

Council of the EU



European Democracy Shield
Minimum Rules to Prevent and Counter the Facilitation of
Unauthorized Entry, Transit, and Stay in the Union

Study Guide

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LETTER FROM THE SECRETARY GENERAL

Dear participants,

My name is Ata Yağız Topalođlu, and I am a third-year student in Political Science and Public Administration at the Middle East Technical University. It is a great honor for me to serve as the Secretary-General of the EUROsimA'26.

As this is the 22nd edition of our conference, it also coincides with my age; thus, carrying the torch of this significant conference has become one of the greatest journeys I have ever had. Participating in Model United Nations and Model European Union conferences has shaped my worldview and guided me in my decision to study this major. Joining the EUROsimA team two years ago was the greatest decision I have made in my university life. I cannot proceed without thanking my partner in this conference, our Director-General Buse Kemahlı, who has been a great colleague and a great friend to me. I cannot thank her enough for this incredible and unforgettable journey. Our academic and organizational teams worked diligently to provide you with a remarkable experience that will be remembered forever.

As we say in EUROsimA, it will always be a family business to us. This was not just a business to us, as we shared a lot while building up this conference for you. I cannot wait to see you all in the coming days; please do not forget to come prepared. I believe that our hardworking delegates will always put forth their best effort in the one and only European Union simulation of our country.

Thank you,

Ata Yağız Topalođlu

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Introduction to the Committee: European Parliament

The European Parliament (EP) is the parliament of the European Union and one of the seven institutions of the EU. EU countries hold elections every five years to elect members of the European Parliament (MEPs). MEPs, along with the Council of the European Union (representing EU governments), amend and approve EU legislation. The Parliament and the Council also have to take decisions regarding the EU budget. The European Parliament also supervises other EU institutions, such as the European Commission. Members of Parliament also elect the President of the European Commission and play a key role in the scrutiny of Commissioners, as they are appointed through individual hearings. Later, they will decide whether to approve the College of Commissioners—how the 27 Commissioners are collectively referred to—through a vote of approval. To ensure transparency, the European Parliament collects a comprehensive set of statistics to track trends over time. They display current and historical data on national parties and political groups in the Parliament, such as the number of MEPs, the number of Member States, the number of political groups and parties, and the number of national delegations.¹

The vast majority of EU legislation is adopted through the Ordinary Legislative Procedure (previously known as the "co-decision" procedure). This is the standard EU legislative decision-making process that gives equal weight to the European Parliament and the Council of the European Union (representing the EU Member States) with the Treaty of Lisbon.² It covers a wide range of areas including migration, energy, transportation, climate change, environment, consumer protection, and economic management. "Approval" is another decision-making procedure. This means that the Parliament's approval or consent is required

¹ "What Is the European Parliament? | News | European Parliament," *WhatIsTheEuropean Parliament?*, n.d., <https://www.europarl.europa.eu/news/en/faq/18/what-is-the-european-parliament>

² "Treaty of Lisbon," *Treaty of Lisbon*, n.d., <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-lisbon>

for issues such as the accession of new EU member states and the EU's international trade agreements. The election of the European Commission occurs through the consensus procedure. The "consultation" method is applied in policy areas such as taxation, competition law, and the Common Foreign and Security Policy. *This method allows the Parliament to approve or reject a legislative proposal, as well as to propose amendments to it.* Although the Parliament's opinion is not binding on the Council, the Council must consult the Parliament and await its opinion before taking a decision. Otherwise, this would render the action unlawful and expose it to the risk of being annulled by the Court of Justice. Additionally, when the Council significantly amends a proposal, it must consult the Parliament again.³

Although it is within the Commission's authority to initiate new EU legislation, Parliament can take the initiative by requesting the Commission to submit a legislative proposal. When exercising the "legislative initiative," MPs may set a deadline for the proposal to be submitted. If the Commission rejects this, it must explain the reason. When adopting a new law, the Parliament and the Council may grant the Commission the authority to make minor additions or changes, such as technical annexes or updates; this authority may be exercised through delegated acts (which supplement or amend parts of the law) or implementing acts (which contain details on how the law is to be implemented). This way, the legislation can remain simple and up-to-date without the need for new negotiations.

MEPs may request the Commission to amend or withdraw implementation regulations if they come into force; however, the Commission has no legal obligation to do so.

Simplified OLP Description

1. The European Commission is submitting a legislative proposal to the European

³ "What Is the European Parliament? | News | European Parliament."

Parliament.

2. The European Parliament examines the Commission's proposal at first reading and may approve it without amendments or make amendments.
3. The Council may decide, upon initial review, to accept the Parliament's opinion; in this case, the legislative text is adopted, or it may amend the Parliament's opinion and send the proposal back to the Parliament for a second review.
4. The Parliament examines the Council's opinion and either approves the draft law, in which case it is enacted; rejects it, in which case the draft law does not come into effect and the entire process ends; or amends the proposal and sends it back to the Council for a second reading.
5. The Council examines the Parliament's second reading position and either approves all the Parliament's amendments, in which case the law is adopted, or does not approve all the amendments, which leads to the convening of a Conciliation Committee.
6. The Reconciliation Committee, consisting of an equal number of MPs and Council representatives, attempts to reach agreement on a common text. If an agreement cannot be reached, the legislative act does not enter into force and the procedure ends. If an agreement is reached on a common text, it is sent to the European Parliament and the Council for a third reading.

7. *Third Reading in the European Parliament and Council*

a. In Parliament

The European Parliament examines the common text and submits it for a vote in plenary session. It cannot change the wording of the common text. If it rejects it or takes no action on it, the bill is deemed not to have been adopted and the procedure ends. If approved by the Parliament and the Council, the law comes into force.

b. In Council

The Council reviews the common text. It cannot make changes to the text. If it rejects the text or takes no action on it, the law does not come into force and the procedure ends. If the text is approved and the Parliament also approves it, the law comes into force.⁴



⁴ “Legislative Powers,” *Legislative Powers*, n.d., <https://www.europarl.europa.eu/about-parliament/en/parliaments-powers/legislative-powers>



Figure 1. Draft of the Ordinary Legislative Procedure⁵

2. Introduction to the Agenda Item: European Democracy Shield

2.1. Background and Evolution of the European Democracy Shield

⁵ “Ordinary Legislative Procedure | European Parliament,” *OLP Diagram*, n.d., <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview>

Until ten years ago, the effort to protect the democratic institutions of the European Union consisted mostly of reactive decisions made in moments of crisis. The turning point in this process was Russia's annexation of Crimea in 2015 and the initiation of systematic disinformation campaigns against Western democracies. In response to this threat, the Council of Europe established the East StratCom Task Force, the EU's first official "observer" in the information war. However, the 2016 Brexit referendum and allegations of interference in the US elections have shown that the threat does not only come from outside; it also feeds off the structural vulnerabilities of digital platforms. The European Democracy Action Plan (EDAP), announced in 2020, brought together scattered defense mechanisms into a single strategy document for the first time. This plan identified electoral integrity, media freedom, and the fight against disinformation as its three main pillars.⁶

Yet, the rapid evolution of technology and the transformation of disinformation production into an industrial scale through artificial intelligence (AI) have made a more robust protective shield necessary. The European Democracy Shield, officially announced by Ursula von der Leyen in 2024, has now evolved from merely an "action plan" into an integrated security doctrine aimed at protecting the EU's digital and political sovereignty. This evolution symbolizes the EU's shift from a "soft power" approach to a strategy of building a "legal and technical fortress" to protect democratic values.⁷

2.2. Scope and Objectives of the Initiative

The scope of the European Democracy Shield goes far beyond the traditional understanding of cybersecurity and offers a three-dimensional structure aimed at social

⁶ “COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS,” *European Commission*, March 12, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0790>.

⁷ “REGULATION (EU) No 1301/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL,” *EUR-Lex*, December 17, 2013, <https://eur-lex.europa.eu/eli/reg/2013/1301/oj>.

immunity. The primary goal of the initiative is to ensure the Integrity of the Information Space. In this context, in line with the Digital Services Act (DSA), strict oversight is envisaged over the algorithmic systems of large technology platforms. The aim is to prevent disinformation from going viral through profit-driven algorithms and to transform digital platforms into "safe public spaces". At this point, Kalkan examines not only the content itself but also the distribution method and financial source of that content under scrutiny.

The second basic dimension is the arbitration of institutional Resilience and Electoral security (Institutional Resilience and Electoral Security). This column presents a "defense toolbox" (toolbox) developed against Foreign Interference and Manipulation (FIMI). Especially during election periods, protecting critical election infrastructure from cyber attacks and ensuring the transparency of political advertising are priorities.⁸ The "transparency requirements" introduced to prevent third countries from influencing European politics through covert funding channels are one of the most controversial but effective components of the shield.

Finally, the scope of the initiative extends to the protection of social actors (Protection of Societal Actors), thereby incorporating civil society and independent media into the shield. "Strategic Litigation Against Public Participation" (Anti-SLAPP) directives aimed at silencing journalists and the transparency of media ownership aim to ensure that democracy functions can operate freely.

3. Key Terms and Definitions

Hybrid threat: The possibility of a coordinated hostile conduct from a state actor, non-state actor, or actor operating domestically or transnationally, characterised by the integrated use of multiple instruments of coercion or destabilisation, including cyber operations, information

⁸ Directorate-General for Justice And Consumers, "New EU Rules to Protect Against Strategic Lawsuits Against Public Participation Enter Into Force," *European Commission*, May 3, 2024, https://commission.europa.eu/news-and-media/news/new-eu-rules-protect-against-strategic-lawsuits-against-public-participation-enter-force-2024-05-03_en.

manipulation, economic pressure, legal or regulatory interference, and actions in the physical domain, directed at undermining countries, organizations, and the constitutional order.⁹

Democratic resilience: The ability to maintain democratic governance functions and principles, despite attempts by illiberal actors to damage or diminish vertical, horizontal, or diagonal accountability mechanisms that are core to democracy.¹⁰

Democratic backsliding: The state-led debilitation or elimination of any of the political institutions that sustain an existing democracy.¹¹

Political polarization: The growing ideological divide between political groups, where individuals increasingly align with extreme positions rather than moderate viewpoints. *(This phenomenon is particularly evident in the context of two-party systems, such as that of the United States, where Democrats and Republicans have moved further apart over the last 25 years.)*¹²

Electoral integrity: The quality of the electoral process, ensuring that elections are conducted fairly, transparently, and free from manipulation or fraud. *(It encompasses various aspects including the legal framework, the administration of elections, the conduct of voters and*

⁹ “Hybrid Threats,” Hybrid Risk Management, accessed March 14, 2026, https://www.hybrid-risk.com/Hybrid_Threats.html.

¹⁰ “Defining Key Concepts,” International Foundation for Electoral Systems, November 2023, accessed March 14, 2026, <https://www.ifes.org/pub/Paths-to-Democratic-Resilience-in-an-Era-of-Backsliding/Defining-key-concepts>.

¹¹

“Defining Key Concepts,” EBSCO, n.d., [https://www.ebsco.com/research-starters/political-science/political-](https://www.ebsco.com/research-starters/political-science/political-polarization)

¹²

[polarization](#).

*candidates, and the overall trust in the electoral system. High levels of electoral integrity are crucial for the functioning of democracy, as they help to legitimize political authority and promote citizen engagement.)*¹³

*Dark patterns: Tricks used in websites and apps that make you do things that you didn't mean to, (like buying something you didn't want to buy) or making choices for you without your consent. Their purpose is to influence a broad spectrum of consumer decisions, impeding the consumers' ability to make informed choices.)*¹⁴

*Digital authoritarianism: The use of digital information technology by authoritarian regimes to surveil, repress, and manipulate domestic and foreign populations.*¹⁵

4. Contemporary Threats to European Democracy

4.1. Foreign Interference and Hybrid Threats

Foreign interference has been a major challenge for Europe's democratic systems, especially since it is increasing. Hybrid threats, which refer to the possibility of a coordinated

¹³ Pippa Norris, *Why Electoral Integrity Matters* (Cambridge University Press, 2014).
¹⁴ "Regulating dark patterns in the EU: Towards digital fairness," *European Parliament*, 2025, accessed March

14

15, 2026,

[https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/767191/EPRS_ATA\(2025\)767191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2025/767191/EPRS_ATA(2025)767191_EN.pdf).

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"About," European Consortium for Political Research, accessed March 15, 2026,
<https://ecpr.eu/group/digital-authoritarianism>.

hostile¹⁶ aim to weaken political, economic, or societal stability. These threats often combine different methods such as disinformation campaigns, economic pressure, and cyber-attacks. Hybrid tactics mostly operate below the gate of an open conflict rather than relying merely on traditional military tactics. Of course while doing so, hybrid tactics target democratic institutions and public trust¹⁷..

In the European context, hybrid activities have mostly been associated with attempts. Attempts to manipulate information environments, disrupt critical infrastructure, and interfere with democratic processes such as elections have been made throughout Europe's history.¹⁸ For instance, “Operation Doppelgänger” is a massive campaign in which a Russian company called Social Design Agency (SDA) created clones of news websites that were originally legitimate.¹⁹ These fake websites published pro-Kremlin articles which looked like exact copies of the original sites. These efforts have been continuing since 2022. Although the European Commission sanctioned the Social Design Agency (SDA) in 2024, their pattern of behaviour was analyzed in activities between March 4th and April 4th of 2025, allegedly interfering with the Polish Presidential Elections.²⁰

Another example would be the subsea cable and pipeline damage on Balticconnector which happened in 2023. A gas pipeline and telecom cables between the EU's two nations:

¹⁶ “Hybrid Threats.”
“Hybrid threats,” Consilium, December 15, 2025, accessed March 14, 2026,

¹⁷

<https://www.consilium.europa.eu/en/policies/hybrid-threats/>.

¹⁸ “European democracy shield,” *European Parliament*, 2025, accessed March 14, 2026,
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/775835/EPRS_BRI\(2025\)775835_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/775835/EPRS_BRI(2025)775835_EN.pdf).

¹⁹ Saman Nazari, Maria Voltsichina, and Pavlo Kryvenko, “Illegal Doppelganger Operation: Targeting the Polish Elections,” *Alliance4Europe*, April 17, 2025, accessed March 14, 2026,
<https://alliance4europe.eu/doppelganger-poland-elections>.

²⁰

Nazari, Voltsichina, and Kryvenko, “Illegal Doppelganger Operation: Targeting the Polish Elections.”

Finland and Estonia were damaged²¹ by an anchor with a Hong Kong flagged vessel.²² Moreover, several other undersea internet and power cables in the Baltic and North Seas have been damaged in suspicious incidents. Prime Minister of the time Kallas said "We have reason to believe that the cases of Balticconnector and the communication cables are related," in a statement. "No version (of events) can be confirmed or denied regarding the Estonian communication cables."²³

Such activities defined and given examples are often designed with an aim of exploiting political divisions, weakening institutional resilience, and of course influencing public opinion. As hybrid strategies continue to evolve more with the increasing technological developments and geopolitical tensions; they create complex security and governance issues which are challenging for the EU states and institutions.

4.2. Internal Democratic Vulnerabilities

4.2.1. Declining Trust in Democratic Institutions

Public trust in democratic institutions is crucial for maintaining the legitimacy of democratic systems to keep them stable. However, in recent years several EU countries have experienced declining trust towards political institutions, public authorities, and democratic

²¹ "Balticconnector disruption between Finland and Estonia on 8 October 2023 - information from the Finnish and Estonian delegations," *Council of the European Union*, October 13, 2023, accessed March 14, 2026, <https://data.consilium.europa.eu/doc/document/ST-14089-2023-INIT/en/pdf>.

²²

Andrius Sytas and Anne Kauranen, "Three Baltic pipe and cable incidents 'are related', Estonia says," *Reuters*, October 27, 2023, <https://www.reuters.com/world/europe/three-baltic-pipe-cable-incidents-are-related-estonia-says-2023-10-27/>.

²³

Sytas and Kauranen, "Three Baltic Pipe and Cable Incidents 'Are Related', Estonia Says."

governance mechanisms.²⁴ There are different factors contributing to this decline. These include a lack of trust in government effectiveness, deep political divides, economic instability, and the spread of misinformation within digital information environments.²⁵

Declining trust in institutions affects democratic vulnerabilities since it can weaken democratic resilience. Democratic resilience refers to the ability to maintain democratic governance functions and principles, and create vulnerabilities within democratic systems.²⁶ When citizens become increasingly skeptical toward political institutions and their decision making processes; democratic accountability and participation can also be affected.²⁷ Situations like this create opportunities for not only domestic actors to question the legitimacy of democratic institutions or promote alternative political narratives, but also pave the path for foreign ones to do so.²⁸ Thus, strengthening institutional transparency, accountability, and public engagement has become an important aspect of safeguarding democratic governance within the European Union.

4.2.2. Political Polarization and Democratic Backsliding

Political polarization has emerged as another challenge affecting democratic governance in Europe. Increasing ideological divisions between political actors and different segments of society can end up reducing political compromise and weakening democratic consensus. In highly polarized environments, democratic institutions can face pressures that limit their independence or effectiveness.²⁹

²⁴ “Guarding Democracy From Within: The EU’s Struggle Against,” November 30, 2025, <https://cddrl.fsi.stanford.edu/news/guarding-democracy-within-eus-struggle-against-internal-democratic-backsliding>

²⁵

“European Democracy Shield.”
Defining Key Concepts.

²⁶

²⁷ “Guarding Democracy From Within: The EU’s Struggle Against.”
“European Democracy Shield.”
“Guarding Democracy From Within: The EU’s Struggle Against.”

²⁸

²⁹

In some cases, such polarization has been associated with democratic backsliding, a state-led debilitation or elimination of any of the political institutions that sustain an existing democracy.³⁰ Democratic backsliding can involve pressures on judicial independence, restrictions on media freedom, or attempts to concentrate political power within executive institutions. Debates about democratic backsliding have been discussed among several European countries. Moreover, the public raised concerns about the independence of courts, the functioning of constitutional checks and balances, and the role of independent media institutions. The long term stability of democratic governance in Europe has started discussions within the European Union on mechanisms aimed at protecting rule of law and democratic standards among member states. Consequently, safeguarding democratic institutions and maintaining effective supervisions have become increasingly important priorities in order to ensure the resilience of democratic governance within the European political system.³¹

4.3. Challenges to Electoral Integrity

Free and fair elections are necessities for democratic governance. However, developments in technology, and cross border political dynamics have created a new challenge to electoral integrity in the EU. Not only digital communication platforms but also external influence campaigns have expanded the range of actors and methods that can affect the process of elections. Electoral interference thus can take different forms. These vary from disinformation campaigns to coordinating online manipulation, to attempting to influence public opinion. Actions like these can undermine public confidence in electoral outcomes, and

³⁰ “Defining Key Concepts.”

³¹ “Guarding Democracy From Within: The EU’s Struggle Against.”

contribute to a worsening in political instability. This is why the protection of electoral integrity has become a crucial point for the EU countries and institutions.³²

The growth of digital communication platforms has also affected political campaigning and public political discourse. Online political advertising enables political actors to reach a large audience. This happens mostly through targeting users according to their data and algorithmic systems. Although these technologies are able to provide new platforms for political discussions and communication, it cannot be guaranteed that these platforms can prevent the spread of misleading or manipulative political content. Algorithmic amplification mechanisms that digital platforms use can unfortunately further intensify these challenges because they prioritize the contents which generate higher engagements, and it does not calculate the accuracy of the content. Thus, contents that are disinformative or polarizing can spread quicker with the effect of the online world. This can potentially affect political debates, and influence voter perception during electoral periods.³³

Electoral processes can also be affected by cross border influence operations conducted by external actors such as coordinated disinformation campaigns, foreign funding of political actors, or attempts to manipulate online political discourse. Aforementioned attempt of the SDA's interference with the Polish Presidential Elections is a current example of the issue. These interferences may seek different outcomes from increasing political fragmentation to weakening confidence in democratic institutions, and they may result in both.

