

Meeting EU (Pres CATS - COM - EEAS) - Council of Europe

Monday 12 June 2023, Council of Europe, Strasbourg

Points for written exchange of information - Contribution from the EU

Criminal law:

8. Prison/detention: latest developments on prison conditions and pre-trial detention, and specific developments at the CoE side (management of offenders with mental health disorder, and on AI aspects of penological work)

On 8 December 2022, the Commission adopted a Recommendation on the procedural rights of suspects and accused in pre-trial detention and on material detention conditions, following a request by the EU Ministers for EU guidance to improve detention conditions. (https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7570; ST 5129/23).

The Recommendation lays down minimum standards, a number of which are already presented in different international instruments, such as using pre-trial detention as a measure of last resort and introducing periodic reviews where its use is justified.

The Recommendation also establishes minimum standards for cell sizes, outdoors time, nutrition and healthcare conditions; as well as initiatives with a view to reintegration and social rehabilitation.

Given the vast number of recommendations developed by international organisations in the area of criminal detention, these may not always be easily accessible for individual judges and prosecutors in the Member States who have to assess detention conditions before taking their decisions, either in the context of a European arrest warrant (EAW) or at national level. Systemising and establishing priority areas of the relevant existing international standards, which are most relevant for judicial cooperation between EU Member States, has an added value and will facilitate the work of judicial authorities and lead to a more uniform approach within the EU.

The Recommendation was presented to the Justice Ministers during the Justice and Home Affairs Council of 9 December 2022. According to the Recommendation, the Member States should inform the Commission on their follow-up to this Recommendation within 18 months of its adoption. Based on this information, the Commission will monitor and assess the measures taken by Member States and submit a report to the European Parliament and to the Council within 24 months of its adoption.

Since 2016, the Commission is providing funding under the Justice programme to the Council of Europe, facilitating the exchange of best practices between national bodies monitoring detention conditions in the Member States and the European Committee for the prevention of torture and inhuman and degrading treatment (CPT) through the National Preventive Mechanisms (NPMs) network.

The Commission also continues to work closely with Council of Europe on this matter in the context of the funding provided under the EU Justice programme . An invitation letter to submit a proposal and a request for funding has been sent to the Council of Europe on 26 May 2023. The invitation includes the development of guidance and training for judicial professionals in order to raise awareness of the newly adopted Recommendation.

9. Protection of the environment through criminal law

The Council of Europe and the European Union are both revising their respective instruments to protect the environment through criminal law. This has become necessary, as both instruments have not been effective. Protection of the environment has become a priority for both the Council of Europe and the Union, as the destruction of our environment is progressing at rapid pace.

The Commission proposal to replace the 2008 Directive was adopted in December 2021 and is being negotiated in trilogues since 4 May 2023.

At the CoE, on 23 November 2022, under the authority of the Committee of Ministers of the Council of Europe and the European Committee on Crime Problems (CDPC), the new Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV) was set up and entrusted with the formal negotiations for a new Council of Europe Convention on the Protection of the Environment through Criminal Law, replacing the 1998 Convention (ETS No. 172). The new Convention will take into account a Feasibility Study on the Protection of the Environment through Criminal Law ‘CDPC(2021)9-Fin’ delivered in 2022, which underlined the appropriateness for a new Convention in this field. The Convention will a.o. define environmental criminal offences as in the new EU Directive, demand effective, dissuasive and proportionate sanctions for legal and natural persons, demand Member States to strengthen their national criminal law enforcement chains with regard to environmental crime and improve transnational cooperation as well as recognising the role of the civil society and environmental defenders in combating environmental crime.

The PC-ENV held its first meeting on 3 and 4 April 2023. The CoE has then distributed draft legislative text of a new Convention and has asked Member States for comments by 28 July 2023. The text will be debated at the second meeting of the PC-ENV from 16 to 18 October 2023.

As there are large overlaps between the new Environmental Crime Directive and the Convention, the Commission is currently preparing a Recommendation to the Council of the European Union to be authorised to negotiate the new Convention on behalf of the Union, in close cooperation with the EU Member States.

10. Cooperation in criminal matters: CoE's work on a 3rd protocol on MLA

New on the Agenda, we understand, that the CoE will inform the EU.

11. Commission's proposal for a new Regulation on the transfer of criminal proceedings

On 5 April 2023, the Commission adopted a legislative proposal for a Regulation on transfer of criminal proceedings in criminal matters. The Proposal sets out the procedure for the transfer of criminal proceedings from one Member State to another, where the objective of an efficient and proper administration of justice would be better served by conducting criminal proceedings in the other Member State. The Proposal sets out, among other elements:

- a list of common criteria for transfer of proceedings;
- a uniform template for requests;
- an exhaustive list of grounds for refusing the transfer of proceedings;
- a time limit for taking a decision on the transfer of proceedings;
- rules on costs for translation and on the effects of the transfer of proceedings;
- obligations with respect to the rights for the suspects and accused persons, as well as victims;
- rules on the use of a cross-border digital channel for communication between competent authorities.

In accordance with Art. 31(1) of the proposal, it would replace the corresponding provisions of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, applicable between the Member States bound by this Regulation. This Regulation would not affect the application of those Conventions between Member States and third States.

The proposal is currently being examined by the Council preparatory bodies.

12. Criminal justice in cyberspace, e-evidence

In general

European policy and legislation on criminal justice in cyberspace is at a key moment of its development. So far the European Union has worked very closely with the Council of Europe. Much of the Union acquis – such as the Directive on Attacks against information systems – is based on the 2001 Council of Europe Budapest Convention. Currently, 68 States are party to the Budapest Convention, including 26 MS (all MS but IE) and the US.

