

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

Tuesday 5 December 2023, Brussels, Europa Building

Points for written exchange of information - Contribution from the EU

7. Recent developments on anti-terrorism and terrorism financing as well as organised crime policies and norms

a) Recent developments - 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.

Significant new events have created a vastly different European security landscape that will have a lasting impact on the terrorist threat development in Europe in the long term. **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. Last but not least, the **attack of Hamas** on the 7th of October 2023 in Israel has resulted in a considerable increase of the terrorist threat in a number of Member States.

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 seek new opportunities presented by the war (e.g. increase in cyberattacks and money laundering). Both Europol, Eurojust and Frontex are closely involved.

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.

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 this will continue to contribute to an increased terrorist threat.

Hamas attack on Israel – the online dimension:

EU Internet Forum (EUIF) meeting on 13 October 2023 assessed the online threat landscape, where the Commission provided Member States and the industry (EUIF Members) with an information package about the different means at their disposal to address the misuse of the internet for terrorist purposes, such as voluntary referrals, obligatory removal orders under the Terrorist Content Online (TCO) Regulation, activation of the EU Crisis Protocol. The EUIF, together with Europol's EU Internet Referral Unit, continues to facilitate meetings between national law enforcement authorities and industry to address the dissemination of harmful and terrorist material online.

The Commission is active on several levels, legislative and non-legislative, to prevent radicalisation and the dissemination of violent extremist and terrorist content online (TCO) Regulation and Digital Services Act, voluntary EU Internet Forum, Radicalisation Awareness Network Practitioners and Policy Support). In line with the TCO Regulation, access to terrorist content has been blocked in the EU in numerous instances. A global legislative approach on addressing the dissemination of terrorist content online is key to ensure prevent that terrorist content is not circulating online.

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, CTR¹**, which entered into force on 31 October 2023, strengthens **Eurojust's role in counter terrorism** by enabling Eurojust to identify links between parallel cross-border investigations and prosecutions regarding terrorist offences more efficiently. Until the renewal of Eurojust's Case Management System, the new Counter-Terrorism Register will however not be fully functional.

Following the adoption of the new Council of Europe Counter Terrorism Strategy (2023-27), Eurojust has e.g. been invited to nominate a representative in a new CoE Working Group starting early 2024 to elaborate Guidelines on strategies for the prosecution of violent extremism conducive to terrorism.

¹ Regulation (EU) 2023/2131 amending Regulation (EU) 2018/1727 of the European Parliament and of the Council and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases.

As the EU Directive on combating terrorism (EU) 2017/541 provides for a definition of terrorist offences, the Commission obtained an authorisation from the Council of the EU (on 15 May 2023) to negotiate on behalf of the European Union the **revision of the definition of terrorism in the Convention on the prevention of terrorism** (CETS 196). COPEN is the responsible Council Working Party to consult Member States. The first negotiating session took place on 24 May at the 10th Council of Europe CDCT Plenary. The Commission proposed a text for the modified definition, supported by EU Member States, which was accepted to be used as the basis for the negotiations. The next negotiating session is scheduled for mid-December 2023.

The EU Centre of Expertise for Victims of Terrorism which was established by the Commission 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 :

The Directive on the resilience of critical entities (CER Directive) entered into force in January 2023. It will enhance the resilience of critical entities providing essential services in 11 key sectors (e.g.energy, transport, banking, digital infrastructure, health, environment, water) against a range of threats, including terrorist attacks or sabotage. On 25 July 2023 the Commission adopted a list of essential services in the eleven sectors covered by the Directive. Member States will have to identify the critical entities for the sectors set out in the CER Directive by 17 July 2026. They will use this list of essential services to carry out risk assessments and to then identify the critical entities. Once identified, the critical entities will have to take measures to enhance their resilience.

Explosives precursors:

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 including a comprehensive monitoring programme.