5. Existing EU Legislative and Policy Instruments

5.1. Digital Services Act

³² “Study on the impact of new technologies on free and fair elections,” *European Commission*, March 2021, accessed March 14, 2026, https://commission.europa.eu/system/files/2022-12/Annex%20I_LiteratureReview_20210319_clean_dsj_v3.0_a.pdf.

³³

“Study on the Impact of New Technologies on Free and Fair Elections.”

The Digital Services Act (DSA) helps to turn the online environment into a safe and trustworthy one through rules for online services, to be obeyed by EU citizens in their everyday life. These services are various through different sectors, including marketplaces, app stores, social media networks, and even online travel and accommodation platforms. The aim of the DSA is to create a digital environment which respects citizens and their rights and consumers.³⁴

The DSA is very beneficial for the citizens since it strengthens the protection of their rights on online platforms while providing them with more control and choices when they are on those online platforms.³⁵ The DSA not only requires platforms to minimize the risk of citizens being exposed to harmful content, it also provides transparency in content removals, options to appeal to content moderation decisions, and easy flagging of illegal content. For instance if a citizen's content gets removed, the platforms must inform the citizen regarding the action's reason, or if a citizen does not agree with the content moderation decision the platform takes, they can appeal it through the platform itself, or they can report illegal content through the platforms as reports which the platforms must respond. Most importantly, under the DSA the platforms need to obtain enhanced protection for minors and ad transparency. For instance, the DSA bans showing targeted advertisements to minors, and ads must clearly state the information of who is placing them and why you are seeing them.³⁶

The only advantageous group under the Digital Services Act is not the customers, but the businesses as well. The DSA provides several benefits for companies. These include a proportionate approach, more transparency on marketplaces, and one single set of rules across the EU. For instance, the DSA arranges each online business' role according to their size and impact in the online ecosystem, small companies as well as the micro ones have much lighter

³⁴ "The Digital Services Act," European Parliament, March 10, 2026, accessed March 15, 2026, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act>.

³⁵ "The Digital Services Act."
³⁶ "The Digital Services Act."

requirements while bigger companies with bigger platforms acquire more responsibility. Transparency brought new requirements such as listing a seller's contact information, and performing random checks on sold products regarding their service. Moreover, the DSA replacing 27 different regulations for each EU member with a unified framework provides the companies with not only legal certainty but also the ability to advance across the EU.³⁷

All online services operating within the EU must comply with the DSA, which complements with the Digital Markets Act (DMA)³⁸. Since the DMA's framework includes rules for gatekeepers of online platforms who block the gate between businesses and consumers on online platforms; this affects the competition within the EU internal market.³⁹ Although the DMA's framework is regarding to make markets in the digital sector more fair and contestable,⁴⁰ some parts of it are already covered in the DSA; however, with both of them in force, they complement each other and regulate the market.⁴¹

In the context of the European Democracy Shield, the DSA functions as defense against the systemic manipulation of public opinion. The EU urges a higher standard of accountability and risk management obligations, especially on Very Large Online Platforms such as Meta and X. After acknowledging their disproportionate influence on democratic stability, this regulatory framework secures the electoral environment through the ban on dark patterns, and the prohibition of targeted advertising based on sensitive personal data like religious or political affiliations. Together, these measures ensure that the digital platforms remain a space for genuine interaction rather than algorithmic exploitation.

³⁷ "The Digital Services Act." "The Digital Services Act." "The Digital Services Act." "The Digital Markets Act," European Parliament, accessed March 15, 2026, https://digital-markets-act.ec.europa.eu/index_en.

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act.ec.europa.eu/index_en.

⁴¹ "The Digital Services Act."

5.2. Artificial Intelligence Act

The Artificial Intelligence (AI) Act is the EU's regulation on AI which is the first comprehensive regulation on AI by a major official anywhere. The AI Act allocates AI to three different risk categories. The first one being unacceptable risk. AI assigned to this category are strictly banned. For instance in China, the government has a social scoring system to track the citizens' behaviour and give them a citizen score. However, under the EU AI Act, this is strictly banned. The second category is high-risk applications. AI falling under this category is legal but heavily regulated. These AI tools can make life-changing decisions for people, such as AI scanning CVs for job applications and ranking the applicants.⁴² However, since AI operates with its database, and the data it has mostly shows dominating men, it tends to have a bias. Research shows that when various questions are asked to AI platforms to write stories with characters of different gender, sexualities, and origins; stories about "people from minority cultures or women were often more repetitive and based on stereotypes."⁴³ Thus high-risk AI must be transparent, safe, and overseen by humans. The last category is the low or middle risk AI.⁴⁴ These are mostly unregulated, and cover most of the AI used daily such as spam filters and AI used in video games or translation tools. Since these AI tools are not likely to violate human rights, they are not regulated.⁴⁵

Since AI tools have many abilities from influencing the information people see online by predictions to diagnosing cancer; it affects many parts of human lives whether they are

⁴² "The EU Artificial Intelligence Act," EU Artificial Intelligence Act, accessed March 15, 2026, <https://artificialintelligenceact.eu>.

⁴³ "Generative AI: UNESCO study reveals alarming evidence of regressive gender stereotypes," *UNESCO*, March 7, 2024, accessed March 15, 2026, <https://www.unesco.org/en/articles/generative-ai-unesco-study-reveals-alarming-evidence-regressive-gender-stereotypes>.

⁴⁴

"The EU Artificial Intelligence Act."

⁴⁵ "The EU Artificial Intelligence Act."

aware of it or not.⁴⁶ Thus, the EU banning unacceptable AI can be seen as a prevention of the rise of digital authoritarianism. Moreover, by regulating the high-risk AI tools, the EU ensures that algorithms do not discriminate against citizens even accidentally, keeping the shield strong.

5.3. European Media Freedom Act

The main aim of the European Media Freedom Act (EMFA) is to enhance the editorial freedom and the independence of media service providers while ensuring that media providers can operate more easily across borders in the EU's internal market. This act also enables media service providers to benefit from the digital transformation, as well as introducing more transparency to the market, especially regarding media ownership and the allocation of state advertising.⁴⁷

The EMFA protects media freedom and editorial independence, journalistic sources and confidential communication including threats to journalists or the illegitimate use of spyware. It finds the independent functioning of public service media valuable, and arranged a structured dialogue between very large online platforms, media service providers, and the civil society.⁴⁸

The EMFA is essentially the human layer of the European Democracy Shield. While laws like the DSA focus on the tech, this act focuses on the people, and their efforts of keeping the system honest. By banning spyware and protecting sources, the EU is making it clear that reporters and journalists do not have to work in fear of government surveillance. Just as importantly; by forcing transparency in state advertising, it stops governments from buying favorable coverage with public money.

⁴⁶ “The EU Artificial Intelligence Act,” “REGULATION (EU) 2024/1083 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL,” EUR-

47

Lex, April 11, 2024, accessed March 15, 2026, <https://eur-lex.europa.eu/eli/reg/2024/1083/oj>.

“REGULATION (EU) 2024/1083 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.”

Regulation on Transparency and Targeting of Political Advertising

This regulation's main goal is to contribute to the proper functioning of the internal market in order to make political advertisement and support political debate that is open and fair. This regulation also raises concerns regarding the information manipulation and foreign interference in elections, as well as processing personal data for political advertisement purposes. This regulation was designed to ensure EU citizens make well-informed choices during elections by three main points. The first one is for officials to make it easier for the citizens to recognize political advertisements. Secondly, helping citizens understand who is behind those advertisements. Lastly, allowing the citizens to know whether they have received a targeted advertisement or not.⁴⁹ Moreover, regulation on Transparency and Targeting of Political Advertising also ensures that the said political advertising respects the right to the protection of personal data, and will protect the citizen's freedom of opinion as well as freedom of speech just as mentioned in the EU's Charter of Fundamental Rights.⁵⁰

The rules of this regulation require honesty and openness for any and all kinds of ads which are meant to influence politics whether it is elections or the way people vote. These rules are applicable at the EU; national, regional, and local levels. The obligations of this regulation do not affect the content of political advertisements or other aspects of political advertising at all. They are governed by national rules such as the conduct of political campaigns. The regulation does not cover any content under editorial responsibility or expression of personal view.⁵¹

⁴⁹ "REGULATION (EU) 2024/900 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL," *EUR-Lex*, March 13, 2024, accessed March 15, 2026, <https://eur-lex.europa.eu/eli/reg/2024/900/oj/eng>.

⁵⁰ "REGULATION (EU) 2024/900 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL."

⁵¹ "REGULATION (EU) 2024/900 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL."

Main elements of this regulation are clear: Firstly, political advertising must be clearly labelled that it is a political advertising indeed, and must state information such as who paid for it, which election, referendum, legislative or regulatory process it is being advertised for, even the techniques used (whether targeting or ad-delivery). Targeting or ad delivery of political advertising online is only permitted under strict conditions. These conditions are as follows: the data have to be collected from the data subject, the data can be used only if the data subject has given explicit and separate consent for their use of political advertising, the personal data of minors cannot be used, special categories of personal data such as race cannot be used for profiling.⁵²

This regulation is designed to make political campaigning clear and open. By requiring a clear transparency label on every advertisement, it ensures that voters always know who paid for the message and why they are seeing it. More importantly, it sets strict limits on profiling, meaning sensitive personal data such as citizens' religious beliefs or specific political affiliations cannot be used to target citizens in a manipulative context. By doing so, the regulation ensures that political debate remains open, honest, and subject to public scrutiny.

5.5. Audio-Visual Media Services Directive

This directive's main goal is to contribute to the proper functioning of the internal market by creating a safe and fair environment for audiovisual media services, including both traditional TV and video sharing platforms. This directive also raises concerns regarding the protection of minors from harmful content, the fight against incitement to hatred, and the preservation of cultural diversity. This directive was designed to ensure EU citizens can access media in a secure way through three main points. The first one is for services to make it easier for citizens to be protected from content involving violence or hatred. Secondly, helping citizens recognize commercial communications and product placement. Lastly, allowing the

⁵² "REGULATION (EU) 2024/900 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL."

citizens to access a wider variety of European works. Moreover, the Audio-Visual Media Services Directive also ensures that media services respect the right to human dignity and will protect the citizen's freedom of information just as mentioned in the EU's Charter of Fundamental Rights.⁵³

The rules of this directive require honesty and openness for any and all kinds of video content, whether it is broadcasted on television or shared on digital platforms. These rules are applicable at the EU and national levels to ensure a level playing field. The obligations of this directive do not interfere with the freedom of expression, but rather set standards for the responsibility of media providers. The directive does not cover content that is purely private or non-commercial in nature.⁵⁴

Main elements of this directive include audiovisual commercial communications that must be clearly recognized as such, and must not use techniques that influence viewers subconsciously. There are strict conditions regarding the advertising of alcohol or tobacco, and advertisements must not cause physical or moral detriment to minors. For video-sharing platforms, the conditions are as follows: platforms must take appropriate measures to protect users from content inciting violence or discrimination, and specific tools must be provided for users to report or flag harmful content. Special categories of data or the personal data of minors are also protected from being used for commercial purposes in a way that could be harmful.⁵⁵

6. Political and Legal Challenges in the Adoption of the EDS

6.1. Competence Allocation between the EU and Member States

⁵³ "Audiovisual Media Services Directive - general principles," *European Commission*, accessed March 15, 2026, <https://digital-strategy.ec.europa.eu/en/node/9634/printable/pdf>.

⁵⁴ "Audiovisual Media Services Directive - General Principles."

⁵⁵ "Audiovisual Media Services Directive - General Principles."

Whenever the European Union puts in effort in order to pass a massive regulation such as the EDS, they face the same classic problem which can be stated as “Brussels vs. The Capitals.” This situation is called *competence allocation* under the EU law. Competence allocation essentially answers the question of “does the EU even have the right to tell us how to run our internal democratic house?” Under Article 2 of the Treaty on the Functioning of the European Union which mentions categories and areas of EU competence, it is clearly stated that the EU may only act within the limits of the competences conferred upon it by the EU Member States.⁵⁶

The Treaty of Lisbon which was signed in 2007, and became effective on the date of December 1, 2009 clarifies the division of competences between the EU and its Member States by dividing these aforementioned competences into three parts: exclusive competences of the EU, shared competences, and supporting competences.⁵⁷

The first type, the exclusive competences of the EU, is concerned about the areas in which the EU is able to legislate and adopt binding acts. Member States of the EU are able to do the same themselves only if given the powers by the EU to the Member State(s) to implement these acts. The EU has exclusive competence in some particular areas such as customs union, the establishing of competition rules necessary for the functioning of the internal market, monetary policy for euro-area countries, conservation of marine biological resources under the common fisheries policy, and lastly common commercial policy.⁵⁸

The second type, the shared competence, states that the EU and its Member States are able to legislate and adopt legally binding acts. Member States exercise their own competence

⁵⁶ “Division of competences within the European Union,” EUR-Lex, February 24, 2022, accessed March 16, 2026, <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html>.

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⁵⁸ “Division of Competences within the European Union.”

where the EU does not exercise, or has decided not to exercise, its own competence. Shared competence between the EU and its Member States applies in some areas such as the internal market, social policy (only for aspects specifically defined in the treaty itself), economic, social and territorial cohesion (regarding regional policy), environment, consumer protection, transport, trans-European networks, energy, area of freedom, security, and justice, technological development, humanitarian aid, and more.⁵⁹

The last type, supporting competence, is the one where the UE can only intervene to support, coordinate, or complement the action of its Member States. It is important to note that legally binding EU acts must not require the harmonisation of the laws or regulations of the Member States. Supporting competences applies to areas such as industry, culture tourism, civil protection, education, and more.⁶⁰

The issue that may be the most controversial for competence allocation is the election. The sovereignty trap of the citizens of particular Member States is very real. Since most EU Member States are very protective when they run their election, and their electoral processes are very crucial to their national sovereignty; some countries argue that the EU should stay in its lane, and continue with handling economic or trade issues.

Some countries may also believe that the EDS creates a lobbying dilemma. All countries would want to regulate, and possibly prevent foreign interference, which is the aim of the EDS. However, how does an organization manage this without stepping on a Member State's right of managing its own diplomatic and security relation is a major question.

6.2. Balancing Security, Fundamental Rights, and Freedom of Expression

How to stop an actor with bad intentions from spreading lies without accidentally silencing a regular citizen or a journalist is a question where the EDS get controversial. In order

⁵⁹ "Division of Competences within the European Union."

⁶⁰ "Division of Competences within the European Union."

to protect democracy from hybrid threats and dark patterns, the EDS needs to monitor and detect what is happening online. However, if a government or an organization acts as an arbiter, the digital authoritarianism that the EU tries to fight becomes itself. Another point is privacy and transparency, and if they contradict one another. For instance, the regulation on political advertising which was mentioned previously wants each and every ad to be honest and open. Although that sounds promising, it requires collecting a lot of information from people, and verifying them. A quest that started as efforts of transparency may slowly turn into a massive surveillance database.

7. Stakeholder Analysis

The "European Democracy Shield" (EDS) is not a single piece of legislation but a collective immune system developed by the European Union against hybrid threats.⁶¹ Although every actor within this system converges on the common ground of protecting democracy, they pursue diametrically opposed agendas when it comes to the method, cost, and boundaries of protection.

7.1. EU Institutions and Agencies

The institutions of the European Union form the core of the shield—however—the power balance within Brussels is constantly tense within the triangle of "Security" (Council), "Executive" (Commission), and "Democratic Rights" (Parliament). The European Parliament (EP), which is one of these institutions, has become the most uncompromising player in this shield after the "Qatargate" bribery scandal in 2022. The primary role of the parliament is to

⁶¹ "Cohesion in the EU towards 2050: 8th Cohesion Report and stakeholder views," November 24, 2022, <https://www.scribbr.com/citation/generator/folders/3h7UgPxonSZCIU9cNUTEqM/lists/EbnmHQ49TYQ3mgFur69kx/>.

be the direct voice of the people in the legislative process and to scrutinize security packages submitted by the Commission through the lens of fundamental rights and freedom of expression. For the European Parliament, full transparency is a red line; its core interests include recording lobbying activities and purging political ads of manipulative algorithms.⁶² Strategically, Parliament, which oversees the Commission's executive power, assumes the role of the system's "democratic conscience" by always demanding public oversight and judicial transparency against the Council's closed-door operations conducted under the guise of "national security."

7.2. Member State Authorities

Member states are the primary implementers of the shield on the ground, but they feel strongly uncomfortable about opening up such a sensitive area as "national security" to Brussels' oversight. The "Hawks" (Baltic countries and Poland), who view the Russian threat as an existential risk, conceive of the shield as a kind of "Political Defense Alliance" and advocate for mandatory intelligence sharing.

In contrast, "Sovereignists" like Hungary and Slovakia view a democratic intervention from Brussels as a threat to their domestic political authority. At this point, national intelligence services constitute the most significant internal resistance center that limits the operational depth of the shield by resisting the idea of a common data pool on the grounds of "the confidentiality of national secrets."

7.3. Media Organizations and Digital Platforms

Although Big Technology (Meta, Google, X) platforms have been tasked with removing disinformation under the DSA, they strive to protect their core interest: profit

⁶² "Special committee on foreign interference to deal with corruption allegations," European Parliament, February 14, 2023, <https://www.europarl.europa.eu/news/en/press-room/20230210IPR74716/special-committee-on-foreign-interference-to-deal-with-corruption-allegations>.

maximization. Since the "algorithmic transparency" requirement for them means the disclosure of billions of dollars' worth of trade secrets, they attempt to soften the rules through lobbying activities. Independent media expect the shield to protect them against "SLAPP" lawsuits, as an early warning system for democracy. However, these actors' greatest fear is that the definition of "fake news" within the shield will be left vague, turning it into a tool of censorship.

7.4. Civil Society and Academic Actors

NGOs, which are the system's "ethical filters," oppose the shield evolving into a "police state" or a surveillance mechanism that would involve scanning citizens' private messages. Academic researchers, on the other hand, undertake the task of proving manipulation through scientific methods. The primary strategic interest of these actors is to gain legal access to the raw data of digital platforms.

8. Party and Country Stances

8.1. Party Stances

European People's Party (EPP): The European People's Party (EPP), established in 1976, is one of the biggest parties in the European Parliament (EP). According to the data of the official European Parliament's website, in the 2024 European Parliament Elections by winning 188 seats out of 720, which is 26,11%, the group remained as the largest political party in the European Parliament.⁶³ As a center-right party; it brings christian democratics, liberal conservatives, and pro-Europeans (Pro-EU) under the same roof. In terms of the European Democracy Shield, EPP as a party recognizes that the influence of it shall lead to new geopolitical issues besides bringing hard times and several challenges to the European citizens.⁶⁴ Strengthening border protection, military mobility, crisis management, and both

⁶³ "Make Europe the place to invest, innovate and produce," n.d. accessed March 4, 2026, <https://www.eppgroup.eu/>.

⁶⁴ "European Parliament 2024-2029 Constitutive Session," July 23, 2024. *EuropeanParliament*, <https://results.elections.europa.eu/en/european-results/2024-2029/>.

civilian and military preparation are also in the party's interest in terms of both future and current issues. The EPP Group stays committed to European Democracy Shield to cope with such issues. Also, upholding universal values such as freedom of expression in a safe environment is one of the group's commitments. Basically, EPP as the core party of EP stands in favor of solving further programs by being committed to the European Democracy Shield.

