JURI

European Parliament

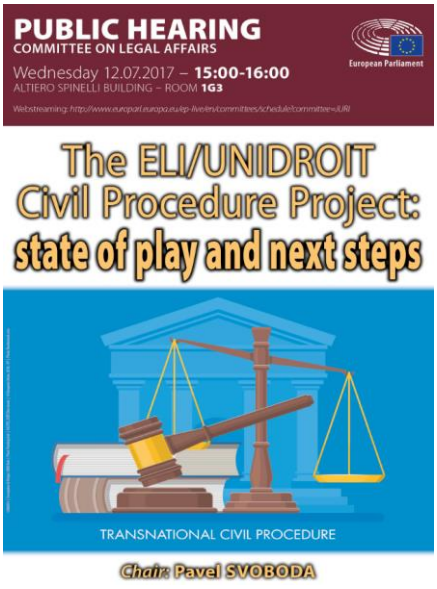
Committee on Legal Affairs

JURI Report

At the meeting of 12-13 July 2017

The July meeting of the Committee on Legal Affairs will commence with presentation Proposal for a Directive on preventive restructuring frameworks, second chance and improvement measures. That will be followed by exchange of views on the same topic, on whistle-blowers, European services e-card. The committee will also consider draft opinions on Eurojust and e-privacy directive. In the afternoon, there will be a hearing on Civil Procedure Project. That will be followed by consideration of amendments on environmental liability directive and presentation of the outcome of the mission to iceland. The day will conclude with in camera items.

The committee meeting on 13 July will start with reporting back to committee on Interpretation and implementation of the interinstitutional agreement on Better Law-Making. That will be followed by the presentation of the outcome of the public consultation on Robotics. Votes will commence at 9.30 and will include vote on report on monitoring the application of EU law 2015. Following the votes, the committee will continue with consideration of amendments on copyright in the digital single market and on international child abduction.



Public Hearing on 'The ELI/UNIDROIT Civil Procedure Project: the state of play and next steps'

On 12 July, the JURI Committee will hold a hearing on 'The ELI/UNIDROIT Civil Procedure Project: state of play and next steps'. Diana Wallis, the President of the European Law Institute, and Eva Storskrubb, of the University of Uppsala, will present the first consolidated draft rules on 'Access to information and evidence', 'Service and due notice of proceedings' and 'Provisional and protective measures', and will discuss the next steps of the project. The debate will take place with the participation of the Commission.

SUBSIDIARITY (RULE 42)

The following reasoned opinion received from national parliaments will be announced in the meeting:

Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity - COM(2016)0861 -2016/0379(COD):

- the Chamber of Deputies of the Parliament of the Czech Republic
- the Spanish Parliament
- The Polish Senate
- The French Senate

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NEXT MEETING

7-9 SEPTEMBER 2017

JURI Website

EPRS

LATEST ANALYSES

Subject file on Robotics

Artificial Intelligence: Potential Benefits and Ethical Considerations

European civil law rules in robotics

Children on the move: A private international law perspective

Private international law in a context of increasing international mobility: challenges and potential

Potential and Challenges of Private International Law in the Current Migratory Context - Experiences from the Field

The Commission Insolvency Proposal and its Impact on the Protection of Creditors

VOTES

Monitoring the application of EU law 2015

The Committee will vote on the 72 amendments tabled to Kostas Chrysogonos' report on the monitoring of the application of EU law 2015. The vote will also include the opinions of the Committee on Petitions and the Committee on Constitutional Affairs.

In his draft report, the rapporteur recalls that effective application and implementation of EU law by the Member States is essential if the European Union is to meet its policy objectives and that, ultimately, it is a question of respecting the principle of the rule of law. The rapporteur also stresses the obligation of the EU institutions to respect the Charter of Fundamental Rights when adopting secondary law, and points out that when the Commission or other EU institutions are assigned tasks in the context of treaties which are concluded outside the EU framework, such as the ESM Treaty, they are still obliged to ensure that the Memoranda of Understanding concluded under the treaty concerned are consistent with EU law.