The Second Additional Protocol to the Budapest Convention

The Second Additional Protocol lays down provisions for a more effective cross-border access to e-evidence and was adopted by the Council of Europe Committee of Ministers on 17 November 2021. This international instrument provides for tools for direct access to subscriber information held by service providers located abroad and enhances current forms of mutual legal assistance. Therefore, it can have a wide application across the globe. On 14 February, the Council of the EU adopted a Decision to authorise EU Member States to ratify, in the interest of the EU, the Second Additional Protocol, after the European Parliament gave its consent. So far, 18 EU Member States have signed the Protocol: Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Spain and Sweden. 37 States have signed the Second Additional Protocol and one has ratified it. The Protocol will enter into force once at least five States have ratified it.

Negotiations on a United Nations Convention on Cybercrime

Based on the 29 March 2022 Recommendation from the Commission, the Council adopted on 24 May 2022 a Decision to authorise the Commission to participate, on behalf of the Union, in the negotiations on a United Nations Convention on Cybercrime. The Commission recently participated in the 5th negotiating session, which took place from 11-21 April in Vienna, on the basis of its negotiating mandate. The next negotiating session will take place between 21 August – 1 September 2023 in New York.

A key objective for the Union in these negotiations is to ensure that the future Convention is compatible with and complements existing international instruments, including the Council of Europe Budapest Convention on Cybercrime and its additional protocols. At the same time, it should ensure that EU Member States can respect and protect fundamental rights and freedoms, and are able to comply with legal requirements for international data transfers in line with EU law, including data protection requirements. The EU is strongly committed to the Budapest Convention as the main multilateral framework for the fight against cybercrime. As the UN negotiations move towards the concluding phase, the EU will strive to ensure that the future UN Convention provides for those States ratifying both Conventions to at least have the preference of using the Budapest Convention, and in particular its Second Additional Protocol, in their mutual dealings.

European Union e-evidence legislation

The Commission proposed a legislative package on access to electronic evidence in April 2018. This consisted of a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

The main purpose of the Regulation is to improve cross-border access to e-evidence by creating a legal framework for production and preservation orders to be addressed directly to the service providers' legal representatives without the intervention of an authority of the Member State where their legal representative is located. The main purpose of the Directive is to introduce harmonised rules on legal representatives of providers for the purpose of gathering evidence in criminal proceedings.

The new rules in the Regulation will provide judicial authorities in one Member State with a reliable channel to directly request disclosure of data from service providers in another Member State, while establishing strong safeguards to ensure a high level of protection of the rights of the persons affected. There is a limited set of situations where a second Member State needs to be involved, namely in cases where a person does not reside in the issuing State, or when the offence has not been committed there. The notified authority can raise certain grounds for refusal, such as protection of fundamental rights or of immunities and privileges. Service providers will have 10 days to respond to requests and eight hours in emergency cases.

The Directive will require all services providers offering services in the Union to designate a legal representative or a designated establishment to receive, comply with, and enforce requests to gather electronic evidence.

The European Parliament and the Council are expected to formally adopt the Regulation and the Directive respectively on 13 and 27 June 2023. The Regulation will enter into application three years after its entry into force. Member States will have two and a half years to transpose the Directive into national law.

Owing to the upcoming adoption of EU law on e-Evidence, the EU and the U.S. relaunched their negotiation of an international agreement on e-Evidence last March. The European Commission aims to ensure the effectiveness of the EU internal e-evidence rules by lifting barriers created by blocking statutes existing in the U.S., which prevent U.S.-based companies from sharing content data directly with European authorities.

13. Hate speech and hate crime: normative initiatives in the CoE and in the EU

Recent initiatives and cooperation between Council of Europe and European Commission on policy work:

Combatting hate speech and hate crime remains a major priority for the European Union. Racist and xenophobic hate crimes and hate speech are already prohibited under EU law, under the Framework Decision on combating racism and xenophobia.

To more effectively combat hate speech and hate crime, the Commission presented, on 9th December 2021, Communication inviting the Council to adopt a decision to extend the current list of 'EU crimes' in Article 83(1) TFEU to hate crimes and hate speech.

Upon adoption of such a decision by the Council - by unanimity and with the European Parliament's consent - the Commission will have the possibility to propose secondary legislation to harmonise the criminalisation of hate speech and hate crime.

Currently, it is for the Council to advance towards a possible decision and very few Member States are blocking the unanimity required.

In addition to the work on the legal framework, the Commission has in place an effective toolbox to support Member States to respond to hate speech and hate crime. In order to tackle hate speech online, a Code of conduct was agreed in 2016 with the major social media platforms. The results of the 2022 evaluation on the Code were published on 24 November and show a slowdown in the progress made so far by the platforms on notice-and-action. The Code of conduct is part of broader policy work under the High Level Group on combating hate speech and hate crime, which brings together national authorities, civil society and international organizations. The Council of Europe has greatly contributed over the years to the work of the High Level Group, in particular in the area of countering hate speech online. The Commission was involved in the drafting and has welcomed the recent Council of Europe recommendation on combating hate speech adopted in 2022, and is currently involved in the drafting process of the Council of Europe recommendation on hate crime.