Progressive Alliance of Socialists and Democrats (S&Ds): S&D is a party that prioritizes social cohesion and welfare systems besides human rights, democracy, labor rights, and rule of law in Europe.⁶⁵ By holding 136 seats out of 720 total, corresponding to a rate of 18,89% of all seats, S&D is recognized as the second- largest political group after the European People's Party (EPP).⁶⁶ The political group gathers socialist, social-democratic, and labor-oriented parties from EU Member States under the same roof with its ideology. As a social- democratic, progressive, and pro-European party, its oversight on the European Democracy Shield is that it is a tool to create a more resilient Europe.⁶⁷ The political group actively encourages the measures taken in order to enhance the democratic institutions, limiting the foreign interference to the politics of Europe.⁶⁸ For S&D, the European Democracy Shield stands as a vital coordinator in order to cope with current and further possible issues such as foreign interference, fragmented politicization, and massive social problems.

⁶⁵ "Our priorities," n.d. <https://www.socialistsanddemocrats.eu/what-we-stand-for/our-priorities>.

⁶⁶ "European Parliament 2024-2029: Constitutive Session," n.d. <https://www.europarl.europa.eu/media/default.do?inf=press&lang=en>.

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[briefing.com/news/eu-china-relations-after-the-2024-european-elections-a-timeline/](https://www.briefing.com/news/eu-china-relations-after-the-2024-european-elections-a-timeline/).

⁶⁸ "EU-China Relations After the 2024 European Elections: A Timeline"

The Patriots for Europe (Pfe): The Patriots for Europe, one of the right-wing and nationalist political groups in the European Parliament, was founded on the principles outlined in the Vienna Manifesto.⁶⁹ One of the priorities of Pfe is to establish a strong patriotic force on the European political stage. Over time, more and more parties joined this patriotic movement, which ultimately established itself as a political group in the European Parliament in June 2024.⁷⁰ By the time the European Parliament elections are held in 2024, the group has risen to be the third- largest block in the European Parliament.⁷¹ Generally, their oversight on European Democracy Shield is critical. The group argues that democracy should be protected by national governments instead of EU institutions. Also, it argues that the electoral systems and political processes of the member states should be special to the country, and EU authority should not be an actor in these. Reason for these arguments, according to Pfe, is stated by presenting that such a mutualization may undermine member-state sovereignty.

European Conservatives and Reformists (ECR): The European Conservatives and Reformists (ECR) Group is a centre-right political group in the European Parliament, established in 2009 under the founding principles of the Prague Declaration.⁷² Following the 2024 European Parliament Elections, ECR won 78 seats from 720 which corresponds to 10,83%.⁷³ ECR has a supportive but cautious oversight on the European Democracy Shield.

⁶⁹ “Who are we?” n.d., <https://www.patriotsforeurope.eu/>,
“Patriots for Europe: A Radical-Right Shift in the EU’s Political Landscape.” November 2, 2024,
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<https://europrospects.eu/patriots-for-europe-a-radical-right-shift-in-the-eus-political-landscape/>.

⁷²The European Conservatives and Reformists Group is a centre-right political group in the European Parliament, established in 2009 under the founding principles of the Prague Declaration. These principles brought together MEPs from across the European Union who supported a vision of common sense reform for the whole EU,” n.d. <https://ecrgroup.eu/ecr>.

⁷³ “European Parliament 2024-2029 Constitutive Session,” July 23, 2024, *European Parliament*, <https://results.elections.europa.eu/en/european-results/2024-2029/>.

By totally agreeing with the argument that democracy should be protected, the ECR group opposes the idea of centralizing more power in Brussels. The political group emphasizes that democratic resilience should be built through stronger member states rather than stronger EU institutions. Therefore, the resilience and political processes should be citizen and government oriented.⁷⁴ In order to conclude the overall stance of ECR Group on the European Democracy Shield, a part of the speech of ECR Shadow Rapporteur Beata Szydło's approach is given as "I support the efforts to protect European democracies from foreign interference, but not at the expense of freedom of expression or the competences of the Member States."⁷⁵

Renew Europe: Renew Europe or simply renew is a liberal, centrist grouping within the European Parliament, based on Emmanuel Macron's Renaissance Coalition in France.⁷⁶ Its roots come from Emmanuel Macron's Renaissance Coalition in France. Renew, as a political group in the European Parliament, is now the third-largest block in the European Parliament with 98 members out of 70. It was previously known as the Alliance of Liberals and Democrats for Europe (ALDE).⁷⁷ The political group seeks freedom and civil rights as they secure economic growth at the same time.⁷⁸ The political group is one of the blocks that are in favor of European Democracy Shield. However, according to Renew, the current legislations are too weak and "toothless" to utilize. Therefore in order to have a safe democracy, it states that the European Democracy Shield shall be supported. On the other hand, more compulsory and

⁷⁴ "Democracy must be protected but not centralized in Brussels," January 29, 2026, <https://ecrgroup.eu/article/democracy-must-be-protected-but-not-centralised-in-brussels>.

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"Democracy must be protected but not centralized in Brussels."

⁷⁶ "What is Renew Europe," September 24, 2020, <https://ukandeu.ac.uk/the-facts/what-is-renew-europe/>.

⁷⁷ "What is Renew Europe," n.d. <https://www.reneweuropengroup.eu/about-us>.

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effective legislation is required. Furthermore, besides promoting media literacy education to help citizens detect disinformation, it advocates for independent journalism, media resilience funding, and a pluralistic media environment.

Greens/European Free Alliance: Greens/EFA was first established as an alliance between European Green parties and regionalist/minority-focused parties (EFA) and first formed in 1999. It was involved in the European Parliament in 1984.⁷⁹ It is not an individual political party in the European Parliament, but it is a coalition of multiple national parties. It is a left-wing party with its strict points made under the light of leftist thoughts. It often aligns with S&D Group due to their mutual political aspects. It sees European Democracy Shield as an efficient body to protect democracy. It conditions the European Democracy Shield only to a point. The argument is that it should be rights-centered and carefully designed. Of these rights, the prior ones are freedom of expression and misuse of political censorship.⁸⁰ The European Democracy Shield should thus be carefully checked and managed. This management should also be transparent, proportionate, and democratically controlled, according to Greens/EFA Group. In conclusion, Green/EFA defends that the European Democracy Shield should be carefully designed for equality, transparency and accuracy. Otherwise they, as a political party, state that they will not be supporting the European Democracy Shield.

The Left in the European Parliament: The Left with its former name which has stated until January 2021 European United Left/Nordic Green Left (GUE/NGL)⁸¹ is a heterogeneous group of left-wing politics. It also consists of socialist and communist parties, including anti-

⁷⁹ “Who we are,” n.d. <https://www.greens-efa.eu/en/who-we-are>.

⁸⁰ “Who we are.”

⁸¹ “History,” n.d. <https://left.eu/history/>.

capitalism, communism, democratic socialism, and eco-socialism.⁸² By having 46 seats out of 720, corresponding to 6,39% of the parliament⁸³ The Left has gained more seats than European Sovereign Nations and others. In terms of the agenda item, European Democracy Shield, the party's approach is supportive but cautious at the same time. The points that The Left supports are defence of democracy from external interference, enhanced transparency in political advertising and online platforms, stronger accountability for Big Tech, and public focused mechanisms. On the other hand, the party's concerns related to the European Democracy Shield are civil liberties risks, overreach by EU institutions, weaponization of "disinformation" labels, and lack of social dimension. Specifically, the party is skeptical about centralized power without strong democratic control and reduction of self expression of the public.

Europe of Sovereign Nations: Europe of Sovereign Nations (ESN), founded on 14 August 2024 and registered on 30 September 2024, is a pan-European political party which stands as a far-right party. It is a right-wing party, which is a feature that determines its stance for the related topic. By having 25 seats out of 720, corresponding to 3.47%, ESN can be considered as a novel political group in the right-wing.⁸⁴ The political party's stance on the European Democracy Shield is critical and spectacular. Due to the management issues regarding a centralized governance system which is EU centered, is a point that the party strongly opposes. This may hurt the information flow besides reduced freedom of expression regarding parliamentary elections. Furthermore, the party thinks that there are several problems about

⁸² "What are the values of the left?," March 5, 2020, *Justice Everywhere*, <https://justice-everywhere.org/distribution/what-are-the-values-of-the-left/>.

⁸³ "European Parliament 2024-2029 Constitutive Session," July 23, 2024, <https://results.elections.europa.eu/en/european-results/2024-2029/>.

⁸⁴ "European Parliament 2024-2029 Constitutive Session."

media monitoring and risks of censorship as well. It highly defends that such politically influential action should be done inside of the Nations. The ESN party stands for freedom, democracy, equality and the rule of law, for respect for human dignity and the protection of human rights, including the rights of minorities. Therefore, they want to guarantee the internal and external security of European states and reinforce the principle of subsidiarity.⁸⁵

8.2. Country Stances

Austria: Austria has fully backed the 'whole-of-society' strategy of the EDS, and it is highly receptive to the development of a new European Centre for Democratic Resilience (ECDR) to share best practice on engaging society.⁸⁶ In addition to this, the country is also in support of the development of media literacy within national curricula, with its federal structures already focusing on countering disinformation at a grassroots level to ensure long-term stability within society.⁸⁷

Belgium: Belgium is a country that is a major advocate of the EDS and has backed the Commission's plan to consolidate foreign information manipulation and interference (FIMI) monitoring to safeguard the EU's administrative hub.⁸⁸ They also support a more streamlined hub within the European Centre for Democratic Resilience (ECDR) to enable a quick response

⁸⁵ "Political program," n.d. <https://esn-party.eu/what-we-stand-for/political-program/>.

⁸⁶ "European Democracy Shield and EU Strategy for Civil Society pave the way for stronger and more resilient democracies," European Commission, November 12, 2025, accessed March 22, 2026, https://enlargement.ec.europa.eu/news/european-democracy-shield-and-eu-strategy-civil-society-pave-way-stronger-and-more-resilient-2025-11-12_en.

⁸⁷ "Australia Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Australia.pdf.

⁸⁸ "European Democracy Shield and EU Strategy for Civil Society Pave the Way for Stronger and More Resilient Democracies."

to large-scale international information operations via the Digital Services Act (DSA) incidents and crisis protocol.⁸⁹

Bulgaria: Bulgaria is one of the countries that is included within the EDS structure, and it has supported digital modernization across the EU in order to combat information threats, particularly from non-EU actors.⁹⁰ However, this country has recently shown a tendency to favor national security protocols over collective monitoring of information threats and hence may need to be more flexible with regards to the implementation of the ECDR strategic hub.⁹¹

Croatia: Croatia is fully aligned with the EDS, and it has not raised any objections to the ECDR's centralization or the enhancement of electoral integrity throughout the Union.⁹² Croatia also specifically supports the legislative actions regarding the safety of journalists as well as the transparency of political advertising, which is essential for maintaining the public's trust in their domestic democratic process.⁹³

Cyprus: Cyprus is a participant in the EDS, and it has not objected to the proposal for a centralized data hub for resilience. This shows Cyprus' understanding of the complexity of threats to the information space.⁹⁴ Since the country has benefited from the Union's security

⁸⁹ "The European Democracy Shield: An overview," *European Parliament*, January 2026, accessed March 22, 2026, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2026/782603/EPRS_ATA\(2026\)782603_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2026/782603/EPRS_ATA(2026)782603_EN.pdf).

"European Centre for Democratic Resilience," European Commission, accessed March 22, 2026, https://commission.europa.eu/european-centre-democratic-resilience_en.

⁹¹ "European Democracy Shield."

⁹² "Defence of Democracy: Questions & Answers," European Commission, December 12, 2023, accessed March 22, 2026, https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_6454.

⁹³ "The European Democracy Shield: An Overview."

⁹⁴ "Defence of Democracy: Questions & Answers."

policies, it supports IT-based threat detection with the condition of sufficient financial support for smaller member states to upgrade their national monitoring capacities.⁹⁵ *Czechia*: Czechia is a proactive supporter of the EDS and the establishment of a new data hub for fact-checking. It has also been an advocate for the Union's more robust defenses against foreign disinformation.⁹⁶ However, Czechia is in need of technical and financial support to fully implement the "FIMI Toolbox", and increase the presence of the European Network of Fact-Checkers within their territory.⁹⁷

Denmark: Denmark is fully integrated into the EDS, and it is very supportive of the new focus on technological resilience with the new democracy shield.⁹⁸ Denmark has the technological capacity to lead on media resilience, and independent journalism projects. Moreover, the country has been pushing to ensure the ECDR is the primary vehicle through which coordination and exchanges occur.⁹⁹

Estonia: Estonia is a primary supporter of the EDS, utilizing its high level of financial stability and digital innovation to push the agenda of the ECDR.¹⁰⁰ The aim is to be technologically

⁹⁵ "The European Democracy Shield: An Overview."
"Defence of Democracy: Questions & Answers."
"The European Democracy Shield: An Overview."
⁹⁶ "Denmark Report Sustainable Governance Indicators 2024,"

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⁹⁸ *SGINetwork*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Denmark.pdf.

⁹⁹ "European Centre for Democratic Resilience."

¹⁰⁰ "Estonia Report Sustainable Governance Indicators 2024," *SGINetwork*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Estonia.pdf.

advanced to ensure detection of AI-driven manipulation, which aligns with the country's national strategy of "digital first." Estonia has not made any objections to the proposal.¹⁰¹

Finland: Finland is fully integrated under the EDS, and it carries the technical expertise to further centralize resilience systems through its established "comprehensive security" model.¹⁰² Finland supports the "Safer Together" modernization goals as well as the protection of scientific research from foreign interference. This shows that the country views the ECDR as a vital hub for pooling cross-border expertise.¹⁰³

France: France is one of the most influential supporters of the EDS, and it has proposed establishing the ECDR to further empower the collective ability of the EU to face threats.¹⁰⁴ The country wholeheartedly backs the development of fresh legislation on transparency in foreign interest representation, and has been a major force behind the 2025 joint communication on empowering resilient democracies.¹⁰⁵

Germany: Germany has been a long-standing advocate of democracy, and it emphasizes the need for unity in dealing with foreign threats to stability in the Union.¹⁰⁶ The country is one of the two major supporters of the EDS, along with France. Germany also advocates for a more

¹⁰¹ "European Democracy Shield and EU Strategy for Civil Society Pave the Way for Stronger and More Resilient Democracies."

¹⁰³ "Defence of Democracy: Questions & Answers."
European Centre for Democratic Resilience,
"European Democracy Shield and EU Strategy for Civil Society Pave the Way for Stronger and More Resilient Democracies."

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Resilient Democracies."

¹⁰⁶ "Defence of Democracy: Questions & Answers."

empowered role for the ECDR, as well as an enhanced ability to handle third-country lobbying data on a centralized level to increase transparency in politics.¹⁰⁷

Greece: Greece is a member of the EDS, and it implicitly endorses the newly established system of EU Resilience; particularly with respect to protecting its information space from regional threats of hybrid warfare.¹⁰⁸ However, the issue of technology infrastructure and funding of the newly established ECDR remains a major issue for their administration and one that requires more investment from the EU.¹⁰⁹

Hungary: Hungary is a part of the EDS, but it has been raising issues about the "interference" of the ECDR with national regulations through EU-level monitoring.¹¹⁰ Though supportive of the modernization process, the country has been pursuing a shift towards national-centric policies. This may create difficulties in the process of full centralization, and therefore made Hungary one of the few delegations to raise concerns about the presidency's conclusions on resilience.¹¹¹

Ireland: Ireland is fully involved with the EDS, and it has not had any issues with the topic. The country has been supportive of the broader EU efforts to regulate the digital information space as well.¹¹² Ireland has been compliant with digital regulations, and supports the new

¹⁰⁷ "The European Democracy Shield: An Overview."

¹⁰⁸ "Greece Report Sustainable Governance Indicators 2024," *SGINetwork*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Greece.pdf.

¹⁰⁹ "European Centre for Democratic Resilience,"
"Defence of Democracy: Questions & Answers,"
"European Democracy Shield,"
"Defence of Democracy: Questions & Answers."

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"incidents and crisis protocol" for online platforms to ensure timely reactions to any transnational information-related actions.¹¹³

Italy: Italy is a part of the EDS but without any objections to the broader process of modernization and regulations on political advertising. The aim of this action is to ensure fair electoral processes.¹¹⁴ However, the country's shift towards national-centric policies may alter its views on the operational role of the ECDR, and infrastructure is an issue for Italy in its southern regions.¹¹⁵

Latvia: Latvia is fully engaged in the EDS, and it has shown full backing towards the idea of a centralized resilience system, which aligns them with the EU's digital policies towards combating foreign interference.¹¹⁶ Latvia has been quite vocal in calling for the ECDR to act as a tool for early detection of foreign interference, especially because of its geopolitical position.¹¹⁷

Lithuania: Lithuania is engaged in the EDS and, in a way, it has shown support towards the idea through the promise of sufficient funding for the infrastructure.¹¹⁸ Lithuania has been quite

¹¹³ "European Democracy Shield and EU Strategy for Civil Society Pave the Way for Stronger and More Resilient Democracies."

"Italy Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Italy.pdf.

¹¹⁵ "European Centre for Democratic Resilience."
"Latvia Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026,

¹¹⁶ https://www.sgi-network.org/docs/2024/country/SGI2024_Latvia.pdf.

¹¹⁷ "European Centre for Democratic Resilience."
"Lithuania Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026,

¹¹⁸ https://www.sgi-network.org/docs/2024/country/SGI2024_Lithuania.pdf.

vocal in calling for the development of the 'FIMI Toolbox', and the establishment of a framework to ensure the development of all member states to a minimum level.¹¹⁹

Luxembourg: Luxembourg is fully engaged, and it supports the idea of a single European Resilience Hub as well as the strengthening of the European Media Freedom Act as part of the shield.¹²⁰ The country believes that the integrity of the information space is a collective responsibility that requires legislative force as well as voluntary strategic cooperation.¹²¹

Malta: Malta is a full participant in the EDS, and it has shown implicit support for the new resilience measures by recognizing them as a necessary complement to the European Democracy Action Plan.¹²² However, the country's technology would need to be upgraded to allow for the development of national branches of the fact-checking network, and the new civic tech hub.¹²³

Netherlands: The Netherlands is not only a crucial member but also a major contributor to the EDS proposal. It has a focus on the need to develop a 'whole of society' approach to help boost trust.¹²⁴ The country aims to be a major player in the development of the ECDD, and it has

¹¹⁹ “European Centre for Democratic Resilience.”

¹²⁰ “Defence of Democracy: Questions & Answers.”

European Centre for Democratic Resilience.

“Defence of Democracy: Questions & Answers.”

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“Netherlands Report Sustainable Governance Indicators 2024,” *SGI Network*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Netherlands.pdf.

been a strong supporter of rolling out media literacy programs across the Union to help empower citizens against digital manipulation.¹²⁵

Poland: Poland has shown its commitment to the changes introduced by the EDS reforms, and recently aligned more closely with its digital compliance rules by focusing on the Polish Council conclusions on strengthening EU Resilience.¹²⁶ Poland also aligns itself with the development of a collective response to the threat of hybrid warfare, and it has advocated for more funding to boost democratic resilience both within and beyond the Union.¹²⁷

Portugal: Portugal is a part of the EDS, and it has not opposed the new centralized system. This means that the country shows its support for a more interconnected network of democracy protectors.¹²⁸ The country showed this by stating that the ECDR should be a dynamic tool, meeting the interests of its citizens while delivering results.¹²⁹

Romania: Romania is a part of the EDS, and it has implicitly voiced their support for it as part of their digitalization efforts, specifically in the context of protecting democratic processes. The country has been vocal about the importance of the ECDR in supporting quick response capabilities during critical moments of elections, especially following domestic incidents regarding social media interference.¹³⁰

¹²⁵ “European Centre for Democratic Resilience.”
“Defence of Democracy: Questions & Answers.”
“European Democracy Shield.”
“Portugal Report Sustainable Governance Indicators 2024,”

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SGINetwork , accessed March 22, 2026,
https://www.sgi-network.org/docs/2024/country/SGI2024_Portugal.pdf.