Procedure: 2017/2011(INI)

Legal basis: Rule 52

Rapporteur: Kostas Chrysogonos

Administrator: Kjell Sevón

Preliminary Timetable

Adoption JURI: 12-13.07.2017

The Committee on Legal Affairs traditionally draws up a report on the annual report by the Commission on the monitoring of the application of EU law. While Member States are responsible for the transposition of directives and the correct application of EU law, it follows from Article 22 TEU that the Commission has the responsibility for monitoring the compliance with EU law of Member States' laws and their practical application. For this purpose, Articles 258 and 260 TFEU empower the Commission to bring actions, if necessary, against a Member State before the Court of Justice for infringements. The European Parliament, in turn, has both a responsibility to politically 'monitor the monitoring' of the Commission, as well as an interest in ensuring that the legislation it adopts becomes reality in the Member States. The Committee on Legal Affairs decided to include within the scope of its report, additionally, a Commission communication entitled 'EU Law: Better Results through Better Application'. That document states: 'This Communication sets out how the Commission will step up its efforts on the application, implementation and enforcement of EU law in line with the Juncker Commission's commitment to be "bigger and more ambitious on big things, and smaller and more modest on small things". This means a more strategic approach to enforcement in terms of handling infringements. It also gives an overview of other action the Commission will take to help the Member States and the public ensure that EU law is applied effectively'.

PAST EVENT

Mission report following the visit of the Committee on Legal Affairs to Reykjavik, 22-24 May 2017

At this meeting, the members who participated in the mission to Reykjavik will report back to the committee on the discussions they had with their Icelandic counterparts.

The objective of the visit was to learn about the major changes that have occurred since 2008 in the political and societal fields, with a special emphasis on the area of justice. The delegation focused on the functioning and organisation of the Icelandic judicial and penal system and the latest developments in the context of the crisis.

Participants had the opportunity to engage in discussions with political leaders and legal experts, as well as with representatives of the civil society on the measures adopted and on topics of common concern, such as better law- making. The programme of the visit foresaw meetings with the highest representatives of Iceland in the political and judicial spheres, including the Icelandic President, the President of the Supreme Court, and members of the Althing, the Icelandic Parliament. In addition, specific discussions took place with legal experts and representatives of civil society, in the framework of two round tables. This was complemented by two additional meetings, on the current reform of the court system and other matters related to civil and penal procedures.

CONSIDERATION OF DRAFT OPINION

Protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data

On 27 April 2016, the European Parliament and the Council adopted the General Data Protection Regulation (GDPR), which will become applicable on 25 May 2018. The proposal for a regulation of the European Parliament and the Council for the Protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data aims at adapting the current rules (as set out in Regulation (EC) No 45/2001) to the GDPR in order to provide a strong and coherent data protection framework in the Union and to enable both instruments to be applicable at the same time. It is consistent with the coherent approach to personal data protection throughout the Union, namely to align, as far as possible, the data protection rules for Union institutions, bodies, offices and agencies with the data protection rules adopted for the Member States.

Procedure: 2017/0002(COD)
Basic doc: COM(2017)0008
Rapporteur: Angel Dzhambazki
Administrator: Henrik Kjellin
Preliminary timetable
Consideration of draft opinion: 12-13.07.2017

The rapporteur will focus his work on ensuring both that there is consistency with the GDPR and that the new rules do not entail any unnecessary burdens on businesses, in particular SMEs.

EU Agency for Criminal Justice Cooperation /Eurojust

urojust was set up by Council Decision 2002/187/JHA to reinforce the fight against serious organised crime in the European Union. Ever since, Eurojust has facilitated coordination and cooperation between national investigative and prosecutorial authorities in dealing with cases affecting various Member States.

Under the Treaty of Lisbon, new possibilities to enhance Eurojust's efficiency in tackling serious forms of criminality have been introduced. Article 85 TFEU explicitly recognises Eurojust's mission and provides for its structure, operation, field of action and tasks to be determined by regulations adopted in accordance with the ordinary legislative procedure. It also requires that they determine arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities.

The proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) aims to repeal the Regulation establishing Eurojust by creating a new legal framework in view of the creation of an EU Agency for Criminal Justice Cooperation, which will replace Eurojust as its legal successor.

Procedure: 2013/0256(COD)
Legal basis: Article 85 TFEU
Rapporteur for opinion: António Marinho e Pinto
Administrator: Andrea Scrimali
Preliminary timetable
Consideration of a draft opinion: 12-13.07.2017
Deadline for AMs: 28.07.2017

The main objectives are to:

- increase Eurojust's efficiency through providing it with a new governance structure;
- improve Eurojust's operational effectiveness through homogeneously defining the status and powers of National Members;
- provide for a role for the European Parliament and national parliaments in the evaluation of Eurojust's activities, in line with the Lisbon Treaty;
- bring Eurojust's legal framework into line with the Common Approach on Agencies, while fully respecting its special role regarding the coordination of ongoing criminal investigations;
- ensure that Eurojust can cooperate closely with the European Public Prosecutor's Office once the latter is established.