The work of the Council of Europe in this field serves to consolidate the jurisprudence of the Court of Human Rights, is supported by the important monitoring activities by ECRI and is closely connected to the Commission's work on combating hate speech online. The Commission will support the Council of Europe through funding under the Citizens, Equality, Rights and Values to undertake knowledge sharing and awareness raising activities involving civil society organisations and experts in the area of combating hate speech online.

It needs to be noted that online misogynist hate speech is expected to be criminalised at EU level in the context of the future Directive on Violence Against Women and Domestic Violence. The Council will reach a general approach on this initiative on 9 June 2023 and trilogues are about to start.

14. Recent developments on counter-terrorism and organised crime policies/norms

A changing threat landscape

Since the attacks in Paris and Brussels in 2015 and 2016, the terrorism threat to Europe has remained high, but the threat landscape has changed. **Lone actors with no clear affiliation to a specific terrorist group are assessed to pose the biggest threat today.** The threat from Islamist/Jihadist terrorism (Daesh/Al Qaeda) still poses the main threat and we need to keep up our vigilance. Nevertheless, in a number of Member States, violent right-wing extremism and terrorism now prevail. Violent anti-system extremism continues to be an issue of concern, often rooted in conspiracy narratives or blurry ideological motives, operating in fluid networks, quick at adapting, reshaping, and exploiting crises, thus posing a more complex threat.

Technological developments, including the extensive use of encrypted or otherwise hidden means of communication, **pose a particular challenge for law enforcement and intelligence services.** So does the use of cryptocurrency and blockchain to enhance online anonymity. Other technological challenges are drones, 3D-printed weapons, and the Metaverse.

The **potential medium- and long-term effects of the Russian aggression against Ukraine**, notably the flow of weapons and explosives and the return of trained violent extremist foreign volunteers from the war, will need monitoring. A prolonged war could also lead to a broadening of the threat that potentially could have implications also on the threat from violent extremism and terrorism through for example intensified hybrid activities targeting Europe, such as disinformation aimed at fuelling polarisation and extremist sentiments.

The internal security dialogue with Ukraine

The structured dialogue on internal security with Ukraine launched in autumn 2022 (“Team Europe”-approach (EU CTC, COM, EEAS), aims at mitigating potential security implications of the Russian aggression. It is a joint process seeking to ensure a continuous dialogue aimed at enhanced operational cooperation within four key challenges for the internal security of both the EU and Ukraine:

- border security,
- firearms trafficking,
- violent extremist foreign volunteers. and
- other security risks.

The impact on organised crime and terrorism is still limited, though criminals are active in seeking new opportunities presented by the war, and there had been an increase in cyberattacks and money laundering activities. Both Europol, Eurojust and Frontex are closely involved on the ground. Notably, there has been progress on supporting the prevention, detection and fight against the trafficking of small arms and light weapons (SALW) into the EU. The next internal security dialogue is still to be scheduled.

The increased number of teenagers/minors being radicalised and involved in attack plotting in recent years is a growing concern. Online radicalisation and the extensive spread of violent extremist content online is a major challenge. People with mental health problems are a particularly desirable target for extremist recruiters and propagandists, which makes them an especially vulnerable group. The negative consequences of algorithmic amplification, making violent extremist content more prevalent, and the lack of sufficient content moderation by some platforms are worrying and require more engagement, in particular from the internet industry. The larger platforms have become better at moderating, but their efforts remain insufficient while new, smaller platforms, with minimal or no moderation, are proliferating.

Influence by state and non-state actors outside the EU is impacting radicalisation, and there are a number of examples of undesired foreign funding contributing to radicalisation and polarisation in Europe. Our collective ability to detect and hinder radicalising structures in the European Union from misusing public funds needs to be strengthened. Organisations that do not act in accordance with relevant legislation and fundamental rights and freedoms should not be supported by public funding, neither at national nor European level.

In the coming years, a large number of radicalised prison inmates, including foreign terrorist fighters, will be released after serving their sentences in European prisons. This will need to be managed effectively since the release of radicalised inmates has resulted in attacks in the past and will continue to contribute to an increased terrorist threat.]

The Counter Terrorism Agenda:

The European Commission, which published on 9 December 2020 a Communication on the Counter-Terrorism Agenda of the EU, is currently working on its implementation and its four different axes (Anticipate, Prevent, Protect and Respond).

The Counter Terrorism Register proposal

This legislation will strengthen Eurojust's role in counter terrorism by enabling Eurojust to identify links between parallel cross-border investigations and prosecutions regarding terrorist offences more efficiently and to proactively provide feedback on these links to Member States. Political agreement on the proposal to amend the Eurojust Regulation as regards the digital information exchange in terrorism cases has been reached in December 2022 between European Parliament, Commission and Council and is expected to be adopted by the co-legislators this summer 2023. In addition, Eurojust participates in the Council of Europe working group to prepare the new Council of Europe counter terrorism Strategy. The draft strategy has been discussed during the plenary meeting of the Council of Europe Committee on Counter Terrorism (CDCT) which took place 30 November-2 December.

Revision of the definition of terrorism in Council of Europe Convention on the prevention of terrorism.