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“European Centre for Democratic Resilience.”
European Democracy Shield.

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Slovakia: Slovakia is a part of the EDS, and it has been part of it since the first issuance of the proposal, supporting the centralized system rollout as well as the protection of the information space¹³¹. The country shares the mission of the ECDR regarding the development of collective awareness about the importance of countering the threat by enhancing response capabilities through a unified approach involving all citizens of the society.¹³²

Slovenia: Slovenia is a full participant in the EDS, and it has been a supporter of the proposal with no signs of resistance. Slovenia is more interested in the security of journalists and the stability of institutions.¹³³ The state has been supporting the ECDR as a tool to enable information sharing and capacity building to ensure that democratic institutions can cope with evolving threats.¹³⁴

Spain: Spain is a strong supporter of the EDS regulations, specifically of the ones with regard to modernized regulations on political advertising and creating a centralized ECDR.¹³⁵ The country is a full participant in the Union's resilience, and it advocates for the use of the ECDR to enable citizens to participate in a democratic system through tools like participation and consultative tools.¹³⁶

¹³¹ "Slovakia Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026, https://www.sgi-network.org/docs/2024/country/SGI2024_Slovakia.pdf.

¹³² "European Centre for Democratic Resilience."
"Europe of Democracy: Questions & Answers."
"European Centre for Democratic Resilience."
¹³³ "Spain Report Sustainable Governance Indicators 2024," *SGI Network*, accessed March 22, 2026,

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https://www.sgi-network.org/docs/2024/country/SGI2024_Spain.pdf.

¹³⁶ "European Democracy Shield and EU Strategy for Civil Society Pave the Way for Stronger and More Resilient Democracies."

Sweden: Sweden is a full participant, and it supports digital modernization within the EDS. The country also allows their rapporteur to lead on policy recommendations on the ECDR.¹³⁷ Sweden has a stable economy, and it believes in creating a joint ECDR and protecting independent media. Sweden considers the shield a line of defense against disruption caused by technology.¹³⁸

9. Points to Be Addressed by the Regulation

- 9.1. Within the scope of the European Democracy Shield (EDS), how should the balance be established between the national sovereignty of Member States and the central supervisory authority of the EU? Should participation in EDS
- 9.2. mechanisms, including coordination bodies and monitoring systems, be mandatory or voluntary for Member States? What kind of institutional
- 9.3. structure should oversee the EDS, such as a centralized EU agency or a decentralized network-based model? How can the EU effectively safeguard
- 9.4. elections against cyber-attacks, foreign interference, and hybrid threats? What common minimum standards for election security infrastructure should be
- 9.5. established across Member States? How should AI-generated political content, including deepfakes and automated bot activity, be regulated during
- 9.6. election periods?

¹³⁷ “Defence of Democracy: Questions & Answers.”

¹³⁸ “The European Democracy Shield: An Overview.”

- 9.7. What kind of legal responsibilities should be imposed on platforms for the real-time detection and flagging of AI-supported disinformation and deepfake content during election periods? Should platforms be required to provide
- 9.8. algorithmic transparency and undergo independent audits of their recommendation systems? What enforcement mechanisms, such as fines,
- 9.9. restrictions, or liability rules, should apply in cases of non-compliance by digital platforms? Should the microtargeting of political advertisements be completely
- 9.10. banned, or only subject to strict transparency and data-use limitations? How can full transparency be ensured regarding the funding sources, targeting criteria,
- 9.11. and sponsors of political advertisements? How should the EU regulate or prohibit foreign-funded political advertising? What mechanisms should be
- 9.12. established for the rapid identification and coordinated response to
- 9.13. disinformation campaigns across the EU? How can the EU strengthen media literacy and societal resilience against disinformation in the long term? How can
- 9.14. the EDS ensure the protection of media freedom and journalists while combating disinformation and harmful content? How should the balance be maintained
- 9.15. between countering disinformation and protecting fundamental rights, particularly freedom of expression and privacy?
- 9.16.

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INTRODUCTION TO THE COMMITTEE: The Council of the European Union

The Council of the European Union, also referred to as the Council or Council of Ministers, is one of the key institutions of the European Union (EU). Along with the European Parliament (EP), the Council is responsible for the enactment of EU legislation via binding legal measures such as directives and regulations, as well as drafting resolutions and non-binding guidance. These stages can be completed in alliance with the Parliament, in accordance with the ordinary legislative procedure (OLP), or solely¹³⁹. With the Treaty of Lisbon, the co-decision procedure was introduced under the label of Ordinary Legislative Procedure (OLP) and was recognized as the main legislative procedure within the EU, requiring the joint approval of the European Parliament and the Council so that both of them would be granted equal legislation powers. The procedure starts with a proposal from the Commission and may entail up to three readings. During the very first reading, Parliament considers the proposal and, with simple majority, amends the proposal, approves it, or rejects it. Afterwards, the Council can either accept the Parliament's position or amend it, triggering a second reading. During the second reading, Parliament must approve or amend the Council's position by absolute majority within a time limit; if disagreements linger after the second reading, the conciliation phase will start and create a joint text from representatives of both institutions. The final agreement must then be ratified by both Parliament and Council to become law¹⁴⁰. The decisions that are adopted by the Council require a simple majority, a qualified majority, or full consensus while the Parliament requires a simple majority except a few specific policy areas. A simple majority is attained when the number of for votes are

¹³⁹ European Parliament. (2025, October). *The Council of The European Union*. Retrieved April 16, 2026, from <https://www.europarl.europa.eu/factsheets/en/sheet/24/the-council-of-the-european-union> .

¹⁴⁰ “*The Council of The European Union*”

higher than the number of against votes. Since each member state has one vote, when 14 in favour votes, a simple majority is reached. A qualified majority has two steps: 55% of the Council's member states need to vote in favour, and those 55% must be representing the 65% of the total EU population. Full consensus is only needed for voting upon two topics: social policy and taxation¹⁴¹. The Treaties of the European Union, particularly Articles 16 TEU and 237–243 TFEU, form the very basis for the Council's and Parliament's powers and operations, distributing legislative, budgetary, and policy responsibilities to the latter. The legislative determination of the Council arises mostly under the ordinary legislative procedure, whereby the Council acts powerfully with the European Parliament and alongside the Commission in maintaining democratic legitimacy and balance of power within the EU. Beyond legislating, the Council is positioned to encompass essential tasks such as adoption of the budget, consideration and conclusion of international agreements, and coordination of economic policy. Decision-making procedures within the Council range from simple majority to qualified majority and unanimity, which means the different interests of member states being seen through either the lens of unity or that of flexibility within the institutional framework of the EU (European Parliament 2024b)¹⁴².

1. Introduction to the Agenda Item¹⁴³

The problem of the smuggling of migrants is undoubtedly one of the most important issues for the governance of migration in the European Union. Indeed, the topic of minimum rules for preventing and combating facilitation of unauthorized entry, transit and stay in the

¹⁴¹ *The ordinary legislative procedure - step by step*. (n.d.). European Parliament. Retrieved April 16, 2026, from <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview> .

¹⁴² *“The ordinary legislative procedure - step by step”*

¹⁴³ European Commission, *ANewEUFrameworktoCounterMigrant Smuggling* , COM(2023) 755 final.

Union can be seen as part of a wider shift in the EU's migration policies. In addition to the traditional approach to border control and crisis measures, the EU is moving towards establishing a new legal framework in the migration context.

However, this agenda point does not refer solely to managing migration flows. Indeed, it can be considered as an even bigger challenge, which involves such issues as the definition of criminal liability and the balance between security and human rights in the migration context, and maintaining the EU's legitimacy and control over its borders at the same time. While it is obvious that measures should be taken against organized crime, there is another risk related to the potential criminalization of humanitarian assistance organizations and persons who provide it.

This initiative is based on the realization that the existing legal framework is outdated and inadequate. Smuggling activities have become more sophisticated, flexible, and internationalized. As stated in the policy papers, a great number of irregular migrants who enter the European Union depend on the assistance provided by smugglers, mostly organized crime groups. Hence, smuggling has become an integral part of modern day migration patterns.

However, migration continues to be a political issue in the European Union. Migration is discussed using terms such as control, security, and sovereignty. In this case, there is increased pressure on politicians to come up with concrete actions in reaction to public discourse. Legal instruments such as this directive are not only legal instruments but also messages of political will.

It is important to find a balance between the two extremes. If the legal framework is too weak, there is a possibility that the criminal organizations may enjoy their activities

without many hindrances. On the other hand, a rigid legal framework can lead to violations of people's basic rights.

1.1 Background and Policy Context

The European Union first established its legal framework upon the facilitation of unauthorized entry, transit, and residence in 2002, which is known as the “2002 Facilitators Package”. This package comprises of Directive 2002/90/EC and Framework Decision 2002/946/JHA.¹⁴⁴

Directive 2002/90/EC aims to define the offense of unauthorized entry, transit, and stay in the Union. According to this directive, anyone who knowingly assists a non-EU citizen in entering or passing through a member state or anyone who assists a non-EU citizen residing in a member state for financial gain is considered to have committed an offense.¹⁴⁵ The directive also leaves it to the Member States' discretion whether to impose sanctions for such behavior, stating that the states can apply their national law and practice for ‘cases where the aim of the behavior is to provide humanitarian assistance to the person concerned’.¹⁴⁶

Framework Decision 2002/946/JHA defines the extent of the penalties. The framework estimates a minimum of eight years of prison time if the offense was committed

¹⁴⁴ “Revision of the Anti-smuggling Package.” European Parliament, February 20, 2024. Accessed February 24, 2026. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753190/EPRS_BRI\(2024\)753190_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753190/EPRS_BRI(2024)753190_EN.pdf).

¹⁴⁵ “COUNCIL DIRECTIVE 2002/90/EC of 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence.” *EUR-Lex*, November 2002. Accessed February 24, 2026. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0090>.

¹⁴⁶ “COUNCIL DIRECTIVE 2002/90/EC of 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence.”

for financial gain, if the offense was committed as an activity of a criminal organization, or if it was committed while endangering the lives of the people who are the subject of the offense.¹⁴⁷ This legislative baseline is still currently used by the union; however, the concept of migration has undergone a radical transformation since it was established in the early 2000s. These changes resulted in the Package falling short of including necessary regulations for the possible outcomes of the current day.

In November 2023, the Commission proposed a directive to modernize and strengthen the legal framework on the fight against migrant smuggling.¹⁴⁸ This proposition's aim is to respond to modern smuggling tactics, such as the digital tools used for smuggling, create legal clarity, ensure humanitarian assistance is distinguished from criminal operations, and harmonize the penalties to make sure smugglers face similar punishments across all Member States of the Union.¹⁴⁹

Some EU organs are also helping the Union with combating smugglers, such as Frontex (European Border and Coast Guard Agency), Europol (European Union Agency for Law Enforcement Cooperation), and Eurojust (European Union Agency for Criminal Justice Cooperation). Frontex is an agency headquartered in Warsaw, Poland, and it ensures safety

¹⁴⁷ “COUNCIL FRAMEWORK DECISION of 28 November 2002 on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorised Entry, Transit and Residence.” European Union, May 12, 2002. Accessed February 24, 2026. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0946>.

¹⁴⁸ “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA.” European Commission, November 28, 2023. Accessed February 24, 2026. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0755>.

¹⁴⁹ “Commission Launches a Global Alliance to Counter Migrant Smuggling and Proposes a Strengthened EU Legal Framework.” Press release, November 28, 2023. Accessed February 24, 2026. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6081.

within the EU's external borders and fights against cross-border crimes.¹⁵⁰ The agency monitors the borders by using technologies such as drones and satellites, trains personnel to assist the Member States with border checks, registration, and fingerprinting, and helps with the return of the individuals who reside in the Union illegally. Europol's headquarters are in the Netherlands, and its mission is to support the Member States in preventing and combating serious international crime, with the help of the European Migrant Smuggling Center (EMSC).¹⁵¹ The agency also works with many EU partner states and international organizations. Eurojust is also based in the Netherlands, and it has a College consisting of National Members seconded by each participating member state.¹⁵² The College of Eurojust is responsible for the Agency's operational work to combat cross-border crimes, terrorism, and cyber crimes. These agencies closely cooperate to ensure the border safety of the Union.

1.2. Link to the European Agenda on Migration

In the year 2015, an increased number of refugees and immigrants fled across the Mediterranean Sea to Europe from the Middle East and Africa, caused by the ongoing war and poverty in the regions. While many of these immigrants succeeded in entering the Union illegally, thousands of them unfortunately lost their lives trying to cross the border.¹⁵³ In May

¹⁵⁰ Frontex. "Tasks & Mission." Accessed February 24, 2026. <https://www.frontex.europa.eu/about-frontex/who-we-are/tasks-mission/>.

¹⁵¹ "European Migrant Smuggling Centre - EMSC," Europol, accessed February 24, 2026, <https://www.europol.europa.eu/about-europol/european-serious-and-organised-crime-centre-esocc/european-migrant-smuggling-centre-emsc>.

¹⁵² "Migrant smuggling," European Union Agency for Criminal Justice Cooperation, accessed February 24, 2026, <https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/migrant-smuggling>.

¹⁵³ "2015: The Year of Europe's Refugee Crisis," UNHRC Global Website, December 8, 2015, accessed February 25, 2026, <https://www.unhcr.org/news/stories/2015-year-europes-refugee-crisis>.

2015, the European Commission launched an agenda as a response to this crisis.¹⁵⁴ The agenda is based on four pillars.

The first pillar is “Reducing the incentives for irregular migration”.¹⁵⁵ This pillar’s aim is to determine why people resort to illegal ways and who paves the way for these methods, standardize the return process for all member states with the implementation of a return handbook and a stronger role for Frontex to help with implementation, and seconding European migration liaison officers to EU Delegations in key third countries.¹⁵⁶

The second pillar is “Border management – saving lives and securing external borders”.¹⁵⁷ This pillar focuses on giving more power to Frontex by strengthening its role and capacity, and strengthening cooperation with the Middle Eastern and African countries to ensure better border management.¹⁵⁸

The third pillar, “Europe's duty to protect: a strong common asylum policy,” prioritizes ensuring that regardless of which member state the refugee enters the union from, they get the same treatment, with an emphasis on full implementation of the Common European Asylum System.¹⁵⁹

¹⁵⁴ “Managing migration better in all aspects: A European Agenda on Migration,” Press release, May 13, 2015, accessed February 25, 2026, https://ec.europa.eu/commission/presscorner/detail/en/ip_15_4956.

¹⁵⁵ “Managing Migration Better in All Aspects: A European Agenda on Migration.”

¹⁵⁶ “COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS a EUROPEAN AGENDA ON MIGRATION,” *European Parliament* (European Commission, May 13, 2015), accessed February 25, 2026, [https://www.europarl.europa.eu/cmsdata/226727/Session_1 -](https://www.europarl.europa.eu/cmsdata/226727/Session_1_-_communication_on_the_european_agenda_on_migration_en.pdf)

[communication_on_the_european_agenda_on_migration_en.pdf](https://www.europarl.europa.eu/cmsdata/226727/Session_1_-_communication_on_the_european_agenda_on_migration_en.pdf)
¹⁵⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS a EUROPEAN AGENDA ON MIGRATION.”

¹⁵⁸ “Managing Migration Better in All Aspects: A European Agenda on Migration.”

¹⁵⁹ “COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS a EUROPEAN AGENDA ON MIGRATION.”

The last pillar is ‘‘ A new policy on legal migration’’ recognizes the aging population and the need for workers in Europe, therefore focuses on ways to develop legal and easy ways for students, doctors, and engineers to enter the Union, such as modernizing the ‘‘Blue Card’’ scheme.¹⁶⁰

To finalize the process of modernizing the migration management of the EU, the European Commission proposed the "New Pact on Migration and Asylum" in September 2020.¹⁶¹ After four years of negotiation process, the pact was officially approved in May 2024, and will start to be fully implemented by June 2026.¹⁶² There are four pillars of the new migration and asylum policy.

The first pillar is ‘‘Securing External Borders’’, and it aims to do this by robust screening with registering and checking those who do not fulfil the conditions to enter the Union, turning the existing database into a modernized one with Eurodac Regulation, applying a mandatory border procedure for asylum applicants that present risks, and providing quick crisis protocols in emergency situations with the Crisis Regulation.¹⁶³

The second pillar, ‘‘Fast and Efficient Procedures, '' focuses on clear asylum rules ensured by the Asylum Migration Management Regulation, establishing harmonized standards across the EU for ensuring the protection of living conditions of asylum seekers and the rights of refugees.¹⁶⁴

¹⁶⁰ ‘‘COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – EUROPEAN AGENDA ON MIGRATION’’

¹⁶¹ ‘‘COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum,’’ *Eur-Lex* (European Commission, September 23, 2020), accessed February 25, 2026, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1_0002_02/DOC_3&format=PDF.

¹⁶² ‘‘Pact on Migration and Asylum a Common EU System to Manage Migration,’’ Migration and Home Affairs, May 21, 2024, accessed February 25, 2026, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

¹⁶³ ‘‘Pact on Migration and Asylum a Common EU System to Manage Migration.’’

¹⁶⁴ ‘‘Pact on Migration and Asylum a Common EU System to Manage Migration.’’

The third pillar is "Effective System of Solidarity and Responsibility" and it concentrates on establishing a permanent solidarity framework, ensuring operational and financial support by the relevant EU agencies and dedicated EU funds, and creating clear rules for asylum applications.¹⁶⁵

The final pillar is "Embedding Migration in International Partnerships" and it aims to combat migrant smuggling through partnerships with UN agencies and strengthening the capacities of border management authorities in partner countries with the help of reinforced cooperation with Frontex.¹⁶⁶

1.3 Scale and Impact of Migrant Smuggling in the EU

The current framework is based on the 2002 Facilitators Package, and it has been facing significant criticism for being outdated. Therefore, in 2023, a new legislative framework was proposed to modernize the framework. The primary objective of this proposal is to establish a clear and effective EU criminal law instrument aligned with the provisions of Article 83 of the Treaty on the Functioning of the European Union and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air.¹⁶⁷ To achieve this, the proposal focuses on five objectives.

¹⁶⁵ "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum," COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum,"
¹⁶⁶ "Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA," *Eur-Lex* (European Commission, November 28, 2023), accessed March 2, 2026, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0755>.

The first objective is “Ensuring an effective investigation, prosecution, and sanctioning of organized criminal networks responsible for migrant smuggling”.¹⁶⁸ The objective points out how the previous package was criticized for being too broad, and led to legal uncertainty. The new proposal aims to solve this by bringing clarity to which offenses should be criminalized. These include facilitation conducted for financial or material benefit, facilitation that is highly likely to cause serious harm to a person, and cases of public instigation. The objective also clarifies that the proposal does not aim to criminal third country nationals for the fact of being smuggled, assistance provided to family members, or humanitarian assistance.¹⁶⁹

The second objective is “More harmonized penalties that take account of the seriousness of the offense,” and it defines the aggravated criminal offenses. These offenses include those that are committed by a criminal group, caused serious harm or caused death, and they are liable to higher levels of criminal penalties. The proposal states that while the standard offenses would be punishable by a maximum level of imprisonment of at least three years, aggravated offenses would be punishable for at least 10 years, and the most serious offenses that caused death would be punishable for 15 years of imprisonment.¹⁷⁰

The third objective is “Improving the jurisdictional reach”, and aims to sanction the high-value targets that reside outside the EU who organize smuggling activities. The proposal

¹⁶⁸Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁶⁹Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁷⁰Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

broadens the jurisdiction of member states to cases in which the facilitation takes place on board of ships or aircraft registered in a member state or flying its flag, and cases committed by legal persons doing business but not necessarily established in the EU.¹⁷¹

The main goal of the fourth objective, “Reinforcing Member States resources to tackle and prevent migrant smuggling”, is to ensure that member states can counter migrant smuggling effectively, by mandating that they make sure the relevant law enforcement and judicial authorities are adequately resourced, sufficiently trained and specialized to ensure effective prevention, investigation, and prosecution of offenders. The objective also emphasizes the importance of prevention through the implementation of information and awareness-raising campaigns, research, and education programs.¹⁷²

The final objective of the proposal is “Improving data collection and reporting”. This objective points out the lack of data on the subject and requires member states to collect and report statistical data on an annual basis. This reinforced reporting. The system is designed to support evidence-based policy making.¹⁷³

2. Legal Framework and Policy Objectives

The idea to set up minimum rules on combating the facilitation of unauthorized entry, transit, and stay was developed against the backdrop of the already existing but fragmentary

¹⁷¹Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁷²Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁷³Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

legal framework in the EU concerning this issue. Although the EU has identified migrant smuggling as a crime for many years, differences in national legislation, terminology, and law enforcement practices have significantly affected the efficiency of the EU's policy on smuggling.