At this meeting the rapporteur will present his draft opinion suggesting some amendments to the proposal.

CONSIDERATION OF AMENDMENTS

Application of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (the 'ELD')

The Environmental Liability Directive (ELD) entered into force on 30 April 2004. Member States had three years to transpose it into domestic law, and transposition was complete by July 2010. The ELD has been amended three times: through Directive 2006/21/EC on the management of waste from extractive industries, through Directive 2009/31/EC on the geological storage of carbon dioxide and amending several directives, and through Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC.

According to Article 18 of the ELD, the Commission had to report in 2014 on the experience gained in the application of the directive on the basis of the national reports submitted in 2013 by the Member States to the Commission and of other relevant information. Owing to delays in reporting and evaluation and changes at EU political level in 2014, the report was only adopted in April 2016.

Procedure: 2016/2251(INI)
Rapporteur: Laura Ferrara
Administrator: Zampia Vernadaki
Preliminary Timetable
Consideration of AMs: 12-13.07.2017
Adoption JURI: 07.09.2017

The rapporteur, Laura Ferrara, presented her draft report on 19 June 2017. At this meeting, the Committee on Legal Affairs will consider the 73 amendments tabled to the draft report.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

The Brussels IIa Regulation, which has been in force since 2005 in all EU Member States except Denmark, is the cornerstone of EU judicial cooperation in matrimonial and parental responsibility matters.

Despite its undoubted success, the regulation gave rise to concern among citizens, practitioners and academics over the first ten years of its application. As a result, the Commission, on 30 June 2016, submitted a proposal to recast Regulation 2201/2003 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

After holding a workshop on 'Recasting the Brussels IIa Regulation', organised by Parliament's Policy Department C, on 8 November 2016, and a first exchange of views with the participation of the EESC on 22 and 23 March 2017, the Committee on Legal Affairs considered a draft report (rapporteur: Tadeusz Zwiefka) at its meeting of 30 May 2017. Aware of the sensitivity and complexity of the relevant issues, the rapporteur has followed a cautious but clear approach that could contribute to finding a compromise acceptable in every Member State. The streamlining of the grounds to deny enforcement, the existence of adequate financial support for the Central Authorities, the concentration of jurisdiction for international child abduction cases and the emphasis on participation rights for children while not interfering with Member States' national provisions on the modalities of the hearing of a child, have thus been sincerely welcomed.

Procedure: 2016/0190(CNS)
Basic doc: COM(2016)0411
Legal basis: Article 81(3) TFEU
Rapporteur for opinion: Tadeusz Zwiefka
Administrator: Zampia Vernadaki
Preliminary Timetable
Consideration of AMs: 12-13.07.2017
Adoption JURI: 28.09.2017

At this meeting, the Committee on Legal Affairs will consider the 166 amendments tabled to the Commission proposal.

Copyright in the digital single market

At this meeting, JURI will consider the nearly 1000 amendments tabled by its members on the proposal for a directive on copyright in the digital single market. Amendments have been tabled on almost all the provisions, but some have been targeted more than others.

Numerous amendments were tabled on Article 13 and its corresponding recitals. With this provision, the Commission seeks to ensure the effective implementation of agreements concluded between information society service providers and rightholders. More importantly, it aims to clarify the responsibility of the former and the conditions under which they can benefit from the 'safe harbour' provisions of the e-commerce directive. The amendments tabled show that Members are divided on the Commission's proposal to limit the possibility of benefiting from the exemption of responsibility under the e-commerce directive and on the use of content recognition technologies.

Another provision which is expected to be discussed in detail is the provision creating a new press publishers' right related to copyright. On this aspect, Members are divided: some support the Commission, in some cases even wishing to go further by extending the new right to print uses and to press agencies, while others are completely opposed and simply propose deleting the provision. A middle way is put forward by the former rapporteur, Therese Comodini Cachia - who has been replaced by Axel Voss (EPP, DE) - who proposes substituting the creation of a new right by a presumption of representation of authors and the legal capacity to sue in their own name.