The European Commission has been closely following the discussions undertaken by the Council of Europe Committee on Counter-Terrorism (CDCT) with regards to the revision of the definition of terrorism in the Convention on the prevention of terrorism (CETS 196). As the EU Directive on combating terrorism (EU) 2017/541 provides for a definition of terrorist offences in Article 3, the Commission obtained an authorisation from the Council of the EU to participate on behalf of the European Union in the negotiations on the amendment or revision of CETS 196 as regards to the modification of the definition of terrorist offences. The Council Decision was adopted on 15 May 2023. COPEN was nominated as the responsible Council Working Party for the consultation of the Member States on negotiating positions and reporting from negotiating sessions. The first negotiating session took place on 24 May at the 10th CDCT Plenary in Strasbourg. The Commission put forward a text proposal for the modified definition, supported by EU Member States. This text proposal was accepted to be used as the working basis for the negotiations. States parties to CETS 196 were invited to submit their written comments on this text by 30 September. The next negotiating session is scheduled for mid-December 2023.

The EU Centre of Expertise for Victims of Terrorism which was established by COM as a two-year pilot project in January 2020 to offer expertise, guidance and support to national authorities and victim support organisations was “re-launched” on 12 May 2023..

Critical entities resilience proposal:

Political agreement has been reached on the Directive on the resilience of critical entities (CER Directive) which is expected to enter into force in early 2023. It will enhance the resilience of critical entities providing essential services in key 11 sectors (e.g. energy, transport, banking, digital infrastructure, health, environment, water) against a range of threats, including terrorist attacks or sabotage.

Explosives precursors:

Explosives precursors are chemical substances that can be used for legitimate purposes, but that can also be misused to manufacture homemade explosives. Such explosives have been used in many of the recent terrorist attacks in the EU, including those in Paris in 2015, Brussels in 2016, Manchester and Parsons Green in 2017, and Lyon in 2019. The EU has rules in place since 2013 to prevent the misuse of explosives precursors, focusing on restricting access for members of the general public, and reporting of suspicious transactions. In 2019, these rules were further strengthened. A new, stricter legislative framework applies since 1 February 2021. Among others a comprehensive monitoring programme has been established which allows the Commission and the Member States to closely follow implementation and enforcement of the new legislation.

Western Balkans:

The Joint Action Plan on Counterterrorism for the Western Balkans was signed in October 2018 at the EU-Western Balkans JHA ministerial meeting. In 2019 six bilateral implementing arrangements were signed with the WB partners including tailored specific actions. The validity of the Joint Action Plan was reaffirmed in October 2020 and again in December 2021.

The Joint Action Plan has proved a very useful framework for cooperation on counterterrorism with the Western Balkan partners and its objectives remain relevant and valid. The Joint Action Plan remains our main framework and is an excellent example of cooperation between the EU and its closest partners on combating terrorism and violent extremism - fully embedded in the enlargement perspective. The EU and the partners demonstrated strong engagement. From a policy point of view, we consider this a success story.

Organised crime

The Commission adopted on 14th April 2021 the EU Strategy to tackle Organised Crime 2021-2025, together with a Strategy on the **Trafficking in Human Beings (THB)**. The Strategy is based on trends in the organised crime landscape and sets out actions, including legislative measures, along four priorities: (1) Boosting law enforcement and judicial cooperation; (2) Effective investigations to tackle criminal networks and high-priority crimes; (3) Eliminate criminal profits to fight infiltration of legal economy; (4) Make law enforcement and the judiciary fit for the digital age.

As part of the Strategy, a set of legislative proposals have been proposed by the Commission, such as the proposals for a Police Cooperation Code or on asset recovery and confiscation, or adopted by the co-legislators, such as the Europol Regulation.

A Common Anti-trafficking Plan to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine was developed in May 2022 and implemented under the lead of the EU Anti-Trafficking Coordinator, in close cooperation with Member States, EU Agencies and civil society organisations. All of the actions of the Plan have either been completed or are ongoing.

The THB team will participate in the Council of Europe/OSCE meeting of the National Anti-trafficking Coordinators and Rapporteurs in June. The EU Anti-Trafficking Coordinator is planning to meet with the Council of Europe's Group of Expert on Actions against Trafficking in Human Beings (to be confirmed).

On 8th December 2021 the Commission adopted the **EU Police Cooperation package**, aimed at enhancing law enforcement cooperation across Member States and providing police officers more modern tools for information exchange. The package includes the three following proposals. Firstly, a Recommendation on operational police cooperation to create shared standards for cooperation between police officers participating in joint patrols, and acting in the territory of another Member State. Secondly, a Directive with new rules on information exchange between law enforcement authorities of Member States.

Lastly, revised rules on automated data exchange for police cooperation under the 'Prüm' framework, to facilitate and accelerate data exchange of DNA, fingerprints and vehicle registration data, but also new data categories such as facial images of suspects and convicted criminals and police records.

On 25th May 2022 the Commission adopted a proposal for a **Directive on asset recovery and confiscation**. The aim of this proposal is to tackle the illicit revenues of organised crime groups and disrupt their business model. The proposal sets out measures to reinforce the tracing and identification of assets linked to criminal activities, ensure a more efficient management of frozen assets and enlarge confiscation possibilities. This includes reinforced possibilities for non-conviction based confiscation and a new model to enable the confiscation of unexplained wealth linked to criminal activities, in line with the 2018 Resolution of the Council of Europe Parliamentary Assembly inviting Member States to develop confiscation models that facilitate the confiscation of illegal assets.

The **revised Europol Regulation** was formally adopted beginning of June 2022 and entered into force on 28th June. The revised mandate will reinforce the capacity of the Agency to better support Member States in their fight against new threats and *modus operandi*, as well as to reinforce its cooperation with third countries. Under the new rules, Europol will have greater capacity for cooperation with private parties, process large and complex data sets in support of criminal investigations, support Member States in the use of emerging technologies, or propose a Member State to launch an investigation for crimes affecting a common interest covered by a Union policy.