As part of the present initiative, an attempt is being made to consolidate legal measures adopted to fight this phenomenon. The main objective of such action is not only increased coordination of efforts but also harmonization of views on the definition of migrant smuggling and ways to combat this crime.

In general, the problem of smuggling requires joint actions at the transnational level because smugglers' activities cross the borders of many countries. In other words, the issue is not confined to the jurisdiction of the individual Member State. Thus, the need for legal cooperation is determined by the characteristics of this form of crime itself.

Nevertheless, harmonization of legislation is a complicated process associated with overcoming significant barriers due to differences in the political and legal cultures of EU member states and their administrative capacities.

2.1 Existing EU Legislation on Migrant Smuggling

Prior to the present initiative, the legal framework of the European Union regarding migrant smuggling was mainly grounded on the so-called Facilitators Package¹⁷⁴, which dates back to the early 2000s. It set common definitions and demanded from the Member States the criminalization of facilitating the illegal entry and residence.

¹⁷⁴ Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

Nevertheless, the Facilitators Package has been subject to criticism for multiple reasons. One of the major flaws of this instrument is the vagueness of definitions, as there is no distinction made between the motivation behind an action. In other words, it is impossible to discern whether it was done in order to make money or to help refugees or asylum seekers. Thereby, there have been doubts whether people assisting refugees – NGOs or even relatives – can be considered criminals.

There is also an issue related to the diversity in the implementation of the instrument within different Member States. Though the EU sets general criteria, national legislation differs considerably when it comes to defining offenses, establishing punishments, and making exceptions.

Besides, the current approach fails to consider the changing dynamics of the phenomenon of smuggling. For instance, over the last twenty years, smuggling groups have become more advanced due to increased use of technology and more sophisticated organizational structures. Therefore, it can be seen that there is a lack of dynamism within the legal framework.

This issue has resulted in a general agreement among experts that there is a need for change. In that case, the proposal currently being considered cannot be viewed as a brand new approach but as an improved version of the previous one.

2.2 Reforming the Facilitators Package

The revision of the Facilitators Package could be viewed as one of the key elements of the EU's strategy to counter migrant smuggling. The idea behind the revision is the

introduction of reforms that would help update the legislative framework and fill the gaps that exist.¹⁷⁵

The issue of legal clarity could be seen as one of the main reasons behind the revision. As it stands now, the definitions of terms used are ambiguous, which creates room for confusion both for authorities and non-governmental organizations dealing with the problem of migrant smuggling. To address the situation, the European Union proposes introducing new definitions.

Improvement of the ability of authorities to coordinate their actions could also be seen as an objective pursued by the draft directive. It is important to remember that smuggling rings operate not within one state but across the border, making cooperation crucial in fighting against the problem.¹⁷⁶

Finally, harmonization of penalties in various countries could also be viewed as one of the main objectives behind the revision. Discrepancies between the sentences imposed in different countries could encourage smuggling rings to continue operating in those states where the risk of being caught is minimal. Nevertheless, the process of reforming the Council Framework decision has shown some areas where differences arose between the Member States. One of these areas pertains to the interpretation of the term 'smuggling', more specifically, whether there must be any gain, either financial or material, for it to be considered as such. While one group feels that this is a rather strict condition, which may prevent some cases from being prosecuted at all, the other side sees it as an unnecessary step, which might result in criminalizing more actions than it should.

¹⁷⁵ European Parliamentary Research Service (EPRS), *EU Legislation on Migrant Smuggling*, 2024.

¹⁷⁶ European Commission, *A New EU Framework to Counter Migrant Smuggling*, COM(2023) 755 final.

In conclusion, it is possible to see that while all agree on the necessity of combating smuggling, there are some differences in its methods and limits.

2.3 Objectives of the Proposed Directive

The new directive outlines several major objectives that should contribute to enhancing the efforts of the EU member states in addressing the issue of migrant smuggling.

First, it is expected that organized crime syndicates will be effectively prosecuted. It is believed that the best way to combat organized crime is to reduce the profits from these actions. Therefore, it will not only target people who engage in smuggling activities, but also the organizations that profit from it or are used in some other way by smugglers.

The second major objective involves the establishment of unified sanctions against smugglers and illegal migrants. In this respect, the directive offers a rather detailed structure, according to which more severe sanctions are envisaged in case of aggravating factors. For example, these include the danger posed to migrants' lives and/or deaths.

Another important objective outlined in the directive is related to improving the jurisdiction. Migrant smuggling is one of the crimes that is often committed internationally. It means that offenses committed within the territory of the other country might be considered.

Moreover, the proposal highlights the necessity to develop capacities in Member States. The resources, education, and instruments that will be used to enforce the legislation are included. There is also a necessity to improve the system of data gathering and reporting, which is crucial in order to identify the scope and nature of smuggling.

However, there is also an emphasis on safeguarding fundamental rights. Special measures must be taken to prevent any criminalization of humanitarian assistance. Yet, the details of such measures have still to be determined.

Finally, the main goals that are set by the directive can be seen as dual. Firstly, it aims to increase the capacity of the Union to deal with organized crime and irregular migration. Secondly, it strives to maintain the right balance between such aspects as legal certainty and fundamental rights.¹⁷⁷

3. Key Provisions of the Proposed Directive

This proposed directive may be seen as the fundamental tool by which the European Union intends to introduce changes into its legislation concerning the issue of migrant smuggling. After the need for reform was explained in the previous paragraphs, the next step is to explain what is included in this new piece of legislation. This involves explaining how migrant smuggling is to be considered, who should bear responsibility, how far the jurisdiction will reach, and how much punishment will be imposed for breaking the laws in this area.

This is important, since the wording chosen may result in various interpretations. Even slight discrepancies in the terminology used may cause confusion within the framework of different legal systems. Because of this, discussions within the Council are often centered around such issues. Nevertheless, the directive tries to balance effectiveness with certainty of application.

¹⁷⁷ European Economic and Social Committee, Opinion on Migrant Smuggling Directive, 2024.

3.1 Definition of the Facilitation Offense

The 2023 proposal updates the legal definition of migrant smuggling to make the directive more inclusive. The proposal suggests that facilitation, where the act is done for financial or material benefit, or the act is highly likely to cause serious harm to a person, even though conducted without financial gain, should be criminalized.¹⁷⁸ Also, the proposal broadens the definition of offense by including the use of digital tools such as social media and the internet to promote unauthorized entry to be defined as an offense. Furthermore, it emphasizes the exclusion of humanitarian assistance from the criminal offenses, as it states "*The purpose of the Directive is not to criminalize third-country nationals for the fact of being smuggled, assistance provided to family members, or humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.*"¹⁷⁹ This way, the non-governmental organizations and civilians who conduct search and rescue operations for the people who are trying to enter the Union illegally are protected from the risk of facing criminal prosecution.

3.2 Scope of Criminal Liability

The 2023 directive expands the scope of criminal liability by including all participants in the smuggling chain. It also extends the liability to the preparatory stages. It is stated under

¹⁷⁸Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA," November 28, 2023.

¹⁷⁹Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA," November 28, 2023.

Article 5 that “ *Member States shall ensure that inciting, aiding and abetting and attempting to commit any of the criminal offenses referred to in Article 3(1) and Article 4 are punishable as criminal offenses.*¹⁸⁰” This statement clarifies that not only the people who cross borders but also those who provoke, encourage, or provide for others to facilitate unauthorized entry are prosecuted. The directive covers attempts as well, even if they are not liable for unauthorized entry. The scope of liability becomes more severe when the offense involves certain circumstances. As stated under Article 4, these circumstances include criminal offenses that are committed by a criminal organization, caused serious harm or death to the subject, committed by use of serious violence, or committed against vulnerable people, including unaccompanied minors.¹⁸¹ The directive also emphasized that the aim is to target criminal networks that facilitate unauthorized entry, and not third country nationals for being smuggled by stating “*The proposal also clarifies that the purpose of the Directive is not to criminalise third-country nationals for the fact of being smuggled, assistance provided to family members, or humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.*”¹⁸²

3.3: Jurisdiction and Cross-Border Enforcement

¹⁸⁰Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁸¹Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁸²Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

The 2023 proposal addresses that migrant smuggling is a transnational crime. Since the criminal networks usually operate from outside the EU or from multiple Member States at once, the proposal aims to ensure that there is no legal gap through which the criminals can escape prosecution.

Under Article 12, it is stated that each member state shall establish its jurisdiction where the criminal offence is committed in whole or in part of its territory, committed by its nationals or third country national who is a habitual resident in its territory, committed for the benefit of a legal person established in its territory or is in respect of any business done in its territory, committed on board of a ship or an aircraft registered in it or flying its flag, and results in entry, transit or stay in the territory of that Member State of third country nationals who were subject to the offence.¹⁸³

Furthermore, the proposal points out that if the crime was committed outside the territory of a Member State, the State should make sure that its jurisdiction is not conditional upon the acts being a criminal offence at the place of commission, or that the prosecution can be initiated only following a transmission of information from the state of place where the offence was committed.¹⁸⁴ Also, when multiple Member States have the authority to prosecute the same case, they must cooperate and choose a single lead country, and use Eurojust as a coordinator.¹⁸⁵

¹⁸³Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁸⁴Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁸⁵ “Guidelines for deciding ‘Which jurisdiction should prosecute?,’” Eurojust, December 2016, accessed March 12, 2026, <https://www.eurojust.europa.eu/publication/guidelines-deciding-which-jurisdiction-should-prosecute>.

3.4: Penalties and Aggravating Circumstances

The proposal provides a harmonised and efficient penal framework to ensure that migrant smuggling is treated as a high risk criminal activity across all Member States. Under Article 6, the proposal sets minimum thresholds for maximum penalties, requiring Member States to implement prison sentences of at least three years for standard criminal offences; at least 10 years for criminal offences where the offence caused serious harm or endangered the life of the subject, where the subject was particularly vulnerable or an unaccompanied minor, or where the offence was committed by a criminal organisation; and at least 15 years for criminal offences and attempts that resulted in death of the subject.¹⁸⁶ In addition to penalties of imprisonment, the directive mandates that Member States implement a series of criminal and non criminal sanctions to offenders. The convicted persons may face the withdrawal of permits or authorisations to pursue activities that resulted in committing the criminal offence, and prohibition on practising directly or through an intermediary the occupational activity and exercise, which the criminal offence was committed. They might also be deported after the enforcement of the penalty in a member state or to serve the whole or a part of the penalty imposed in the third country of return, as well as an entry and stay prohibition within the union territory for a period of up to 10 years. Financial and administrative dismantling is also reinforced through exclusions from public funding, imposition of heavy fines, and the freezing and confiscation of both the proceeds derived from the crime and the instrumentalities used to commit it.¹⁸⁷

¹⁸⁶ “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,”

November 28, 2023.

¹⁸⁷ “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

The proposal also identifies specific scenarios that represent a higher level of criminal intention and categorise them as aggravating circumstances to make sure that stronger penalties are applied to such offences . Under Article 9 these circumstances are explained as the criminal offence that was committed by a public official when performing their duties, the criminal offence resulted in involvement of third country nationals who were subjected to criminal offenses in illegal employment, the criminal offence where the offender has been previously convicted of criminal offences of the same nature, the criminal offence entailed or resulted in exploitation of a third country national, a criminal offence were the third country nationals who were the subject of the offense were dispossessed of their identity or travel documents and finally the criminal offense that was carried out while carrying a firearm.¹⁸⁸ By forming this criteria the directive ensures that the most dangerous smuggling networks face the maximum penalties.

3.5:Liability of Legal Persons

The 2023 proposal aims to make sure that necessary measures are taken by the member states to ensure that legal persons can be held liable for the criminal offences. A legal person, such as a corporation or a nonprofit organisation, can be held accountable if the crime was committed for their benefit by any person holding a leading position within the entity based on a power of representation, decision-making, or control. This liability also

¹⁸⁸ “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

extends to the cases where the lack of supervision by such persons has made possible the commission of the criminal offences by a subordinate.¹⁸⁹

The member states are expected to take the necessary measures to ensure the legal person liable for such cases faces effective penalties. These penalties may include fines, exclusion from entitlement to public benefits, temporary or permanent exclusion from access to public funding, being placed under judicial supervision, temporary or permanent closure of establishments that were used for the crime, and withdrawal of permits and authorisations. The proposal also regulates the amount of fines based on the seriousness of the offence. The maximum level of such fines is not less than 3% of the total worldwide turnover of the legal person for standard criminal offenses, 5% of the total worldwide turnover for aggravated criminal offenses, and at least 6% of the total worldwide turnover of the legal person if the criminal offense caused the death of the subject.¹⁹⁰

4. Humanitarian Assistance and Fundamental Rights Concerns

However, arguably the most controversial element in the draft directive relates to the interaction between criminal law enforcement practices and humanitarian activities. Although the draft directive is mainly targeted against criminal groups, the latter's wide coverage inevitably raises the question of its potential effects on those people who provide help to migrants without any profit motives.¹⁹¹

¹⁸⁹Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁹⁰Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down Minimum Rules to Prevent and Counter the Facilitation of Unauthorised Entry, Transit and Stay in the Union, and Replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA,” November 28, 2023.

¹⁹¹ International Commission of Jurists, *Criminalisation of Humanitarian Assistance in Europe* (2022) <https://www.icj.org/wp-content/uploads/2022/04/Criminalization-paper-22-04-2022.pdf>

At the same time, this problem is related to the general contradiction characteristic of EU migration policy. Namely, on one hand, there is a need to counteract criminal organizations and ensure migrants' protection, and on the other hand, there are legal and ethical requirements aimed at ensuring their rights. For instance, it refers to the right to life and assistance.

The problem is that the distinction between assistance and smuggling in practice is not always easy to determine. For example, actions like offering food, housing, or transportation can be considered either criminal or not, depending on legal and interpretive issues.

In consequence, the directive tries to deal with this problem through some particular aspects. Unfortunately, this approach has failed to solve all the problems raised by different parties. Rather, this matter is now the focus of debates during the legislative procedure.

4.1 Humanitarian Clause and Its Legal Implications

The suggested directive also features a humanitarian clause, whose goal is to provide protection to those types of acts that should not be classified as criminal offenses. It recognizes the fact that there are cases when facilitation is performed out of solidarity, compassion, or the need to protect human life and not necessarily due to personal gain or other motivations associated with crime.¹⁹²

¹⁹² Migration Policy Group, *Crackdown on NGOs Helping Migrants* (2019) https://www.migpolgroup.com/wp-content/uploads/2019/06/Final-Synthetic-Report-Crackdown-on-NGOs-and-volunteers-helping-refugees-and-other-migrants_1.pdf

Usually, humanitarian acts include assisting relatives or providing food, water, shelter, and other basics to people in danger. There is an idea of developing such a provision in order to avoid the criminalization of people acting out of humanitarian reasons.

At the same time, it should be noted that the status of the clause remains unclear since, in most cases, the clause is included in recitals of directives rather than the directive itself. As a result, it becomes possible for the states to use discretion when implementing the provision.¹⁹³

Member states could opt for a restrictive interpretation, which would narrow the scope of protection, while other member states might pursue a more expansive interpretation that would provide greater security for humanitarian operators. This inconsistency may cause confusion, especially for organizations that operate internationally.

The ambiguity in the humanitarian provision is one of the critical problems in the ongoing discussions. Although there is broad consensus about the importance of protecting humanitarian aid, the specifics of what constitutes such protection remain controversial.

4.2 Risks of Criminalization of Humanitarian Actors

One of the biggest fears articulated during the legislative process pertains to the possible criminalization of humanitarian organizations. Civil society organizations, non-governmental organizations, and even volunteer individuals have articulated concerns about the risk of being put in trouble with the law because of the new directive.

¹⁹³ PICUM, *Criminalisation of Solidarity in Europe* (2024) https://picum.org/wp-content/uploads/2024/06/How-the-New-EU-Facilitation-Directive-Further-the-Criminalisation-of-Migrants-and-Human-Rights-Defenders_EN.pdf

The fear is well-founded, as there have been numerous occasions when individual citizens and groups faced legal charges after providing humanitarian assistance to migrants. Situations where individuals have been arrested on charges of helping migrants by rescuing them from the seas or providing temporary shelters have played an important part in creating this impression.

If the new directive defines facilitation broadly without providing effective prevention measures, such concerns may well become a reality, as activities aimed at protecting lives could easily constitute facilitation of irregular migration.

It leads to something that is called the “chilling effect.” The threat of being prosecuted might deter individuals and organizations from assisting people who require help. This is especially dangerous in regard to immigrants, especially when they find themselves in a position where their lives are in danger.

On the other hand, there are politicians who believe that strict penalties should be introduced so that the humanitarian pretext is not abused. The reason why they say this is that smugglers will try to hide behind the veil of humanitarianism in order to escape any legal repercussions. It becomes hard to differentiate what counts as true humanitarianism and what can be seen as helping illegal immigrants cross the border for financial gain.

4.3 Compatibility with EU and International Human Rights Law

The directive must also be evaluated in the context of other applicable legal instruments, namely EU and international human rights law. These instruments require that

Member States respect and guarantee certain rights of individuals, even during the course of migration control.¹⁹⁴

Specifically, one issue in evaluating this aspect of the directive is whether it provides sufficient guarantees in order to comply with these obligations of Member States. According to its critics, several problems arise here. For example, the lack of definitions, inadequate protection of humanitarian personnel, and the disproportionate nature of possible sanctions might become problems.¹⁹⁵

International instruments lay down that people who assist others humanely, especially when necessary to prevent harm or injury, must be respected. If national legislation adopted in accordance with the directive does not adhere to this principle, it can be challenged in court.

Another important question arises: how would migrants be affected by the measures adopted as a result of the directive's implementation? The measures taken should combat smuggling without violating migrants' basic human rights.

Different organizations and professional bodies have raised concerns regarding the problems mentioned above. There have been calls for clear definitions and better measures to guarantee adherence to the standards of fundamental rights.

In conclusion, the directive's credibility depends not only on its efficacy but also on its compliance with legal and ethical considerations. A system that violates fundamental rights is unlikely to be credible and will face many difficulties in enforcing its policies.

¹⁹⁴ European Parliamentary Research Service, *Facilitation Directive Proposal Analysis* (2025) [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/765787/EPRS_STU\(2025\)765787_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/765787/EPRS_STU(2025)765787_EN.pdf)

¹⁹⁵ UK Parliament Evidence / UN Protocol reference discussion <https://committees.parliament.uk/writtenevidence/57436/pdf/>

5. Institutional Positions and Interinstitutional Dynamics

Not only the content of the legal act that was introduced, but also the process of developing such acts has much to do with the cooperation between several EU institutions. Each of them considers the matter of migrant smuggling in the light of its own approach to the problem.