Protection of public spaces:

The EU Security Union Strategy for the period 2020 to 2025 highlights our full commitment to protecting public spaces. The protection of Public Spaces, such as shopping malls, places of worship, transport hubs, is very high on the EU Agenda, as can be seen from the Action Plan on the Protection of Public Places from 2017 and the EU Counter-Terrorism Agenda from December 2020. Key actions included:

- o Creation of an EU Operator Forum where security and best practices are exchanged among operators at EU level;
- o Creation of EU Practitioner Forum, which brings together law enforcement practitioners of the Member States and law enforcement networks. The aim is to exchange expert knowledge in regard to the protection of public spaces. And support Member States in improving their preparedness against attacks and enhancing their capacity to react in

case of an attack. The Commission also has a support tool to Member States: an EU Protective Security Advisor Programme which started operations in 2021 with twelve missions performed during 2022 assessing the security posture of high visibility events, places of worship, transport hubs.

The Commission is committed to assist in enhancing the physical protection of places of worship. A Quick Guide to Support the Protection of Places of Worship has been published in 2021 and a security by design book in 2022, as inspiration for authorities to incorporate security aspects in the design of future and the renovation of existing public spaces. The Commission, in its 2022 call for proposals, is making 14.5 million euro available to fund projects that will improve the security of public places, with a special focus on places of worship but also covering other public spaces in what concerns Chemical, biological, radiological and nuclear substances and explosives (CBRN-E), unmanned aircraft systems (UAS) and explosives.

In addition, the Commission has adopted on 10 May 2023 a Recommendation on voluntary EU performance requirements for metal detection equipment used in public spaces (outside aviation).

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. At the Ministerial Forum on Justice and Home Affairs held in Skopje on the 26-27 October 2023, it was agreed that a reflection should start to update the Joint Action Plan and to reinforce cooperation on threats such as violent content spreading online and online radicalisation, right-wing extremism, disinformation and hybrid threats, the financing of terrorism via cryptocurrencies as well as the protection of critical infrastructures.

The Joint Action Plan has proved a very useful framework for cooperation on counterterrorism with the Western Balkan partners which allowed for a strengthened partnership in an essential area for the security of Europe. The Joint Action Plan 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.

Border security and Counter-Terrorism:

On 7 March 2023, the renewed Schengen Information System (SIS) started operations, providing enhanced tools helping to ensure terrorists do not enter the EU undetected. The strengthened SIS introduced new alert categories such as alerts for inquiry checks, alerts on unknown wanted persons and vulnerable persons who need to be prevented from travelling

as well as return alerts enabling the sharing of information on return decisions. The renewed SIS includes new types of biometrics in addition to fingerprints, such as palm prints, fingermarks, and DNA records which allow the correct identification of persons, and information about the car (or other objects) that they are using.

The legislative process was also finalized on the new ‘information alert’ in the SIS. The new ‘information alert’, is to be issued by Member States with the support and upon the proposal of Europol.

b) Counter terrorist financing (CTF)

The Commission is supporting Member States to make their terrorist-financing related investigations more efficient. It established a **new network of EU counter terrorism financing investigators** in 2021 that agreed that its priorities for 2023 should include four priorities:

1. “**Use of Cryptocurrencies to finance terrorism** and impacts of new technologies, including investigations on the Dark and/or Deep Web, on terrorism financing Risks”,
2. abuse of Non-profit organisations to finance terrorism,
3. use informal banking systems (hawala) to finance terrorism, and
4. financing or right-wing terrorism.

It can also be noted that CEPOL has also set up a similar network (the Counter Terrorism Support Network (CTSN)) to support training of authorities involved in investigations in the context of the Western Balkans Partnership against Crime and Terrorism (WB PaCT).

c) 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.

On 18 October 2023, the Commission adopted the ‘**EU Roadmap on the fight against drug trafficking and organised crime**’. The Roadmap complements and builds on the

Organised Crime Strategy and the EU Drugs Strategy and Action Plan, by setting out 17 concrete actions for the short, medium and long term. The Roadmap aims to enhance the resilience of the logistic hubs with a European Port Alliance, bring together customs, law enforcement and public and private actors in the ports, to jointly address vulnerability.

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.

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. Two political trilogues have taken place on 13 June and 3 October, a third is scheduled for 12 December 2023.

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.