15. Smuggling of migrants

Work by the Migrant Smuggling Focus Group of prosecutors and investigative judges

In October 2022, Eurojust hosted the largest meeting ever of prosecutors who specialise in tackling migrant smuggling. In addition to participants from all EU Member States, prosecutors from the Western Balkans, Western Africa and the South Partner Countries (SPCs) shared experiences and best practices. The 2022 Eurojust Annual Meeting on Migrant Smuggling provided participants with an overview of the latest developments in people smugglers' operational models and routes. A wide range of international practitioners from 34 countries, including EU Member States and third countries, as well as specialists from Europol, the European Commission and UNODC, presented updates on the latest people smuggling techniques and how to improve international judicial cooperation. One insight noted is that organised criminal groups are extremely flexible, and changes in one smuggling route (e.g. the Western Balkans route impacted by the war in Ukraine) has repercussions on others (i.e. higher migratory pressure in Greece and Cyprus).

Enhancing cooperation with third countries was a key point of discussion. Participants discussed challenges for international judicial cooperation, including scarce resources and differences in legal frameworks (e.g. lack of a harmonised legal definition of migrant smuggling or differences in the weighting of the element of gain in migrant smuggling offences). Building up trust and direct contact between judicial practitioners across borders was identified as the best solution to overcome such challenges.

Eurojust facilitates this cooperation at the institutional level through the EuroMed Justice Programme (EMJ) hosted by the Agency since 2020, and the more recent Western Balkans Criminal Justice (WBCJ) project, hosted by Eurojust since 2022.

Another focus of the meeting's agenda was how to investigate the financial streams behind migrant smuggling groups that increasingly use cryptocurrencies. The alternative hawala banking system (based on trust and no official documentation), was also discussed as a means often used for transactions for migrant smuggling services. Participants examined cooperation via public-private partnerships, as well as the rise of so-called 'digital smuggling' (the use of social networks to publicise migrant smuggling services).

Work in the Council

On 25 November 2022 the Standing Committee on Operational Cooperation on Internal Security (COSI) on counteracting migrant smuggling discussed areas of actions to strengthen responses to migrant smuggling as part of a broader discussion on resilience of the Schengen area. The outcome of the discussion was presented during the Justice and Home Affairs Council on 8-9 December 2022.

Through the priority "Migrant Smuggling" of the EMPACT cycle (2022-2025) and its dedicated operational action plan (OAP), EU Member States, EU Institutions, Bodies and Agencies, as well as partner countries, coordinate their approaches, design and implement operational actions to fight against criminal networks involved in migrant smuggling. Since 2019, Eurojust has increased its participation in the EMPACT OAP "Migrant Smuggling", both quantitatively and qualitatively. In coordination with the Member State's representatives, in 2023, Eurojust is participating in 18 operational actions of this plan, co-leading 11 of them.

16. The CoE's "Medicrime" Convention: latest developments

The 'Medicrime' Convention on Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health – no new developments since December 2022.

On 28 October 2011, the Council of Europe approved the Convention on Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (MEDICRIME Convention). The Convention aims to prevent and combat threats to public health by criminalizing certain acts, including counterfeiting, protecting the rights of victims of the crimes set out therein and promoting national and international cooperation.

The Convention provides a framework for international co-operation to safeguard public health and target the criminal behaviour of those who, like criminal networks, take advantage of the loopholes in our systems, and is particularly important in times of the COVID-19 pandemic. It is open for accession by third States and international organisations.

During its term in office as President of the Council of the EU (1 January – 30 June 2021), Portugal has drawn considerable attention to the Medicrime Convention. At the informal JHA of 29 January 2021, a preliminary exchange of views among Ministers of Justice took place regarding the need for further EU action in the fight against counterfeiting, and notably the need for the EU and its Member States to accede to the Medicrime Convention.

So far, seven Member States have signed and ratified the MEDICRIME Convention (Belgium, Croatia, France, Hungary, Portugal, Slovenia, Spain). Nine other Member States have signed but not ratified the Convention (Austria, Cyprus, Denmark, Finland, Germany, Greece, Italy, Lithuania, Luxembourg).

In the EU strategy to tackle organised crime (COM(2021) 170 of 14 April 2021), counterfeiting is mentioned as one of the areas in which efforts need to be stepped up, including a call on Member States to sign and ratify the Medicrime Convention. The Commission announced that it will explore the possibility for the Union to accede to the Council of Europe Medicrime Convention. That assessment is pending.

Non-criminal law:

17. Respect for the Rule of Law

The Commission's Rule of Law Report

The preparations for the 2023 Rule of Law Report, which is set to be adopted in early July 2023, are well-advanced. The 2023 Report will in particular include an assessment of the follow-up to the recommendations to Member States, which were issued for the first time in 2022.

The good cooperation with the Council of Europe in this context has continued. As in previous years, the Commission has also received a contribution from the Council of Europe for the Report. In the framework of the preparation of the 2023 Rule of Law Report, the Commission services have also met at technical level in early February with the Venice Commission, the Group of States against Corruption, the Department for the Execution of Judgments of the Court of Human Rights and the Expert Council on NGO law.

It is an established practice of the Rule of Law Report that the Commission examines the national rules both in terms of EU law, namely the case law of the Court of Justice, as well as regards European standards such as Committee of Ministers' Recommendations, European Court of Human Rights judgments, and Venice Commission's opinions. The recommendations also make references to these standards, as relevant.