The European Commission¹⁹⁶ acts as the author of legislation initiatives, paying attention to the effectiveness of its decisions. The European Parliament is characterized by bringing politics into the discussion and considering the issues concerning human rights and legality. Finally, the Council of the European Union pays attention to practical solutions and enforcement measures.

It is important to mention that such an understanding of the role of various institutions is necessary for conducting the analysis of the processes that take place during the elaboration of the directive.

5.1 European Commission Proposal and Policy Justifications

Indeed, the European Commission takes on an important part in defining the directive. The proposed text represents a clear strategic step taken to bring the European Union legal system to the contemporary realities of migration and to enhance its adaptability to the changes.

¹⁹⁶ European Commission, *A New EU Framework to Counter Migrant Smuggling*, COM(2023) 755 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2023:755:FIN>

Namely, one of the core arguments provided by the Commission for adopting such a directive is the insufficiency of the current legal framework. The migration network has changed greatly and is now more sophisticated, better organized, and prone to finding loopholes in the laws in order to take advantage of them.

For this reason, the proposed initiative attempts to empower the prosecution of smugglers' networks through some vital aspects, such as new definitions and penalties, among others.

On the other hand, the Commission stresses the need for harmonization. Divergent national laws may hinder the process of enforcement and open avenues for the smuggling syndicate to conduct their illegal operations from one nation to another. The harmonization of legal norms is, therefore, the key strategy employed by the Commission.

Nonetheless, the Commission recognizes the need to guarantee the protection of basic human rights. In this regard, the Commission makes mention of humanitarian assistance and clarifies that some forms of assistance must not be deemed as illegal activities. Nonetheless, the critics are of the opinion that the provisions made by the Commission are inadequate to offer sufficient protection.

5.2 European Parliament Position and LIBE Committee Amendments

The Parliament itself, especially the LIBE Committee, is an important actor when it comes to scrutinizing the Commission proposal and proposing amendments to it. The Parliament seems to have a more favorable approach to fundamental rights and legal certainty.

While the Parliament recognizes the goal of preventing migrant smuggling, it questions possible implications of the proposed directive, which relate to humanitarian assistance and legal certainty.

The first contribution of the Parliament is associated with trying to define the terms better. The Parliament seeks to make the distinction between illegal conduct and acts of humanitarian assistance more clear cut by providing definitions for both categories and indicating that such assistance cannot be considered criminal behavior.¹⁹⁷

Additionally, the Parliament expresses doubts regarding certain aspects of the Commission proposal that seem questionable from its perspective. Some elements of the proposal could be seen as overly broad and ambiguous.

Further to this, the Parliament underlines the importance of ensuring conformity with international legal norms. There is the call for more stringent measures to be put in place so as to ensure that basic rights are respected.

The stance adopted by the Parliament is one of caution and rights protection. In this regard, even though there may be some need for more enforcement measures, the Parliament ensures that legal limits are maintained.

5.3 Council of the European Union: General Approach

¹⁹⁷ Haddeland, *Facilitators of Irregular Migration in EU Law* (2025)
https://brill.com/view/journals/emil/27/2-3/article-p125_1.xml

The Council of the European Union¹⁹⁸ embodies the interests of its Member States and is the principal venue for negotiation and compromise. It is influenced by the interests of the Member States, issues of security, and practical matters concerning implementation.

Generally, the Council is in support of the objective of enhancing the EU's effectiveness in dealing with migrant smuggling. Most Member States regard smuggling as a serious security threat, stressing the importance of having powerful instruments against it.

There is, however, a difference in opinion among the Member States on how the matter should be addressed. While some Member States prefer an expansive interpretation of the term 'smuggling' that will enable greater criminalization, others are hesitant about a liberal definition since it might have negative repercussions for humanitarian assistance.

This latter group of Member States is consistent with the European Parliament's position¹⁹⁹.

The overall approach adopted by the Council takes into account both perspectives. On the one hand, it involves strengthening the process of enforcement while at the same time allowing Member States a certain amount of leeway. This can be demonstrated through its use of terms such as broader definition, while also mentioning humanitarian aspects.

On the other hand, the Council emphasizes pragmatic concerns regarding the implementation of the measures. These are focused on making sure Member States have what they require, and also cover topics such as jurisdiction, cooperation, and punishment.

¹⁹⁸ Council of the European Union, *Legislative Process on Migrant Smuggling Proposal*
<https://www.consilium.europa.eu/en/policies/eu-migration-policy/>

¹⁹⁹ European Parliamentary Research Service, *Revising the EU Facilitators Package*
[https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2025\)765787](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2025)765787)

In any case, the approach taken by the Council demonstrates the conflict between harmonization and national sovereignty. While there is agreement concerning action, differences exist when it comes to standardizing legal provisions.

6. Council Negotiations and Member State Positions

The negotiations, changes, and modifications of the directive take place precisely at the level of the Council of the European Union, which becomes the main locus for shaping the final document. While previous chapters provided insights into the stances of various institutions, this chapter will deal exclusively with internal mechanisms of the Council, where the Member States need to come to terms with conflicting legal backgrounds, political considerations, and concerns about security.

Indeed, negotiations at the Council level tend to be complicated even when an agreement on the necessity of combating migrant smuggling exists. Different views regarding the definition, scope, and implementation of measures to counter this crime arise, which is due to various approaches to migration and security policies in general.

Therefore, the discussion at the Council level goes far beyond the technicalities of legal language.

6.1 Diverging National Approaches to Criminalization

A considerable source of dispute between member states in this area is the extent of criminalization. While all member states agree that organized networks involved in

smuggling people across borders need to be addressed, there is some divergence in how they view what constitutes criminal behavior in the broader context.

Some Member States take a very inclusive view. According to them, the legislation should target any assistance provided that enables irregular immigration into their territories, irrespective of the motivation for doing so. It means that, while the motivation to commit crimes can include a desire to gain profit, excluding financial or material gain would leave room for abuse. Such behavior has grave implications irrespective of its motivation.

Other Member States prefer the latter to be taken into account. They stress that it is necessary to make a distinction between acts committed for purely commercial reasons and those that are motivated by humanitarian considerations.

These different stances stem from national circumstances and realities. Some states face an enormous challenge of addressing illegal immigration and thus are interested in stronger tools to tackle this phenomenon.

This leads to the creation of a fragmented preference structure, which complicates the task of forming a common and integrated standpoint. In this respect, the directive needs to reconcile these divergent standpoints without losing its legal coherence.

6.2 Financial or Material Benefit Requirement Debate

At the core of the debate on this directive lies the question of the inclusion of a profit element into the definition of smuggling. This point is considered to be among the most disputable provisions of the draft directive.

In EU legislation, traditionally, smuggling was defined as an activity aimed at obtaining profits or other benefits from it. Such an approach makes it possible to distinguish between smugglers and persons providing illegal assistance for non-commercial purposes. In addition, it is consistent with the concept of organized crime accepted in international law.

However, some Member States have raised concerns regarding such a provision. Namely, it is considered rather difficult to prove the existence of the intention to obtain any benefit in such a case. That is why there is a proposal to abolish or weaken this requirement.

On the contrary, many stakeholders are strongly against such an amendment. First, they believe that omitting the financial gain element would blur the difference between criminal conduct and assistance.²⁰⁰ Without it, it might be possible for the crime to encompass all kinds of behaviors that do not aim at facilitating smuggling networks.

Second, this discussion highlights the conflict of interests in balancing effectiveness and legality. While broadening the scope of the definition would make prosecution easier in some cases, there is an increased likelihood of over-criminalization.

As shown in the compromise documents of the Council, there are several options that attempt to strike a balance between both ends of the spectrum. For example, some texts propose retaining the financial gain condition and leaving the option for Member States to have their own definitions.

6.3 Presidency Compromise Texts and Negotiation Mandate

²⁰⁰ PICUM, *Criminalisation of Solidarity in Europe*
https://picum.org/wp-content/uploads/2024/06/How-the-New-EU-Facilitation-Directive-Further-the-Criminalisation-of-Migrants-and-Human-Rights-Defenders_EN.pdf

The rotating Presidency of the Council is very important in helping to negotiate and propose compromises during the process. The Presidency uses nonpapers and draft proposals as a way of reconciling differences and moving the process forward.

The tool that is most commonly used by the Presidency in this regard is the compromise text. Compromise texts contain recommendations based on the suggestions made by the Member States. Their purpose is to highlight what can be agreed upon while also providing solutions for contentious matters.

Regarding this directive, there have been various compromise texts issued in relation to the following aspects of contention: the definition of smuggling, financial gain, and humanitarian aid.

The negotiation mandate, which was adopted by the Council, summarizes these negotiations. It provides a formal mandate from the Council to start negotiating with the European Parliament. However, it does not end all controversies.

It should be noted that the mandate will provide some flexibility. For instance, it allows for the possibility of stricter rules to be adopted by Member States at the national level. Thus, the objective can be achieved through harmonization of legislation with a minimum degree of flexibility.

Nonetheless, it should also be remembered that flexibility might lead to some problems. Firstly, too flexible approach will prevent achieving consistency in legislation across the whole EU. Secondly, a lack of flexibility will hinder reaching a compromise. Therefore, the Presidency plays an important role in making the mandate effective.

7. Operational and Enforcement Implications

Though the directive is a legal tool, its efficacy is dependent on the manner in which it is implemented. Simply having laws is insufficient to fight migrant smuggling. They need to be backed up by operational capability, coordination, and availability of data.

This chapter will deal with how the directive is implemented. This will include looking at the contribution of the agencies of the EU, operational capabilities of the member states, and data. These components will play an important part in transforming legal provisions into actions.

However, there are also operational challenges that arise due to operational implementation of the directive. Variations among member states can have different impacts on the directive's implementation process.

7.1 Role of Europol and the European Centre Against Migrant Smuggling

The operational response by the EU against migrant smuggling can only be completed through the involvement of Europol, which is the EU's law enforcement organization. In the case of Europol, the European Centre Against Migrant Smuggling plays an important specialized role within Europol.

The directive will greatly enhance the capability of Europol. The nature of the smugglers' network is such that they move across international boundaries; hence, the need for a central institution that coordinates the investigations.

The main responsibility of the European Center Against Migrant Smuggling is the collection of relevant data concerning the migrant smuggling process, analysis of patterns of their operations, and facilitation of action against the smugglers.

The strengthening of Europol, according to the EU, will allow it to develop a new strategy based on coordination and intelligence.

Nonetheless, it should be noted that Europol is not there to substitute national forces; it merely works in coordination with them. That is to say that the success of cooperation largely depends upon whether the Member States have the ability to do so.

Another issue concerns the protection of information and trust between Member States. Indeed, there are often cases where Member States are reluctant to cooperate due to sensitive information being exchanged.

7.2 Strengthening Member State Capacities

It is clear from the directive that there needs to be a proper allocation of resources and capacity building to support the legal provisions.

There are wide disparities amongst the Member States in enforcing anti-smuggling laws, with some having highly efficient systems equipped with special units and state-of-the-art technology. The other Member States may lack resources or have insufficient experience in implementing such measures.

Accordingly, capacity building becomes important, and this can be accomplished through training and better investigative methods. It is necessary to build up capacities by developing an effective mechanism that would address the shortcomings in this regard.

Building capacities also entails dealing with institutional issues. Smuggling cases necessitate comprehensive investigations involving money tracing and electronic tracking. This is especially true if the investigation transcends into third states.

However, increased capacity goes beyond mere enforcement measures. It requires compliance with legal protections as well. The capacity to differentiate between crimes and aid must exist, along with an ability to use the law in a proportionate fashion.

The success of the directive is largely dependent on capacity development and maintenance. Variations among Member States might affect the implementation process, leading to disharmony within the harmonization objective.

7.3 Data Collection, Reporting, and Information Sharing

Good quality and accurate data are crucial to understanding and addressing migrant smuggling. The lack of such data makes it impossible to measure the scale of the issue and assess trends or the effectiveness of particular policies.

The directive focuses on improving data gathering mechanisms. Member States should collect information on incidents of migrant smuggling. This data includes the number of occurrences, nature of the offenses, and results of the trials.

Such data can help adjust strategies based on emerging patterns or changing trends. If there are changes in migrant smuggling methods, strategies might have to be modified to address the challenge adequately. Data gathering helps establish cooperation among Member States and other EU bodies.

Effective information sharing is especially important due to the international dimension of smuggling networks. In most cases, the networks operate across national borders. This means that in order to obtain comprehensive data, information from various channels must be linked together.

However, there are some obstacles associated with enhancing the data systems. For instance, data gathering and sharing should conform to legal requirements, such as data protection regulations. There are also logistical problems in maintaining uniformity among the Member States since various nations employ distinct approaches to gathering data.²⁰¹

Nonetheless, enhancing data collection and information sharing is critical to enforcing regulations. It enables the EU to adopt a proactive approach as opposed to being reactive.

8. External Assessments and Stakeholder Opinions

Besides the EU institutions and Member States, several other external actors have been involved in shaping the proposed directive. They include various advisory groups, research institutions, and legal scholars, whose role is to analyze the proposed directive from various angles.²⁰²

It is vital that such an assessment of the directive takes place, as it provides valuable information on some of the shortcomings and unintended consequences of the proposed directive, as well as any possible conflicts between the provisions and existing laws and norms.²⁰³ Even though these evaluations carry no decision-making authority, they still contribute greatly to the discourse around the directive.

A lot of attention was paid to the relation between law enforcement and fundamental rights. Whereas most agree that efforts to tackle organized smuggling rings are necessary,

²⁰¹ European Commission, *EU Data Protection Rules (GDPR)*
https://commission.europa.eu/law/law-topic/data-protection_en

²⁰² European Commission, *Impact Assessment on the Migrant Smuggling Package*, SWD(2023) 755
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2023:755:FIN>

²⁰³ European Union Agency for Fundamental Rights (FRA), *Fundamental Rights Report 2023*
<https://fra.europa.eu/en/publication/2023/fundamental-rights-report-2023>

there are concerns about how the proposed directive will affect humanitarians and asylum seekers.

8.1 European Economic and Social Committee (EESC) Opinion

The European Economic and Social Committee issues an opinion on EU laws from the standpoint of the interests of organizations of civil society, employers, and workers. This opinion always involves consideration of many aspects of social and economic life.²⁰⁴

As regards the anti-smuggling package, the Committee declares its general approval of the idea of toughening the EU stance on the issue of migrant smuggling. Indeed, it is necessary to tackle organised crime and stop exploiting immigrants.

Still, the Committee points out that the package can have some negative consequences concerning protection of fundamental human rights. Some of the proposed provisions of the directive may criminalize organizations that assist migrants out of goodwill.

In particular, the Committee mentions the need for strict definitions and legal certainty. The absence of these two important factors means that the proposed anti smuggling measure may result in the directive being implemented differently from one country to another.

Finally, the Committee stresses the necessity to make sure that migration policies take into account the needs and rights of migrants in addition to focusing on control over illegal activities and preventing further crime.

²⁰⁴ European Economic and Social Committee, *Opinion on Migrant Smuggling Package*, 2024

Overall, the opinion issued by the EESC reflects a very prudent stance on the proposed directive.

8.2 European Parliamentary Research Service (EPRS) Findings

EPRS supports the European Parliament with services such as impact assessment and legal opinions. Their reports are usually very specific and deal with the overall consequences of the legislation.

As regards the directive evaluation performed by the EPRS, there are a number of important observations made by the organization. First of all, it is stressed that the legislative document might be at odds with some established laws at the national and international levels. Among the issues in question is whether the proposed directive guarantees adequate protection of basic rights.

Another issue pointed out by the EPRS concerns the definition problem in relation to humanitarian assistance. The problem of definitions can pose certain difficulties as it is hard to determine whether humanitarian activities cross the boundary of what is acceptable and thus become illegal.

Another critical concern that arises from the EPRS is the inadequacy of an all-encompassing impact assessment on the draft. According to this source, the proposed directive may overlook several implications, especially those associated with human rights and implementation issues.

In certain instances, it is recommended that the directive be reconsidered and possibly improved before finalizing it. This implies that the conclusions of the EPRS can be considered more critical than those of other organizations on this matter.

As can be seen, the findings made by the EPRS have added to the existing discussion by focusing on various risks and flaws of the directive under consideration.

8.3 Meijers Committee Legal Critiques

An independent panel of lawyers known as the Meijers Committee has also offered its own criticism of the directive. Their evaluation is mainly concerned with the issues of legal consistency and the safeguarding of basic freedoms.

The Committee²⁰⁵ is worried about the possibility of criminalizing humanitarian assistance. This is because the directive fails to offer a satisfactory and binding definition of humanitarian conduct. The absence of such a definition means that those who act with good intentions might find themselves on trial.

Furthermore, the Meijers Committee is also wary of the scope of criminal responsibility outlined in the directive.

Furthermore, the Committee stresses the need for effective oversight systems. An independent agency needs to be part of the implementation process of the directive, especially in matters pertaining to humanitarian intervention and basic rights protection.

Moreover, the question of consistency between the directive and the laws currently in place must also be addressed. The importance of making sure that the directive harmonizes with both European Union laws and other international laws cannot be overlooked.

²⁰⁵ Meijers Committee, *Comment on EUMigrantSmuggling Proposal*, 2024
<https://www.commissie-meijers.nl/en/publications>

On the whole, the Meijers Committee takes a rather balanced stand. They do not dispute the goal of fighting migrant smuggling, but they demand major changes to the directive in order to make it lawful and rights-respecting.

9. Key Controversies and Policy Trade-Offs

The issues relating to this proposal do not relate only to legal and technical questions. Rather, there is a series of underlying issues that are significant in their own right. The significance of these issues relates to the fact that they explain why this issue is so complicated to negotiate over.

At the heart of this negotiation is the issue of how to balance between issues such as security and freedom; harmonization and flexibility; and effectiveness and certainty. There can be no easy solutions here, and each party attaches different weight to each of these aspects.

9.1 Security Objectives vs. Fundamental Rights Protection

One of the key contradictions in the directive is the relationship between security and fundamental rights. On the one hand, there is a great deal of focus on the need to confront organized criminal structures that enable irregular migration. The phenomenon of smuggling is often linked to exploitation, risk, and a larger organized crime network.

In such an understanding, the law must be improved through more elaborate definitions, stiffer penalties, and wider liability. Such efforts could strengthen enforcement, as well as act as a deterrent to criminal behavior. Countries with high levels of irregular

migration would give priority to such laws in their attempts to keep their borders under control.

On the other hand, these laws could infringe upon fundamental rights. There could be cases where humanitarian aid would be considered smuggling if the definition was wide enough and the enforcement powers were sufficiently robust. Furthermore, migrants themselves could become targets of policies in this regard.

It is difficult to make sure that the measures are compatible with the ethical and legal responsibilities. According to European legislation, it is necessary to guarantee human dignity and the right of asylum and to provide humanitarian assistance under some conditions.

The problem is not unique to this directive, but it is quite evident in the context of the document. The approach used to solve it will determine both the legitimacy and efficacy of the directive.

9.2 Harmonization vs. National Discretion

Another important trade-off relates to the degree of harmonization within the Member States. The directive seeks to promote harmonization, but it must also take into account disparities between national legal orders and political stances.

The process of harmonization may be beneficial in several ways. It may help eliminate discrepancies, fill gaps in existing legislation, and provide predictability for enforcement authorities. Given the cross-border nature of smuggling syndicates, such harmonization is especially critical.

Complete harmonization is not easy to accomplish. Member States vary in terms of their legal heritage, which may include divergent criminal laws, procedures, and standards of liability. Political considerations and degrees of vulnerability to migratory pressures also differ.

