The proposed amendment to Article 11(3) and 11(4) states:

" paragraph 3 is amended as follows:

- the first subparagraph is replaced by the following:

“3. Member States shall make provision for administrative or judicial appeal procedures which the members of the special negotiating body, European Works Council members or employees’ representatives may initiate when the central management provides information in confidence in accordance with Article 8 or does not transmit information on specific grounds in accordance with Article 8a.”;

the following subparagraph is added:

“The duration of such procedures shall be compatible with the effective exercise of the information and consultation rights under this Directive.”;

the following paragraph 4 is added:

“4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.”

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**1. PROPOSAL for a COUNCIL REGULATION on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood**  
COM(2022)695final2022/0397(COD)13.12.2016

The general purpose of this proposal is to improve the situation of children in cross border situations who may find that their parenthood or filiation which has been established in one Member State is not recognised in another Member State. It does not affect the rights of a child which are derived from EU law<sup>1</sup> (art 2) and does not affect the content or consequences of parenthood, such as maintenance obligations or rights of succession (art 3). It is not confined to children in minority but extends to persons of any age whose parenthood requires to be established, recognised or proved. The proposal covers the recognition of the parenthood of a child irrespective of how the child was conceived or born and irrespective of the type of family of the child. It thus includes the recognition of the parenthood of a child with same-sex parents.

Jurisdiction

Chapter II of the proposed regulation sets out common rules on jurisdiction. Put briefly, general jurisdiction may be based on the habitual residence or nationality of the child or either parent at the time the court is seised; or the habitual residence of the respondent at the time the court is seised; or the place of the child's birth. If jurisdiction cannot be determined on those grounds, it may be based on the presence of the child. Provision is also made for the exceptional case of *forum necessitatis*.

The proposed regulation contains provisions on examination of jurisdiction and *lis pendens* similar to those in the regulations on civil and commercial matters and matrimonial proceedings.

Applicable law

Common rules determining the applicable law are set out in Chapter III of the proposed regulation. In summary, the principal rule (art 17(1)) is that the law applicable to the establishment of parenthood shall be the law of the State of habitual residence of the person giving birth at the time at which the child is born. By default, where the habitual residence of the person giving birth at the time of birth cannot be determined, the law of the State of birth of the child shall apply.

The proposed regulation also addresses in art 17(2) the case where the principal rule under art 17(1) results in the establishment of parenthood as regards only one parent. In that event the law of the State of nationality of that parent, or of the second parent, or the law of the State of birth of the child may apply to the establishment of parenthood as regards the second parent. This provision would appear important in the case of same- sex couples, where application of the principal rule may only establish the genetic parent.

Among the subsidiary provisions in this Chapter is the requirement that any reliance on public policy (*ordre public*) is subject to observance of the fundamental rights and principles of the EU Charter, particularly art 21 (non-discrimination). This is intended to ensure that an application for establishment of parenthood is not refused as being contrary to public policy solely on the basis that the parents are a same-sex couple.

Recognition

Recognition of judicial decisions and authentic instruments is dealt with in Chapter IV.

Briefly, a court decision on parenthood given in one Member State shall be recognised in all other Member States without any special procedure being required other than production of a copy of the decision and an attestation in the form set out in annex I issued by the court which gave the decision. The grounds upon which recognition may be refused are set out in art. 31 and, put shortly, include (i) public policy; (ii) decision given in default of appearance where the party in default had not received service in sufficient time to appear; (iii) where a party claiming the decision infringes his

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<sup>1</sup>Rights derived from EU law include, for example, the right of EU citizens and their family members to move and reside freely within the Union, including rights related to scholarships, admission to education, reductions in public transportation costs for large families, reduced student fares for public transport and reduced museum entrance fees, as well as the right to the recognition of name.



fatherhood or her motherhood had not been given an opportunity to be heard; and (iv) irreconcilability with a later court decision given by, or recognisable by, a court in the Member State in which recognition is sought. The invocation of public policy is subject to observance of the Charter, as noted above.

#### European Certificate of Parenthood

The proposal provides for the creation of an optional European Certificate of Parenthood. This uniform certificate is designed specifically to facilitate the recognition of parenthood within the Union as it would be issued 'for use in another Member State'. The certificate must be issued in the Member State in which parenthood was established in accordance with the applicable law and whose courts had jurisdiction under the proposal. It may be issued either by a court having relevant competence or an administrative authority. Although intended for use in another Member State, once issued the certificate may also be used in the Member State where it was issued.

The certificate is an optional certificate. Member State authorities would only be required to issue it if the child or a legal representative asks for it. Persons entitled to apply for a certificate would be under no obligation to do so and would be free to present other documents, such as a court decision or an authentic instrument accompanied by the relevant attestation, when requesting the recognition of parenthood in another Member State. However, no authority or person presented with a copy of the Certificate issued in another Member State would be entitled to request that a court decision or an authentic instrument be presented instead of the Certificate.

### **2. PROPOSAL for a REGULATION of THE EUROPEAN PARLIAMENT and of THE COUNCIL on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults** COM(2023)280final2023/0169(COD)31.01.23

This proposed regulation applies in civil matters to the protection in cross border situations of "adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests". The scope of the regulation is further defined in arts 2 (3). Put briefly it includes the determination of the incapacity of the adult and the institution of a protective regime – such as placing the adult under judicial or administrative authority, guardianship or curatorship and the management of property. By way of further definition, art 2 (4) catalogues matters which are excluded – such as maintenance obligations, matrimonial property regimes or measures directed solely at public safety.

The proposed regulation builds upon the Hague Convention of 13 January 2002 on the International Protection of Adults – "the Convention" - which has been ratified by 12 of the EU Member States.