Work in the Council

Three horizontal discussions took place during the General Affairs Council, on 13 October 2020, 19 October 2021 and 20 September 2022.

In addition, six country-specific discussions took place so far, with all Member States now having been the subject of the discussions, namely: BE, BG, CZ, DK and EE (on 17 November 2020); DE, IE, EL, ES and FR (on 20 April 2021); HR, IT, CY, LV, LT (on 23 November 2021); LU, HU, MT, NL, AT (on 12 April 2022); PL, PT, RO, SI and SE (on 13 December 2022) and SK, FI, BE, BG, CZ (on 21 March 2023).

Two Article 7(1) TEU procedures are ongoing, against Hungary and Poland. The sixth hearing of Poland and Hungary took place in the General Affairs Council on 30 May 2023.

Concerning Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget – which relates to breaches of the principles of the rule of law – the Commission triggered a procedure against Hungary on 27 April 2022. On 30 November 2022, the Commission presented an assessment under the conditionality procedure for Hungary. The Commission found that, notwithstanding steps taken, there is still a continued risk to the EU budget given that the remedial measures that still need to be fulfilled are of a structural and horizontal nature. On 15 December 2022, on this basis the Council adopted measures to protect the Union budget from breaches of the principles of the rule of law in Hungary under the Conditionality Regulation. The Council suspended 55% of the commitments under three operational programmes in cohesion policy. The suspension amounts to approximately EUR 6.3 billion in total for the period 2021-2027. The Council also prohibited any new legal commitments with public interest trusts.

In this context, COM would like to present its Anti-Corruption package of 3 May 2023:

Corruption threatens our democracies and erodes trust in our institutions. Speaking just about the EU, conservative estimates value the cost of corruption in the EU alone 120 billion euro each year. But corruption is also a threat to security. Daphne Caruana Galizia was trying to unveil corruption when she was murdered.

- The fight against corruption is one that the Commission takes very seriously. In the 2022 State of the Union address, Ursula von der Leyen announced that the Commission would present an anti-corruption package in order to strengthen EU action against corruption.
- And we delivered on that promise. The European Commission's Anti-corruption Package adopted on 03 May is a comprehensive set of measures to fight corruption and nurture integrity.
- The package includes a legislative proposal for a Directive to update the criminal law approach to corruption in the EU Member States. Currently, definitions and penalties related to corruption differ too much among the EU Member States. This makes cross-border investigations more difficult and creates loopholes.
- With our proposal we close the gaps and propose that all kinds of corruption are criminalised, including trading in influence, abuse of power and obstruction of justice.
- It also lays out a set of common penalty levels and aggravating and mitigating circumstances. For the first time at EU level, the proposal brings together public and private sector corruption in one legal act.
- The proposal aims to provide law enforcement, prosecution and judiciary with the tools they need to combat corruption, such as resources, investigative tools, and a sufficiently long statute of limitations to bring proceedings to an end. It also will ensure that immunity or privileges from prosecution can be lifted by an effective and transparent process in a reasonable period.
- But we do not only need to fight corruption when it appears, as before that happens we need to prevent it. Prevention helps to create a culture of integrity, in which corruption and impunity are not tolerated. It has wider benefits in promoting public trust and managing the conduct of public officials.

- The Directive requires Member States to take action such as launching information and awareness-raising campaigns, and research and education programmes, and encourages civil society and community-based organisations to participate in anti-corruption efforts.
 - The anti-corruption package also includes a Communication on the fight against corruption that outlines the overall EU actions in both fighting and preventing corruption. The Communication also sets out potential longer-term actions.
 - The workstreams set out in the Communication represent a major EU commitment to further holistic, comprehensive and consistent efforts to combat corruption and to work towards a strategic approach with an EU Anti-corruption Strategy.
 - It also establishes an EU network against corruption, to foster corruption prevention efforts across the EU. It will be tasked to develop best practices and practical guidance. The network will hold its first meeting on 20 September this year, and will bring together all relevant stakeholders, including practitioners, experts and researchers, as well as representatives of civil society and international organisations, including GRECO, and other networks.
 - Lastly, jointly with the Commission, the High Representative for Foreign Affairs Josep Borrell has proposed a new legal act establishing a sanctions' regime to address serious cases corruption in third countries, under the Common Foreign and Security Policy. The proposal aims to target serious acts of corruption worldwide, to complement our external anti-corruption toolbox. We provide for a travel ban, and the freezing of funds and economic resources for persons, entities or bodies responsible for serious acts of corruption worldwide.
 - Fighting corruption within the EU's borders is important for the credibility of EU action in the international arena. Deepened engagement in multilateral fora such as GRECO will help the EU's contribution in building strong and coherent understanding of why effective integrity and anti-corruption policies are so central to security and prosperity worldwide.
- As announced in the anti-corruption Communication, the Commission will continue discussing with the other institutions the possibility of moving toward full participation of the EU in GRECO.
- The Commission enormously appreciate the cooperation with GRECO in the fight against corruption and expect that this package will allow us to further deepen our joint efforts.

18. Profession of lawyers: normative initiatives in the CoE and in the EU

General

Within the European Union, the profession of lawyer has already been regulated from the point of view of the freedom to provide services, and indirectly in criminal directives, such as the Directive on the right to information in criminal proceedings, or the Directive on the right of access to a lawyer. However, there are currently no specific rules at EU level governing the status or ethics of the legal profession and each Member State is free to regulate its practice.

For several years, the Commission has presented indicators on the independence of lawyers and bar associations in the EU Justice Scoreboard.