Consequently, the Member States find it more advantageous to be flexible. This means that they would like to adjust the directive according to their national circumstances and have a say in certain legal matters concerning their jurisdiction.

The trade-off here lies in creating a minimum standard at the European Union level while giving the Member States an option to do more if they so wish. Although this may help reach a compromise, it is bound to create a fragmented system of rules and regulations.

It is a question of how far the EU should go in the development of its migration policy and whether the Member States have enough leeway for sovereignty in this matter.

9.3 Legal Certainty and Prosecution Effectiveness

Yet another conflict arises between the necessity of a precise legal definition and the need to enforce the laws effectively. In criminal law, legal certainty is an absolute prerequisite. Every person should know what actions can be considered criminal and what cannot.

Legal certainty helps to achieve consistency in the application of the law. Moreover, such precision is necessary to prevent individuals from facing arbitrary or excessive legal action. Such precision becomes extremely important when determining what actions are legal and what actions are not.

However, too much emphasis on definitions can become a problem. Precise legal definitions can hamper enforcement and make the prosecution of specific kinds of activities impossible. It becomes even harder when the process of smuggling becomes highly organized.

The dispute regarding the financial or material gain criterion is another obvious instance of this conflict. The preservation of this criterion contributes to legal certainty and safeguards humanitarian operators. Conversely, the removal of this criterion will expand the scope of criminal offenses, yet at the same time cause confusion.

The directive thus requires striking a balance between these competing factors. It has to offer enough certainty to guarantee fairness but still allow enough room for maneuvering.

This is no easy task, and different parties have varying opinions regarding how far this boundary should go.

10. Issues for Council Debate

As negotiations unfold at the Council of the European Union, the directive takes shape through specific policy questions that need to be addressed by all Member States. They relate to the issues that have been discussed before, but the problems are posed in an entirely different manner.

The Council needs to decide not only on the goals of the directive but also on the mechanism needed to meet these goals. It means making decisions on such aspects as definition, protection, punishment, and the general trend of the EU migration policy.

It is important since it is precisely at this stage that the final version of the directive is formulated.

10.1 Scope of Criminalization

One of the key questions of discussion is related to the scope of the criminalization.

With regard to this issue, it is important that member states determine whether the directive would provide a broader scope for the facilitation of unauthorized entry, transit, and stay.

With such an approach, it will be possible to cover more practices that lead to irregular migration. In turn, there is a possibility that it will be easier for the authorities to enforce the directive.

On the other hand, the broadened scope will create an additional risk that the unintended actions can become covered. In order to prevent this situation, it will be necessary for the Council to draw some conclusions.

10.2 Safeguards for Humanitarian Assistance

Connected to this is the question of what mechanisms might be put into place in order to protect humanitarian assistance. Though there is little disagreement that humanitarian aid must be exempted from criminalization, there is less agreement on the structure of the protection.

One possibility would be including solid and precise protection clauses within the mandatory part of the Directive. Such action would result in a legal guarantee of exemption of particular types of activities from criminal sanctions.

On the other hand, it would be possible to leave more discretion in the hands of Member States. In such a case, national legislation would determine the range of the protected activity.

The difference in these two alternatives is rather significant. One approach would guarantee more consistent implementation of the Directive but leave less room for discretion; whereas, the other approach would make it easier for the Council to reach agreement but might result in unequal levels of protection in different Member States.

It is for the Council to decide which course of action it will pursue.

10.3 Penalty Harmonization and Proportionality

Another important matter relates to the harmonization of sanctions. By pursuing the harmonization of penalties within the framework of the directive, the Council seeks to enhance its effectiveness, but there is always a difficulty in doing so due to differences in laws.

Such harmonization may be useful in that it increases deterrence and decreases the incentive for smugglers to engage in illegal activities in specific Member States.

Harmonisation will also help improve cooperation among Member States by bringing their respective legal systems into agreement.

However, it must also be ensured that the proposed penalties are still proportional. According to criminal law, sanctions should be proportional to the gravity of the crime committed. Excessive penalties may give rise to ethical or legal problems when dealing with indirect or less serious offenses.

In sum, the Council needs to carefully consider the issue of harmonization with regard to determining penalties and aggravating factors like situations leading to injury or death.

10.4 Future Direction of EU Anti-Smuggling Policy

Aside from the actual measures stipulated by the directive, the Council has to look into the overall direction of EU policy towards migrant smuggling. This directive is only one component of a bigger scheme, and the way that it is designed will have a bearing on future actions.

There is one issue that needs to be considered: Should the European Union adopt a more centralized approach to tackling migrant smuggling?

Another issue is related to enforcement versus prevention. While the proposed directive concentrates on criminal law, the resolution of underlying factors causing smuggling might entail other actions, such as increasing legal immigration channels or improving conditions in source countries.

Finally, the Council has to consider the place of the directive in the EU's foreign policy agenda. Third-party cooperation is one of the crucial aspects in managing migration processes; however, it can be associated with a lack of accountability and human rights protection.

In conclusion, the decisions reached in the directive will determine not only the response of the EU to smuggling activities but also its migration policy.

11. Country Stances

Austria

The country is actively **addressing organized crime networks and smuggling**. Also, combating people smuggling and irregular migration issues are several key commitments of the Australian Government. Austria's Federal Criminal Intelligence Service (BK) announced on 10 March that, in cooperation with German and Balkan counterparts, it had dismantled one of Europe's largest people-smuggling networks²⁰⁶. For EU integration and migration policies, it is important to note that Austria has the veto power as a country that has a strict approach to Schengen Border Security.

Belgium:

Belgium stands as a **strict institutionalist supporter**. Its primary concern is the migrants who have already come to the EU through other states. It strongly supports the Directive's goal for criminalization of facilitation. On 6 March 2026, the country has just approved a draft bill to fastly track the transposition of the EU Migration Pact.

Bulgaria:

Bulgaria is a country that advocates "**Broad Definitions**" for **smuggling**. Its 2026 position for our agenda item consists of support for the current draft that allows for criminalizing the public instigation. Belgian legal history is one of the most complex. Belgium

²⁰⁶ Visa HQ. "Austrian Police Break up Billion-euro Smuggling Ring That Moved 100,000 Migrants," March 11, 2026. Accessed March 25, 2026. <https://www.visahq.com/news/2026-03-11/at/austrian-police-break-up-billion-euro-smuggling-ring-that-moved-100000-migrants/#:~:text=Austria%27s%20Federal%20Criminal%20Intelligence%20Service,with%20drivers%20remunerated%20via%20cryptocurrency>.

supports Recital 7 and Article 3 that exempt close family members and provision of humanitarian aid from the smuggling issue.

Croatia

The country joined Schengen in 2023, and since then, Croatia has become a **transit country** for a major protector of EU land borders²⁰⁷. In history, Croatia used to be a part of the Western Balkan corridor, which allowed migrants to move quickly to Eastern Europe. However, currently, Croatia has refused to be part of this "corridor". Minister of Interior Davor Božinović has stated that Croatia's role is to ensure that "EU institutions, not smugglers, decide who enters"²⁰⁸.

Cyprus

The country is holding and going to hold the **Presidency of the Council of the EU** from January 2026 to June 2026. Therefore, the country's stance can be considered unique. It pushes hard for a broadened role for Europol in order to dismantle the financial infrastructure of the smuggling crime groups²⁰⁹. The country calls for a firm and clear definition of facilitation in order to cover those who misuse legal transit loops.

Czechia

²⁰⁷ "Croatia Tightens Border Control Laws Amid Smuggling Surge," ETIAS.COM, accessed March 25, 2026, <https://etias.com/articles/croatia-tightens-border-control-laws-amid-smuggling-surge?hl=tr-TR>.

²⁰⁸ Božinović: Croatia Will Be Ready to Implement the Pact on Migration," Vlada Republike Hrvatske, June 13, 2024, accessed March 25, 2026, <https://vlada.gov.hr/bozinovic-croatia-will-be-ready-to-implement-the-pact-on-migration/42853?hl=tr-TR#:~:text=He%20added%20that%20the%20Pact,EU%20and%20receive%20international%20protection>.

²⁰⁹ "Cyprus Pledges Tougher Action Against Migrant-smuggling Rings at Europol Meeting," Visa HQ, February 6, 2026, accessed March 25, 2026, <https://www.visahq.com/news/2026-02-05/cy/cyprus-pledges-tougher-action-against-migrant-smuggling-rings-at-europol-meeting/?hl=tr-TR#:~:text=Finally%2C%20Ioannides%20hinted%20that%20Cyprus,that%20knowingly%20transport%20undocumented%20passengers>.

The country is a **supporter of the EU Directive**. Thus, it has recently overhauled its national migration laws (January 1, 2026). The country does not want to be seen as a transit hub for the Western Balkan route. Therefore, it adds its own strictness to these overhauled laws²¹⁰. By 2026 March, Czechia's stance may be seen as a zero tolerance country for the administrative system. Czechia, as a supporter of the evaluation of the outdated 2002 Facilitators Package with this new Directive. The country argues that the current laws are too vague and inconsistent for the EU. Thus, they allow smuggling and exploitation of the laws. Its considerable actions in 2026 are the developed penalties under Czechia's Asylum and Migration Act (January, 2026).

Denmark

The country's stance remains important thanks to its legal opt-out from EU Justice and Home Affairs (JHA) points. As a key actor in this topic, Denmark's stance is the whole **of route strategy**. Due to the JHA's opt-out, the country is not directly bound by this EU Directive. Its policy is to have a balanced and parallel EU legislation system. The Danish Government is currently working on a national legal proposal in order to set Danish penalties for smuggling as high as the ones proposed by the EU (March 2026), despite the fact that the country has the right to choose whether to follow the Directive or not. Furthermore, Denmark is an active funder of migration management projects in the transit countries.

Estonia

The country sees **these smuggling issues as not only a criminal enterprise but also a potential tool of weaponized migration which is supported by states from its eastern**

²¹⁰ “What Will the New Migration Policy and Stricter Asylum Rules Bring?,” Dospunty Advokat, September 22, 2025, accessed March 25, 2026, <https://dostupnyadvokat.cz/en/blog/what-will-the-new-migration-policy-and-stricter-asylum-rules-bring?hl=tr-TR>.

neighbor. First, Estonia urgently wants specific provisions for facilitation of migrants from the Directive to support it. The regulation about nighttime closures for several border points (Koidula and Luhamaa), which started in February 2024, remains as a currently active system of the Estonian Government. Also, the country wants the Directive to harmonize the utilization of biometric data, which is used to detect and identify smugglers moving across the EU borders, as a step for contactless border management.

Finland:

, Finland has ~~as a frontier~~ **border with Russia**, which has shaped its perspective. The country advocates that in the Directive, the definition of facilitation should include cases where a third country weaponizes immigration cases to harm the regulation and destabilization of a Member State. The country recently lengthened the Border Security Act, with other words, the Act on Temporary Measures, until December 31, 2026, in order to restrict asylum applications in several territories that are close to the borders. Finland's goal regarding the topic is to cover Aggravating Circumstances in terms of smuggling cases, which are coordinated by foreign intelligence services. Moreover, Finland has confirmed that it is fully ready to implement the EU's new Entry/Exit System (EES) on April 10, 2026.

France

The country has a **sovereignist enforcement perspective**, besides focusing on the Northern Maritime Corridor. France, the original proposer of the 2002 Facilitators Package, currently has a harder position regarding the implementation of 2024-2026 Immigration Law Reforms. In terms of the Directive, France wants the Directive to cover conspiracy and preparation as high-tier offenses in order to prosecute individuals who have nautical/explosive equipment in smuggling-prone zones before having any trouble. France supports the

Directive's action for harmonizing financial penalties for legal companies. In addition, France respects Human Rights and advocates that in the criminalization of smuggling, humanitarian acts should not be a part of this crime and should be distinguished clearly.

Germany

The country wants **stricter regulations and calls for systematic hardening**. Recently, Germany has shifted from a reluctant aspect to a primary driver of enforcement across the EU. The country attaches these minimum rules to the existence of the Schengen Area. The country's current regulation system is that it maintains temporary border controls at all nine of its land borders (Extended date: September 15, 2026). The country finds the Facilitators Package, the 2002 rules too weak. Thus, it sees these internal checks as essential. The current deal with the country is that the country shall confirm its readiness to phase out its internal border checks after the new Directive is harmonized across the bloc and fully implemented. Germany amended the Residence Act (AufenthG) to make it an essential offence and criminalization for the entry/transit of someone on an EU travel ban list.

Greece

The country wants **maximum deterrence for the smuggling cases**. Also, the country is actively working on establishing this deterrence. Greece recently introduced life imprisonment for smuggling crimes that results in serious injury or death under the new Law 5275/2026 which was passed in February, 20206. The country has no tolerance specifically for the cases of coincidence with death. Minister of Migration and Asylum, Thanos Plevris, stated in early 2026 that the "business of death" must be met with the highest possible stakes. Minister of Migration and Asylum, Thanos Plevris, stated in early 2026 that the "business of death must be met with the highest possible stakes." Greece, in January 2026, amended its Migration Code

to make membership in an Non Governmental Organization (NGO) an aggravating situation in smuggling crimes.

Hungary

The country's stance can be considered as **rejection and sovereign defence**. Currently (March 2026) Hungary is not only opposing the Directive but it also campaigns against the whole EU Migration Pack which was set for June 2026 implementation. Hungary's perspective is affected by the ongoing battle between Hungary and the European Court of Justice (CJEU) . Also, as an active opposer to the EU regulations, the country is paying a million euros daily fine (as of March 2026) in order not to comply with its border practices with related EU law. With Hungary's newly empowered Sovereignty Protection Office (SPO),the country is actively investigating foreign funded Non Governmental Organizations (NGOs)²¹¹.

Ireland

The country's stance can be defined as **pragmatic integration**. Ireland has a special legal opt out from EU Justice matters (Protocol 21)²¹². Currently The Irish Government officially opts in to the EU Migration Pact and the rules on anti smuggling*. The country also targets secondary movements from the UK. Its primary concern regarding facilitation of transit/stay is the Common Travel Area (CTA) with the United Kingdom. By supporting the Directive's approach for unauthorised stay Ireland wants the Directive to cover accelerated

²¹¹ “Hungary Events of 2025 - Attacks on Civil Society,” Human Rights Watch, accessed March 26, 2026, <https://www.hrw.org/world-report/2026/country-chapters/hungary?hl=tr-TR#:~:text=The%20%E2%80%9Ctransparency%20of%20public%20life%E2%80%9D%20bill%20would%20grant%20the%20SPO,them%20threats%20to%20national%20sovereignty.>

²¹² “International Protection Bill 2026: Second Stage (Resumed),” Tithe an Oireachtais Houses of the Oireachtas, February 10, 2026, accessed March 26, 2026, <https://www.oireachtas.ie/en/debates/debate/dail/2026-02-10/12/?hl=tr-TR#:~:text=Ireland%20has%20a%20legal%20right,for%20the%20Treaty%20of%20Lisbon.>

return pressures in order to deter smugglers from seeing Ireland as a backdoor to the EU via the UK.

Italy

The government of Italy plays a leading part in the modernisation of the EU's legal framework against migrant smuggling, with their active support on the 2023 proposal. The government aims to provide a legal alternative to illegal unauthorised entry and transit by increasing the entry quotas and therefore reducing the demand for criminal networks²¹³. After the tragedy in 2023 where many migrants lost their lives on the coast of Cutro, the government introduced the Cutro Decree. The decree includes severe penalties of up to 30 years in prison for smuggling activities that result in death²¹⁴. However, the government's stance on humanitarian assistance remains controversial; while it agrees with the non criminalisation of aid, the enforcement of the Pientenosi Decree strictly regulates NGO research and rescue operations. Italy also supports the externalization of border management, shown by the 2024 Italy-Albania protocol, which seeks to enhance cooperation with third countries to deter unauthorized entry.²¹⁵

Latvia

The government of Latvia strongly supports the modernization of the framework. The country's stance is shaped heavily by the problem they are having with their neighbor, Belarus, which is the instrumentalization of migrants, viewing the illegal migration cases on

²¹³ "Flows 2023-25: new quotas for entering Italy to work," *Integrazionemigranti.gov.it* Work and Live in Italy, accessed March 18, 2026, <https://www.integrazionemigranti.gov.it/en-gb/Dettaglio-approfondimento/id/54/Flows-2023-25-new-quotas-for-entering-Italy-to-work#:~:text=The%20first%20click%20day%20is,UFFICIALE%20on%203%20October%202023>.

²¹⁴ "Summary of the Request of Admission to the Italian Constitutional Court in Relation to the Case Against the Crew of the Iuventa.," *European Centre for Constitutional and Human Rights*, May 2023, accessed March 18,

2026, https://www.ecchr.eu/fileadmin/user_upload/IL%20IUVENTA_Summary_of_Constitutional_Complaint.pdf
²¹⁵ "Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters," UNHCR, accessed March 18, 2026, <https://rimap.unhcr.org/node/43186>.

their border with Belarus as a hybrid threat organized by the Belarusian government²¹⁶. The Latvian government also implements strong penalties for smuggling cases, including up to 15 years of imprisonment for cases that cause death. The government cooperates with EU institutions such as Europol and European Multidisciplinary Platform Against Criminal Threats(EMPACT) , as well as other Member States such as Lithuania and Poland to manage criminal networks.

Lithuania

Similar to Latvia and Poland, Lithuania's policy is dominated by the instrumentalization of migrants by the Belarusian regime. Lithuanian government responds to these aggressions by implementing “border reversals (pushbacks)” during cases of emergency.²¹⁷ In 2025, the Lithuanian government closed their borders with Belarus temporarily for crossings due to contraband carrying balloon incursions. The country also increased the penalties for cross-border crimes, with sentences reaching up to 10 years of imprisonment for offenses organised by a criminal organization.

Luxembourg

Luxembourg views migrant smuggling as a public security threat and a violation of human rights, and combats this crime with collaborations with Member States and operational partnerships with institutions such as Europol and Frontex. The country also focuses on modern investigation methods such as digital network monitoring. The

²¹⁶“Security and Defence Policy,” Ministry of Foreign Affairs Republic of Latvia, accessed March 18, 2026, <https://www.mfa.gov.lv/en/security-and-defence-policy>.

²¹⁷ “Lithuania and Latvia are developing a united response to hybrid threats,” Ministry of the Interior of the Republic of Lithuania, accessed March 18, 2026, <https://vrm.lrv.lt/en/news/lithuania-and-latvia-are-developing-a-united-response-to-hybrid-threats/>.

government also adopts the principle of “no punishment” for subjects of such crimes and aims to create a balance between strict penalties and humanitarian aid .²¹⁸

Malta

Migrant smuggling is a great threat to the government of Malta as it is the smallest Member State and has a high population density. The government prioritizes border deterrence and rapid deportation. The country cooperates closely with Libyan authorities to send the boats back before they reach the Maltese territory.²¹⁹ Although this strategy has significantly reduced the number of illegal entries, it is also frequently criticized due to delays in sea rescue operations and allegations of human rights violations.

Netherlands

The Netherlands views migrant smuggling as both an organized crime that endangers the lives of migrants and a threat to public security, and therefore follows a zero tolerance policy. To fight with this crime, the government has increased penalties up to 18 20 years of imprisonment, extended temporary border controls at the German and Belgian borders despite the border free travel in the EU,²²⁰ and prioritised global operations targeting the international criminal networks. The government also aims to disrupt smugglers’ logistical

²¹⁸ “LUXEMBOURG EMN COUNTRY FACTSHEET,” *Migration and Home Affairs*, n.d., https://home-affairs.ec.europa.eu/document/download/08aa37d2-add5-4602-8e4c-6b5a8d5fc39c_en.