#### Jurisdiction

The regulation incorporates the rules on jurisdiction contained in Chapter II of the Convention. Additionally, it permits a non-exclusive jurisdiction of choice in the authorities of a Member State other than that of the adult's habitual residence provided certain conditions are met. In summary, the conditions are (i) the adult must have been *capax* at the time of making the choice, which must be expressed in writing; (ii) the exercise of the jurisdiction must be in the interest of the adult; and (iii) the authorities of a Member State otherwise having jurisdiction under the Convention must not already have exercised that jurisdiction.

#### Applicable law

The regulation incorporates, without modification, the relevant provisions of the Convention.

#### Recognition and enforcement of measures

The proposed regulation provides that a measure taken by the authorities of one Member State shall be recognised in other Member States without any special procedure being required. The authority of origin shall, at the request of any interested person, issue an attestation in the form set out in annex I setting out the content of the measure. No *exequatur* is required for enforcement. Article 10 specifies the limited grounds upon which recognition and enforcement may be refused.

An authentic instrument established in one Member State shall have the same, or most comparable evidentiary effects in another Member State. Annex II contains a form of attestation which may be

requested from the competent authority in the State of origin.

#### European Certificate of Representation

The proposed regulation creates a European Certificate of Representation for use by representatives, who, in another Member State, need to invoke their powers to represent adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. Various detailed provisions are made for the issuing of a certificate, its rectification, modification or withdrawal and for its suspension.

Use of the certificate is not mandatory.

#### Cooperation between authorities

Detailed provisions are included for improving cooperation between central authorities and also for the establishment and interconnection of registers of protection measures.

**3. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union** COM(2023)753 final

**4. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on passenger rights in the context of multimodal journeys** COM(2023)752 final

While both EC 261/04, which protects passenger rights in the event of denied boarding, cancellation and delay, and Regulation 1107/06 (EC 1107/06), which deals specifically with disabled passengers and passengers with reduced mobility, have been in force since 2004 and 2006 respectively, historically their amendment has faced several obstacles. On 29 November 2023, however, proposals to amend various European passenger rights legislation including EC 261/04 and EC 1107/06 were published:

10. Reimbursement rights for bookings through an intermediary
11. Service quality standards
12. Common form for reimbursement and compensation requests.

The amendments to EC 1107/06 are very similar to those to EC 261/04, although there are additional protections afforded to persons with disabilities and/or reduced mobility.

**5. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828** COM(2023)649 final 2023/0376 (COD)

The current ADR Directive is essential for ensuring a high level of consumer protection in the EU internal market, as it allows for the resolution of low-value disputes without having to assert their rights in court, thus avoiding high costs and lengthy procedures. However, it does not cover new consumer trends, in particular online shopping and shopping from traders outside the EU.

The proposal to amend the Directive extends the scope of the Directive to these two areas, provides protection for consumers with limited digital literacy skills, provides protection in the event of misleading advertising, missing, unclear or misleading information, unfair terms or warranty rights. Consumer centres will play a greater role, which Member States must establish and communicate to the European Commission, which will publish the data. On the other hand, the proposal streamlines reporting obligations and reduces the administrative burden on operators.

The proposal to amend the Directive maintains the minimum harmonisation approach and adapts it to make it suitable for digital markets and cross-border ADR procedures.

The legal basis for the proposed revised ADR Directive is Article 114 of the Treaty on the Functioning of the EU (TFEU), having regard to Article 169 of the TFEU. The proposed amendment to the Directive will bring greater benefits to consumers and society in general, and thus more out-of-court dispute resolution, which should reduce the backlog of cases. The proposal to amend the Directive will have an indirect impact on the work of judges, greater in Member States where court-affiliated mediation programmes are well-functioning.

**6. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions** COM(2023)533 final

The Commission combats the problem of late payments in commercial transactions in Europe. Late payments have a major impact on SMEs (Small and medium-sized enterprises). One in four bankruptcies are due to invoices not being paid on time. One of the root causes of late payments is asymmetries in bargaining power between a large or more powerful client (debtor) and a smaller supplier (creditor). This often results in suppliers having to accept unfair payment terms and conditions. To address this problem, there is a proposal for a new Regulation on combating late payments, which revises the existing [Directive from 2011](#). The Regulation now streamlines the current provisions and introduces a single maximum payment term of 30 days for all commercial transactions, including B2B and transactions between public authorities and businesses. Contrary to the current Directive, under the new proposal the creditor cannot waive its right to claim interest for late payment. The payment of interest becomes an automatic obligation of the debtors when they pay late. The rate of late payment interest is +8% above the ECB reference rates.

**7. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL harmonising certain aspects of insolvency law** COM(2022)702 final 2022/0408 (COD)

Negotiations between the Member States and the European Commission on harmonizing the text are continuing, but they are not easy, as the regulations in this area differ considerably from one Member State to another. It is important that the new document will no longer be a Regulation, i.e. directly applicable, but a Directive, which Member States will have to implement in their legal systems. Special attention during the harmonisation process will also be paid to a new way of regulating challenge actions, and an important innovation will be the tracking of assets, including bank data, which bankruptcy administrators from across the European Union will have access to. Given the main guideline of the European Union in the last year, which is the construction of a Union of capital, the Commission wants to facilitate cross-border intervention, including bankruptcy and fair payment of creditors. Another innovation will be the so-called *prepack procedure*, which is supposed to be the sale of a (working) company as a whole before bankruptcy. It should be emphasized that the directive will still not contain a definition of insolvency at the European level, but it will be defined by the Member States themselves. Another important innovation will be the transfer of already concluded contracts and their continued validity in a new legal entity.

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