The Commission is closely monitoring reforms affecting the professional activity of lawyers and any developments that may affect their independence or the proper performance of their duties.

For the preparation of the 2023 Rule of Law Report, the Commission was in direct contact and exchange with lawyers and bar associations, both at national and EU level. Relevant developments affecting the professional activity of lawyers will be taken into account in the 2023 Rule of Law Report.

The Commission is furthermore monitoring developments in the case law of the Court of Justice concerning important aspects of the independent and effective exercise of the legal profession, such as the legal professional privilege. In this context, it is noted that recent case-law of the Court supports strengthened protection for legal professional privilege, whether the legal services rendered by the lawyer are linked to legal proceedings (i.e. representation services) or not (i.e. advisory services).

Work in the Council

During the JHA Council on 4 March 2022, Ministers had an exchange of views on the issue of access to a lawyer and its role in protecting the rule of law. They discussed the challenges faced by lawyers in the EU in their efforts to uphold the rule of law and how the EU could help them do so, as well as whether a European statute for lawyers guaranteeing an independent practice could contribute to guaranteeing respect for the rule of law.

All Member States agreed on the essential role played by lawyers in guaranteeing access to justice, defending citizens and businesses and respecting the rule of law and stressed the importance of guaranteeing independence and the protection of professional secrecy. Some Member States added that they must be protected against abusive checks and disciplinary measures or threats from organized crime.

Following the work in the Council of Europe

The EU is following with interest the work being developed by the European Committee for Legal Cooperation regarding the creation of a new instrument on the profession of lawyer, following the recommendation by the Parliamentary Assembly of the Council of Europe.

At a discussion held in March 2022, it appeared that a majority of the Member States were in favour of thinking about a European statute for lawyers, even if many reservations as to the precise set-up, the added value and the nature of such an instrument were expressed.

19. SLAPPs (Strategic lawsuits against public participation)

As part of the action under the **European Democracy Action Plan**, the Commission's **anti-SLAPP initiative** was adopted on 27 April 2022, with the aim to strengthen **media pluralism and media freedom** in the European Union.

The initiative combines a legislative component (**Directive**) in the field of civil justice and a horizontal non-legislative component (**Commission Recommendation**), which allows it to provide comprehensive protection to EU journalists and human rights defenders.

The proposal is meant to **protect journalists, human rights defenders** and others against Strategic Lawsuits against Public Participation (SLAPP). At the same time, it serves as a **countermeasure** in the effort to prevent SLAPP from growing roots in the EU.

The proposed Directive is limited to **civil matters having cross-border implications** due to the limitations of the legal basis. It enables judges to swiftly dismiss manifestly unfounded lawsuits against journalists, human rights defenders and others. It also establishes other **procedural safeguards and remedies**, such as award of costs and dissuasive penalties for launching abusive lawsuits. Finally, it prevents the recognition and enforcement of third-country SLAPP judgments in the EU.

Council negotiations on the proposed Directive started in May 2022 and were concluded at technical level in April 2023. The Swedish Presidency aims to reach a General Approach on it at the 9 June JHA Council. The adoption of the EP position is expected on 11 July 2023 and the inter-institutional negotiations towards the final adoption of the Directive are expected to start right after, on 12 July 2023.

The **Commission Recommendation** is a non-binding instrument. Under one of the recommendations, Member States are invited to submit statistical data on national SLAPP cases annually.

The Commission Recommendation applies to all types of domestic cases, civil, criminal, and administrative alike. Member States are recommended to ensure that there are support mechanisms in place for SLAPPs targets. To this end, they should identify and buttress organisations that provide guidance and support for such targets by making use of national or Union funding to provide them with financial support and by facilitating the exchange of information and best practices between such organisations.

Access to such support organisations should be facilitated through the establishment of national focal points in each Member State that gather and share information on all organisations that provide guidance and support for SLAPP targets. Each of these focal points is intended to be visible to anyone targeted by SLAPP and to allow them to know where they can turn to find help and support.

The Commission is following closely the work of the Council of Europe's Committee of Experts on Strategic Lawsuits against Public Participation.

19. Victims' rights

The protection of the rights of victims of crime, including rights of victims of terrorism is an area in which both the European Union and the Council of Europe are very active. Strengthening our co-operation in this area is in the interest of both Parties.

It is particularly valid considering the recent developments, notably the adoption by the Council of Europe of Recommendations on Victims' Rights in March this year and the upcoming revision of the Victims' Rights Directive, planned for summer this year. The adoption of the Commission's proposal for revision of the Victims' Rights Directive is planned for 5 of July.

The revision of the Victims' Rights Directive has been found necessary to remedy numerous shortcomings demonstrated in the evaluation of the Directive, adopted in June 2022.

With the revision, we aim to ensure that: 1) victims have the information they need to be able to exercise their rights, 2) victims' needs for protection are met accordingly 3) victims are supported by specialist support services in accordance with their needs, 4) victims can actively participate in criminal justice 5) victims have more adequate access to compensation.

In parallel to the revision of the Victims' Rights Directive, the Commission is working on ensuring that **victims of war crimes who fled Ukraine to the EU receive support and protection in accordance with their individual needs.**

In addition, specialised rules are being adopted for victims of gender-based violence, in line with the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence (see below).

At the Council of Europe level, the revision of the Council of Europe Recommendation on Victims' Rights has updated them to the current EU standards – mostly covered by the Victims' Rights Directive. Nonetheless several additions that go beyond the current standards of the Victims' Rights Directive such as referrals from the police to victim support organisations and right to remedy are also envisaged within the revision of the Directive.