²¹⁹ “Malta Sets up Center in Libya to Fight Irregular Migration,” *InfoMigration*, May 6, 2020, <https://www.infomigrants.net/en/post/25188/malta-sets-up-center-in-libya-to-fight-irregular-migration>.

²²⁰ “Temporary Reintroduction of Border Control,” *Migration and Home Affairs*, accessed March 18, 2026, https://home-affairs.ec.europa.eu/policies/schengen/schengen-area/temporary-reintroduction-border-control_en.

networks, such as boat and engine supply, and to raise awareness in origin countries to stop the demand for illegal crossings at its source.

Poland

The government of Poland, similar to Latvia and Lithuania, views migrant smuggling not only as an illegal activity but also as a hybrid threat by Russia and Belarus. Consequently, the government built a 186 km long electronic and physical barrier along its borders²²¹, toughened prison sentences, implemented deportation legislation, and harsh legal measures such as suspending asylum applications during crisis periods. While Poland coordinates with Frontex and Europol, it maintains that Member States must retain full autonomy over their physical borders. Furthermore, Poland is cautious regarding broad "humanitarian exemptions," arguing that such cases could be exploited by foreign services to facilitate unauthorized entry under the name of aid.

Portugal

Portugal is a firm supporter of the 2023 Proposal. The government emphasizes the need for legal clarity and protection of vulnerable persons. Poland views the expansion of legal pathways and effective regulations as effective deterrents against these crimes. They also renewed their border management from the former *ServiçodeEstrangeiroseFronteiras*

²²¹ "Completion of work on the first section of the electronic barrier on the Polish-Belarusian border – an event with the participation of the heads of the Ministry of the Interior and Administration representatives," Ministry of the Interior and Administration Republic of Poland, November 21, 2022, accessed March 20, 2026, <https://www.gov.pl/web/mswia-en/completion-of-work-on-the-first-section-of-the-electronic-barrier-on-the-polish-belarusian-border--an-event-with-the-participation-of-the-heads-of-the-ministry-of-the-interior-and-administration-representatives>.

(SEF) to *Agência para a Integração, Migrações e Asilo (AIMA)*²²² after the tragic loss of an immigrant in 2020. The country also operates with Europol and Frontex and notes the importance of balancing the strong enforcement with the social inclusion of migrants to prevent their exploitation by underground criminal networks.

Romania

Romania views migrant smuggling as a threat to national security and is implementing stricter regulations, especially in line with its goal of full Schengen membership. The country has an important geopolitical position as it is located on a transit route used for crossing into Western Europe, therefore it collaborates closely with Frontex and Europol to strengthen border controls through technological improvements and implements prison sentences up to 10 years for smuggling crimes.²²³

Slovakia

Slovakia is aware of the threats of unauthorized entry and is tightening border controls on the Western Balkan route. To prevent illegal crossings, the government placed police units with military support on the borders, and is imposing severe prison sentences of up to 10 years for smuggling cases. The country aims to dry up the financial resources of the

²²²Agency for Integration, Migration and Asylum (AIMA) starts work,” gov.pt, October 31, 2023, accessed March 20, 2026, <https://www2.gov.pt/en-GB/noticias/agencia-para-a-integracao-migracoes-e-asilo-aima-inicia-funcoes>

²²³“LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING ROMANIA,” *Council of Europe*, March 27, 2024, accessed March 20, 2026, [https://rm.coe.int/romania/1680af605b#:~:text=LEGISLATIVE%20FRAMEWORK,262\);](https://rm.coe.int/romania/1680af605b#:~:text=LEGISLATIVE%20FRAMEWORK,262);)

criminal networks through cooperation with the V4 countries and Europol, and supports the full protection of the EU's external borders and effective return policies.²²⁴

Slovenia

As a critical gateway along the Western Balkan route, Slovenia carries out Europol-supported operations to ensure its border safety. The country primarily focuses on the disruption of organized smuggling networks originating from its southern borders,²²⁵ and its main concerns are the integrity of the Schengen Agreement and the prevention of irregular migration to Central Europe. Slovenia supports the New Directive's approach and aims to deter smugglers from viewing the Slovenian-Croatian border as an easy way to get into the EU by harmonizing penalties and digital tracking.

Spain

Spain has been insisting on creating a clear legal distinction between criminal smuggling and humanitarian assistance during the EU Justice and Home Affairs Council discussions, and made it clear that they are against any criminalization of humanitarian aid, and also called for the inclusion of a humanitarian exemption clause in the directive.²²⁶ The

²²⁴ “LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING SLOVAK REPUBLIC,” *Council of Europe*, August 21, 2023, accessed March 20, 2026, <https://rm.coe.int/slovak-republic-2767-9480-1417-v-1/1680aef599>.

²²⁵ “LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING SLOVENIA,” *COUNCIL OF EUROPE*, July 2023, accessed March 20, 2026, <https://rm.coe.int/slovenia-2768-1157-8633-v-1/1680aefb9a>.

²²⁶ “Spain Rejects Criminalising Humanitarian Assistance to Migrants,” *La Moncloa*, December 13, 2024, <https://www.lamoncloa.gob.es/lang/en/gobierno/news/paginas/2024/20241213-eu-justice-council.aspx>.

state also cooperates with Morocco to enable joint patrols, faster return of migrants and cooperation against the smuggling networks.²²⁷

Sweden

Sweden firmly supports the proposed directive and is also shifting towards a highly restrictive migration policy.²²⁸ The country focuses on the security challenges migrants smuggling activities create, and emphasizes that migrant smuggling is no longer just a border issue but an organized crime within Europe. With their “Tidö Agreement”, the Swedish Government changed some parts of their migration policy. The grant amount for adults returning of their own free will has been increased to 350,000 SEK (approximately 30,000 EUR),²²⁹ and the mandatory residency period for naturalisation is increased from five years to eight.²³⁰ Consequently, Sweden's stance on the proposed directive is driven by the belief that migrant smuggling is the primary driver of criminal networks and endangers public safety, therefore the directive should prioritise maximum criminal penalties and enhanced cooperation with Europol.

Party Stances

²²⁷ “LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING SPAIN,” *Council of Europe*, accessed March 21, 2026, <https://rm.coe.int/edited-spain-country-profile-som-2026-2757-0458-8051-v-1/48802b1685>.

²²⁸ Rebecca Stern, “When Permanent Turns Temporary Recent Developments in Swedish Migration Policy,” *Verfassungsblog*(blog), December 5, 2025, accessed March 21, 2026, <https://verfassungsblog.de/migration-sweden-proposal/>.

²²⁹ “The Repatriation Grant Will Be Increased,” *Migrationsverket*, October 31, 2025, accessed March 21, 2026, <https://www.migrationsverket.se/nyheter/news-archive/2025-10-31-the-repatriation-grant-will-be-increased.html#:~:text=The%20Swedish%20Government%20has%20taken,apply%20from%201%20January%202026.>

²³⁰ Mark Hallam, “Sweden to Raise Hurdles to Gaining Citizenship,” *DW*, February 9, 2026, <https://www.dw.com/en/sweden-to-raise-hurdles-to-gaining-citizenship/a-75875130>.

European People's Party (EPP): Founded in 1976, EPP is the largest transnational party of the center-right with 73 member-parties from 37 European countries.²³¹ EPP shares a common commitment to a peaceful, democratic, and united federal Europe based on the principle of subsidiarity.²³² They safeguard the European way of life by promoting a united Europe rooted in fundamental values such as human dignity, freedom, solidarity, respect for human rights, and the rule of law as their mission.²³³ According to the agenda item, they stand in a supportive perspective to prevent such entries to the borders by essentially focusing on illicit migration²³⁴. They strongly emphasize the need of tightening EU migration control for security, rule of law, and combatting smuggling networks. By stressing protection of human dignity and avoiding criminalizing humanitarian aid, the party wants to create a human-focused, peaceful environment. Another issue is criminalization of smuggling for the agenda item. The political party is highly in favor of the idea of criminalizing smuggling cases since they want to clear EU-wide criminal offences in order to enhance human smuggling and illegal entries for profit. Therefore, the political party supports harsher penalties for these crimes and such organized crime groups. On the other hand, by distincting the smugglers from humanitarian aid, EPP states that smugglers should be strictly punished. However, NGOs and individuals helping migrants should not be considered as a part of crime. Thus, the party is protecting the people in need and other helping bodies²³⁵. As the last point regarding the party, they are a supporter of Minimum EU standards for penalties and tougher punishment for repeating offenders and organized crime groups.

²³¹ European Movement International. "European People's Party – EPP." Accessed March 23, 2026. <https://europeanmovement.eu/Member/european-peoples-party-epp/#:~:text=X->

²³² "WHO WE ARE - The European People's Party – EPP."

²³³ EPP Group in the European Parliament. "Our Mission & Values." Accessed March 23, 2026. <https://www.eppgroup.eu/who-we-are/our-mission-amp-values> .

²³⁴ EPP Group in the European Parliament. "Europe Steps up Fight Against Illegal Migration," March 9, 2026. Accessed March 23, 2026. <https://www.eppgroup.eu/newsroom/europe-steps-up-fight-against-illegal-migration>

²³⁵ EPP Group in the European Parliament. "Presidency Resolution on Migration," February 23-24, 2026. Accessed March 23, 2026. <https://www.epp.eu/papers/presidency-resolution-on-migration> .

Progressive Alliance of Socialists and Democrats (S&D) : The S&D Group is the leading centre-left political group in the European Parliament and the second largest²³⁶. S&D is a human-centered party. Therefore for such an agenda item, it argues that anti-smuggling laws should totally comply with fundamental rights and international protection obligations. Therefore, they remark upon the protection of asylum seekers and refugees by stating that this protection should not be undermined by criminalization measures. Also, the party distinguishes humanitarian assistance and smuggling activities as a vital point in criminalization. As a second case, the party totally opposes penalising NGOs, activists, and individuals that are ensuring humanitarian aid²³⁷. Hence, the party wants to have legal safeguards in order to prevent misuse of smuggling laws against individuals by supporting a “humanitarian exemption clause” in legislative processes. Highlighting organized crime networks, the S&D focuses on dismantling transnational smuggling networks, not migrants themselves. Therefore, the party argues that there is a need for intelligence-sharing and financial tracking of smuggling profits. As another point, S&D does not want legal fragmentation among Member States and supports clear and firm definitions in terms of “facilitation”. By accepting the harms of illegal migration and supporting proportional sanctions, the party emphasizes the ways of legal and safe migration pathways.

Patriots for Europe (Pfe) :Following the recent European Parliament elections, the Patriots for Europe has emerged as nothing less than the *third* largest political party²³⁸. Pfe, for

²³⁶ Socialists and Democrats. “Who Are We? - Our Mission, Vision and Values.” Accessed March 23, 2026. <https://www.socialistsanddemocrats.eu/who-we-are#:~:text=The%20S&D%20Group%20stands%20for,opens%20in%20a%20new%20tab>).

²³⁷ Socialists and Democrats. “S&Ds Reject Controversial and Rushed Migration Changes,” December 3, 2025. Accessed March 23, 2026. <https://www.socialistsanddemocrats.eu/newsroom/sds-reject-controversial-and-rushed-migration-changes>.

²³⁸ Verfassungsblog on Matters Constitutional. “The Patriots for Europe,” September 17, 2024. Accessed March 23, 2026. <https://verfassungsblog.de/author/jaap-hoeksma/>.

the agenda item, stands as a strict party with its aspect. The party supports the EU's actions and framework but argues that these “minimum” rules are too weak. It defends that stricter measures shall work better than minimum harmonisation. On behalf of broad criminalization of facilitation, the party is relatively in favor of it. On the other hand, it opposes proposed minimum standards but it supports having broader definitions and having rules for regulation measures. It wants limited or no humanitarian exemptions. Thus the party is against inclusion of broad humanitarian exemption clauses by believing that these minimum rules are too vague and have gaps that can be used by organized crime groups. The political party supports stricter penalties and sanctions in order to regulate these entries better. Furthermore, PfiE strongly opposes migration policy over national sovereignty. According to the party's stance, the Member State autonomy comes first. Therefore, it opposes binding EU-wide minimum rules if they limit Member State autonomy and advocates national-level control over migration and criminal law.

European Conservatives and Reformists (ECR) : The ECR Group emerged as a prominent centre-right force in 2009, driven by a clear dissatisfaction with the centralising tendencies of the EU²³⁹. The party strongly considers the issue of migration. Hence, a seminar regarding the issue is organized by the party itself²⁴⁰. ECR supports criminalization of facilitation of illicit entry. Therefore, ECR supports EU-Level baseline rules. Moreover, the party supports a balanced approach for the topic. Hence, it defends EU's actions for combatting smuggling but argues that minimum rules are useful only when they effectively deter irregular migration. By highlighting intentional and profitable facilitation, ECR's approach is neither too strict nor too vague. In terms of exemptions, the party advocates that only clearly defined

²³⁹ European Conservatives and Reformists. “ECR Group Achievements 2019-2024.” Accessed March 23, 2026. <https://ecrgroup.eu/achievements-2019-2024>.

²⁴⁰ European Conservatives and Reformists. “ECR Group Achievements 2019-2024.” Accessed March 23, 2026. <https://ecrgroup.eu/achievements-2019-2024>.

and limited humanitarian exemptions should be accepted by opposing vague or unclear definitions that can be exploited. Consequently, for exemptions, the party wants to have clear, openly-stated, and strict legalization to prevent exploitation and related abuses. As another issue, the party conditionally supports sanctions and enforcements related to the agenda item. ECR supports the framework of sanctions but it finds minimum penalties too weak. Also, the party accepts harmonization to a minimum extent. On the other hand, ECR is a party which strongly opposes over-centralization. “Migration is the defining challenge of our time. The ECR must spare no resources to take the lead on this issue to counter the weak, ineffective and damaging legislative proposals that are coming from the Commission.”²⁴¹

Renew Europe: Renew Europe is the pro-European and centrist political group in the European Parliament²⁴². The party has a balanced approach for rights and security. It supports EU’s minimum rules besides considering them as a way to ensure balanced security and fundamental rights²⁴³. Also, the party sees harmonization as an essential migration system for Europe. In terms of smuggling, the party strongly supports criminalization. By highlighting the importance of targeting organised criminal networks instead of migrants, the party wants EU-wide clarity in the legislative system. In terms of exemptions, Renew Europe strongly supports clear clauses for humanitarian exemptions. The party emphasizes the requirement for a clear and certain legal action to avoid misuse of laws. For sanctions, Renew Europe gives partial support. They insist that all the sanctions should be fair and proportional. Therefore, it strongly opposes unfair and harsh actions under the name of sanctions. Also, the party encourages

²⁴¹ ECR Policy Group on Migration. “Campaigns.” Accessed March 23, 2026. https://ecrgroup.eu/campaign/ecr_policy_group.

²⁴² Renew Europe. “Who We Are.” Accessed March 23, 2026. <https://www.reneweuropesgroup.eu/who-we-are>.

²⁴³ Renew Europe. “A truly European approach to tackling irregular migration is the only way,” January 29, 2026. Accessed March 23, 2026. <https://www.reneweuropesgroup.eu/news/2026-01-29/a-truly-european-approach-to-tackling-irregular-migration-is-the-only-way>.

judicial flexibility. In terms of EU harmonization, Renew Europe stands as a supporter for these. By opposing fragmentation with the statement that such fragmentation weakens enforcement and creates gaps in the legal system, the party supports harmonization and cooperation among Member States. As the last point, the party gives support to the steps taken in order to combat organized crime. It strongly focuses on dismantling transnational smuggling as a party defending humanitarian rights.

Greens/European Free Alliance : The Greens/EFA parliamentary group was established in 1999, when two progressive European political families - The Greens and the European Free Alliance (EFA) - agreed to join forces in the European Parliament²⁴⁴. The party gives importance to Human Rights. Therefore, they conditionally support EU Rules by stating that only if they totally prioritize fundamental rights. By stating some parts of these restrictions as “inhuman”, the party is totally against any framework that risks criminalizing innocent migrants²⁴⁵. For the current mechanisms, the party states that they are too security- focused. By targeting organized crime networks, the party wants to have clear and firm definitions which include non-profit and assistance based on survival. In terms of exemptions, Greens strongly support broad and explicit humanitarian exemption clauses. By advocating the safety of NGOs and migrants, the party gives importance to these legislative exemptions. In terms of sanctions, the party opposes deterrence- based, unfair sanction systems. Hence, Greens believe that current systems lack proportional approach and over criminalize people. For harmonization, the party opposed the idea of having stricter mechanisms due to harmonisation

²⁴⁴ The Greens/EFA in the European Parliament. “Who We Are - Our Group.” Accessed March 23, 2026. <https://www.greens-efa.eu/en/who-we-are/our-group>.

²⁴⁵ The Greens/EFA in the European Parliament. “EU Ministers’ Decision on Return Hubs & ‘Safe Countries’ Rejects Human Rights in Migration Policy - Migration,” December 8, 2025. Accessed March 23, 2026. <https://www.greens-efa.eu/en/article/press/eu-ministers-decision-on-return-hubs-safe-countries-rejects-human-rights-in-migration-policy>.

but supports proportionate harmonization that shall ensure protection of rights across Member States. Furthermore, the party strongly opposes a too security-focused focus but in favor of humane and proportionate measures.

The Left: By considering dignity, equality, and solidarity as their core principles the party represents questions of civil liberties and human rights in Europe and beyond²⁴⁶. The party opposes current minimum rules because of several points since The Left has long been at the forefront of advocating for migrant rights, consistently denouncing the policies and practices that contribute to Fortress Europe²⁴⁷. The first point is that the party states that the current minimum rules are criminalizing the “whole” migration itself by undermining asylum rights and international protection. The Left is totally against deterrent- focused migration policies as well. A second opposed point by the party is about criminalization of facilitation. The party strongly emphasizes the importance of having clear, specific definitions for facilitation and accepts essentially measures taken against profit- based trafficking networks. Therefore, It rejects informal and solidarity- based assistance approaches. In terms of sanctions, it opposes the argument of punitive sanction systems and sees approaches which are mostly focused on enforcement as disproportionate. For EU Harmonization, the party claims that the party is against harmonization which leads to stricter migration policies and unproportionate measures and supports only the right- based approach for the topic. On the other hand, The Left is in favour of humanitarian exemptions and measures for this topic. It calls for full protection for Non-Governmental Organizations (NGOs), activists, and the civil public that helps migrants.

²⁴⁶ GUE/NGL the Left in the European Parliament. “Rights & Liberties.” Accessed March 23, 2026. <https://left.eu/rights-liberties/>.

²⁴⁷ GUE/NGL the Left in the European Parliament. “The EC’s Dangerous proposal on Migration,” March 11, 2025. Accessed March 23, 2026. <https://left.eu/issues/the-ecs-dangerous-proposal-on-migration/>.

Europe of Sovereign Nations : Europe of Sovereign Nations, which is a party that firmly stand by the idea of a Europe of homelands: a European community of sovereign, democratic nation states that work together in peace for the benefit of their peoples, in all areas that can be better managed together²⁴⁸.For the agenda item, The party finds minimum rules too weak and wants to have stricter deterrence measures and restrictions by undermining its support only when these points are strengthened. For the case of criminalization, the party wants a broader scope that should cover indirect or non-profit facilitation and again, finds minimum definitions too narrow. For sanctions, the party supports the sanctions themselves but finds minimum penalties insufficient and too narrow to work. In terms of humanitarian exemptions, the party has a strict focus in terms of exemptions. It wants very limited and specific exemptions instead of too broad ones by stating that they create gaps and possibility to be exploited. For EU harmonization, the party strongly objects to having EU minimum rules limiting national sovereignty.

²⁴⁸ ESN Europe of Sovereign Nations. “What We Stand For- Political Declaration.” Accessed March 23, 2026. <https://esn-group.eu/what-we-stand-for>.

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