8. AI and criminal law, including in the penological field

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. After the adoption of their respective positions, in December 2022 for the Council and June 2023 for the European Parliament, the EU co-legislators started to negotiate with the support of the European Commission in trilogue. They committed to adopt the AI Act by the end of 2023. Trilogues were organised in June, July, September and October. The last one should be organised on 6 December 2023. Important political issues still need to be agreed on, such as the list of high-risk AI systems, provisions related to prohibited systems, law enforcement, or the inclusion of a fundamental right impact assessment for AI deployers.

Regarding the draft framework **Convention of the Council of Europe**, following the Council Decision which authorises the opening of negotiations on behalf of the EU adopted in November 2022, the Commission represents the EU within the Council of Europe Committee on AI (CAI). Whereas the EU AI Act will allow to address risks posed by AI systems to safety and fundamental rights in the EU, the convention represents a unique opportunity to foster trustworthy AI beyond the Union and to set out key principles and obligations in a legally binding instrument at global level. While the convention should leave sufficient flexibility to each Party to accommodate constraints of its domestic legal order (i.e. the AI Act in the EU) it is important to ensure that the future Convention remains meaningful and delivers on the ambition to provide a serious answer to growing

concerns about risks posed by AI systems to human rights, democracy and the rule of law. We can notably not overlook legitimate and documented concerns from civil society about the risks posed by AI in the private sector, which should be addressed in such a Convention.

9. Prison/detention: latest developments on: management of offenders with mental health disorder as well as on prison conditions and pre-trial detention

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.

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 ongoing EU Justice programme, such as . the development of guidance and training for judicial professionals in order to raise awareness of the newly adopted Recommendation.

10. Mutual legal assistance: work towards a 3rd protocol to the CoE Convention

As in June 23 we understand that the CoE will inform on this point.

11. Combating hate speech and hate crime

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 by means of criminal law.

To strengthen the legal framework, the Commission adopted, on 9th December 2021, a Communication to prompt a Council decision which would extend the current list of ‘EU crimes’ in Article 83(1) TFEU to hate speech and crimes.

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 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 Commission is currently discussing with the signatories about a **revised Code of conduct** that is not only reactive (based on review and response to notifications) but also a tool that helps to anticipate trends and risks, and to find mitigating measures before content goes viral. 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 prevention of hate speech is also addressed in the new **EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030**, which encompasses three horizontal objectives in the areas of equality, inclusion and participation and four sectoral objectives in the areas of education, employment, housing and health.

Since Roma are often the target of hate-motivated harassments the Commission noted that as a prerequisite for the fight against antigypsyism, the minimum standards set on the criminalisation of hate speech, and the denial, condoning or trivialisation of the Holocaust need to be fully and correctly transposed into the legislation of Member States. As other people with a minority ethnic or racial background, Roma are affected by online hate speech, and antigypsyism is one of the most commonly reported ground of hate speech.

Additionally, the **Council Recommendation on Roma equality, inclusion and participation** (2021/C 93/01) which was unanimously adopted by all EU Member States on 12 March 2021 sets out measures targeting the prevention of hate speech against Roma. EU Member States should consolidate efforts to adopt and implement measures to promote equality and effectively prevent and combat discrimination, antigypsyism, and social and economic exclusion, as well as their root causes. This involves measures to effectively fight direct and indirect discrimination, including by tackling harassment, antigypsyism, stereotyping, anti-Roma rhetoric, hate speech, hate crime and violence against Roma including incitement thereto, both online and offline.

Through the involvement of the bodies for the promotion of equal treatment EU Member States should inter alia, within their respective national legal framework, pursue cases of discrimination, hate speech and hate crimes, and pursue strategic litigation and address underreporting of discrimination, hate speech and hate crimes, and raise awareness of rights among.

Furthermore, EU Member States should by cooperating with civil society monitor and report hate crimes and hate speech as well as other crimes against Roma and assist victims in reporting hate crimes and hate speech.

12. The CoE’s “Medicrime” Convention and “Nicosia” Convention: latest developments (DG HOME)

The ‘Medicrime’ Convention on Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health

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.

Trafficking in cultural goods – CoE “Nicosia” Convention

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 (cultural goods trafficking is not a “eurocrime” pursuant to Art. 83 TFEU).