Moreover, at European Union level, we have crossed the halfway point of the implementation of [the EU Strategy on victims' rights \(2020-2025\)](#), adopted in June 2020. A detailed assessment of the state of play of the Strategy took place during the High-level Plenary Meeting of the Victims' Rights Platform, organised by the Commission in Brussels on 17 of April. The representative of the Council of Europe participated in the event. We have already achieved most of its actions.

Important work has been done on **the implementation of [the Victims' Rights Directive](#)**

The Commission has successfully launched the **EU-wide campaign on victims' rights in February 2023**. The campaign aims at raising awareness on victims' rights and is expected to result in a better reliance on victim support services and improved crime reporting among the population affected by the campaign.

The Commission has also launched the second phase of **the EU Centre of Expertise for Victims of Terrorism in February 2023**. This phase of the Centre will operate for the next two years with a possibility of prolongation for additional two years.

At the Council of Europe level, the revision of the Council of Europe Recommendation on Victims' Rights has updated them to the current EU standards – mostly covered by the Victims' Rights Directive. Nonetheless several additions that go beyond the current standards of the Victims' Rights Directive such as referrals from the police to victim support organisations and right to remedy are also envisaged within the upcoming revision of the Directive.

20. Violence against women

On 8 March 2022, at the occasion of International Women's Day, the Commission presented a proposal for a **Directive on combating violence against women and domestic violence**. The aim of this proposal is to implement the standards of the Istanbul Convention in EU law, in certain areas of EU competence. The future Directive is, however, not expected to cover all matters contained in the Istanbul Convention under EU competence, like e.g., matters on asylum and non-refoulement. Accession to the Convention therefore remains necessary to ensure the application of all its relevant provisions in the EU.

The Council is expected to adopt a general approach on the initiative on 9 June 2023. The competent committees of the European Parliament (LIBE and FEMM) will vote on the draft Report on 27 June. The plenary vote is expected in July (13 July tbc).

The European Parliament and the Council are expected to enter inter-institutional negotiations in July. The Commission hopes for a quick adoption of an ambitious text.

21. Trafficking in cultural goods – CoE “Nicosia” Convention: cf. draft Council conclusions

Adopted in 2017, the Council of Europe Convention on Offences Relating to Cultural Property (Nicosia Convention) is the first international treaty dealing with the criminalisation of the illicit trafficking of cultural property. Its entry into force was on 1 April 2022, following the ratification by 5 countries (Cyprus, Latvia, Hungary, Greece, Italy). Many EU Member States have not signed the Convention (it was only signed by Cyprus, Latvia, Hungary, Greece, Italy, Portugal and Slovenia). The EU is not a signatory of the Convention either.

The EU welcomes the entry into force of the Nicosia Convention of 1 April 2022 and agrees that it will strengthen crime prevention and criminal justice responses to all criminal offences relating to the illicit trafficking of cultural property.

In order to foster the implementation of the Nicosia Convention in the EU, the EU Action Plan against trafficking in cultural goods, adopted on 13 December 2022, explicitly encourages Member States to sign, ratify and implement the Nicosia Convention. Moreover, to get a better overview on the adoption measures set out in the Nicosia Convention throughout the EU, according to the Action Plan, the Commission is conducting a mapping of Member States' national legislation criminalising the illicit trafficking of cultural property and the implementation of the Nicosia Convention.

The EU Member States have adopted Council Conclusions on the fight against trafficking in cultural goods on 24 May 2023. In these Council Conclusions, the EU Member States welcome the EU Action Plan, and commit to consider signing, ratifying and implementing the Council of Europe Nicosia Convention on Offences relating to Cultural Property, or implementing its principles where this is considered more appropriate.

In addition Member States should encourage the setting up of a EU network of archaeologist or art specialists and consider the establishment and financing of a contact point of the CULTNET network at Europol. Ultimately, Member States required the Commission to study the feasibility of a compulsory centralised and digitalised register.

22. Normative development on AI including in the field of criminal law/detention

The negotiations on the **proposal for a Regulation on an Artificial Intelligence** (8115/21) are progressing well and are expected to be concluded within the current mandate of the European Parliament.

On 6 December 2022, the **Council** adopted its General approach on the AI Act. The compromise text largely preserves the overall architecture of the Commission's proposal. Among the several points on which the Council has amended the Commission's proposal the following can be mentioned: the definition of an AI system and of remote biometric identification; the scope of the prohibitions; the list of high risk AI systems and the scope of the risk based approach, including obligations for general purpose AI systems; the governance system and AI regulatory sandboxes

In the **European Parliament**, the lead EP committees, IMCO and LIBE adopted their draft report on the AI Act on 11 May 2023. This negotiating mandate still needs to be endorsed in Plenary (14 June). MEPs propose amendments regarding, in particular; the extension of the list of prohibited AI practices (predictive policing systems and emotion recognition systems); the classification of an AI system as high-risk AI systems if it posed a significant risk of harm to the health, safety, fundamental rights, and the environment; new general principles that apply to all AI models and sustainability for high risk AI; new obligations for providers of general-purpose AI and increase transparency for generative AI; extra safeguards for the process of sensitive data.

Regarding the draft **convention of the Council of Europe**, following the Council Decision which authorises the opening of negotiations on behalf of the EU, the Commission represents the EU within the Council of Europe Committee on AI (CAI).