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 Offenses relating to Cultural Property, or implementing its principles where this is considered more appropriate.

On 26 October 2023, at the occasion of the meeting of the informal network of Member States law enforcement authorities EU CULTNET (organised by the Spanish Council presidency in Madrid), the Council of Europe and Cyprus Police also encouraged Member States to implement the Convention.

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.

13. Criminal justice in cyberspace, e-evidence

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), the US and many partners from the Global South.

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 2022, 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, 20 EU Member States have signed the Protocol: Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Spain and Sweden. As per 29 November 2023, 43 States have signed the Second Additional Protocol and two have ratified it. The Protocol will enter into force once at least five States have ratified it. Further efforts will be necessary to build the capacity of the membership of the Budapest Convention, to make sure that partners can fully benefit from the mechanisms introduced by the Protocol: the Commission has planned a 2Mio€ grant for the Council of Europe to work with EU Member States.

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 6th negotiating session, which took place from 21 August – 1 September 2023 in New York, on the basis of its negotiating mandate. The concluding negotiating session will take place between 29 January – 9 February 2024 in

New York. The final text of the UN convention is foreseen to be formally adopted at the 79th session of the UN General Assembly taking place in September 2024.

A key objective for the Union in these negotiations is to ensure that the future Convention is compatible with and complements existing international instruments, in particular 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 personal 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 framework, and in particular its Second Additional Protocol, for international cooperation.

European Union e-evidence legislation

The legislative package on access to electronic evidence was adopted on 12 July 2023. It consists 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 appoint a legal representative or designate an establishment to receive, comply with, and enforce requests to gather electronic evidence.

The Regulation will apply from 18 August 2026. Member States will have to transpose the Directive into national law by 18 February 2026.

Owing to the adoption of EU law on e-Evidence, the EU and the U.S. relaunched their negotiation of an international agreement on e-Evidence in March 2023. 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.

14. Victims' rights

The protection of the rights of victims of crime, 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 rights, services and support for victims of crime** in March 2023 and the adoption of the **Commission's proposal for a revision of the Victims' Rights Directive** on 12 July 2023. The evaluation of June 2022 showed that the instrument overall has been successful, but punctual amendments in relation to each of the main victims' rights under the Directive are necessary to ensure its optimal effectiveness.

The revision aims to ensure that: 1) victims have improved access to information 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, and 5) victims have facilitated access to compensation.

The proposal is currently being considered by the competent Council bodies, which have already completed the first reading. Work is expected to pursue in the coming months, during the term of the incoming Presidency. In this context, it is worth underlining that the proposal on fight against women and domestic violence contains specific provisions on assistance and support to the victims of the crimes established in the proposal and for the reinforcement of their rights. Negotiations between the EP and the Council are currently ongoing on this proposal, in view of possibly reaching a political agreement early next year.

In addition to this revision, the Commission is working to ensure that **victims of war crimes who fled Ukraine to the EU receive support and protection in accordance with their individual needs**. E.g. the Commission has launched actions within the EU Victims' Rights Platform that focus on informing about EU funding opportunities, raising awareness, and exchanging best practices on support and protection for victims of war crimes.

Moreover, at European Union level, the Commission continues working on the implementation of **the EU Strategy on victims' rights (2020-2025)**. In implementing this Strategy, the Commission has already achieved most of the actions.

In January 2023, the Commission launched the **Eyes Open campaign** to raise **awareness on victims' rights**. In October, the Commission initiated a new strand of the campaign on **victims of war-related crimes** – mostly women and children – who fled the Russian war of aggression in Ukraine to the EU Member States. The main activity of the campaign is a children's book entitled **"The Girl Who Kept Her Eyes Open"**. It aims to raise awareness

of the problems suffered by people fleeing war and their rights. Representatives of the Council of Europe participated in the launch event at an Ad hoc meeting of the EU Victims' Rights Platform. They expressed big interest in involving the Council of Europe in the promotion of the book. 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 rights, services and support for victims of crime provides an update in accordance with current EU standards – notably 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 part of the revision of the Directive.