Procedure: 2016/0280 (COD)
Basic doc: COM(2016)593
Legal basis: Article 114 TFEU
Rapporteur: Therese Comodini Cachia
Administrator: Carine Piaguet
Preliminary Timetable
Consideration of AMs: 12-13.07.2017

JURI members have also tabled amendments on fair remuneration in contracts of authors and performers, on exceptions to copyright for text and data mining, illustration for teaching, and on cultural heritage. New elements have been introduced by a number of members who propose to incorporate into the legislation new exceptions on user- generated content and on 'panorama'.

CONSIDERATION OF A DRAFT REPORT

Legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies

Whistle-blowing is the act of disclosure of confidential information in the public interest, with the aim of revealing a problem of major societal importance. Some national legal systems provide for the protection of whistle-blowers. Often, there is a distinction between public and private employees. As an example, the EU Staff Regulations contain provisions on whistle-blower protection. However, two recent major cases concern more than one Member State. The 'Luxleaks' case is linked to the Luxembourgish tax system but has implications for the rest of Europe. The 'Panama Papers' affair is linked to a law firm in Panama and to offshore companies, but it has repercussions for the whole of Europe, and even beyond. A European solution is needed for such cases of whistleblowing.

Procedure: 2016/2224(INI)
Rapporteur: Virginie Rozière
Administrator: Henrik Kjellin
Preliminary Timetable
Consideration of a draft report: 12-13.07.2017
Deadline for AMs: 18.07.2017

The rapporteur intends to draw up a report reflecting on how to balance the legitimate expectations of whistle-blowers acting in the public interest and the protection of business sensitive information. If the disclosure of confidential information is in the public interest, it seems justifiable for society to defend the whistle-blower. The report will also deal with the institutional structure necessary for whistle-blower protection.

EXCHANGE OF VIEWS

Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures

Procedure: 2016/0259(COD)

Rapporteur for opinion: Angelika Niebler

Administrator: Francisco Ruiz-Risueno

Preliminary Timetable

Exchange of views: 12-13.07.2017

On 22 November 2016 the Commission forwarded to Parliament and the Council a proposal for a directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU. Within Parliament JURI is the lead committee, as the committee responsible for civil, company and procedural law. The EMPL and ECON committees will provide opinions under Rule 53 of the Rules of Procedure.

The aim of the proposal is for all Member States to have in place key principles on effective preventive restructuring for viable undertakings and second chance frameworks for entrepreneurs, as well as measures to make all types of insolvency procedures more efficient by reducing their length and associate costs and improving their quality. Such frameworks should help increase investment and job opportunities in the single market, reduce unnecessary liquidations of viable companies, avoid unnecessary job losses, prevent the build-up of non-performing loans, facilitate cross-border restructurings, reduce costs, and increase opportunities for honest entrepreneurs to be given a fresh start. The proposal's intention is not to harmonise core aspects of insolvency. Instead, it could be said that the Commission has taken a step-by-step approach focusing at this stage on issues that could be feasibly addressed by harmonisation. In designing the proposal, the Commission claims having sought to strike an appropriate balance between the interests of debtors and creditors, providing for safeguards preventing negative impacts on the parties' rights. It also aims to enhance and expand the rescue culture in Europe. A company that is threatened by insolvency should not have to declare bankruptcy and undergo liquidation proceedings where it would be possible for it to stay in the market with the adoption of the right measures. Access to debt discharge would help honest entrepreneurs. In addition, harmonising the laws of Member States on these issues would contribute to introducing and reinforcing modern approaches to insolvency law.

The Estonian Presidency has committed itself in its Programme for the Justice and Home Affairs Council (JHA Council) to continuing negotiations within Council for finding flexible and practical solutions.

On 20 June 2017, the Committee on Legal Affairs held a public hearing on the proposal. The hearing brought together five speakers representing different stakeholders (banks, SMEs, trade unions, insolvency practitioners), who presented their views to and had a discussion with committee members.

At this meeting, two studies commissioned by Policy Department C at the request of the committee will be presented by their authors. Professor Madaus' study on the impact of the proposal on SMEs identifies and explains the issues at stake for SMEs in their capacity both as debtors and creditors. Professor Dammann's study focuses on the impact of the proposal on the protection of creditors. Also at this meeting, the committee will hold an exchange of views on the proposal.

Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities

The proposal for a European services e-card, presented jointly with a directive, is complementary to other policy initiatives in the context of services announced in the Single Market Strategy to prevent the introduction of barriers to cross-border service provision at national level.

Through the e-card service providers will be able to avoid administrative obstacles such as uncertainty as to which requirements apply, filling in disparate forms in foreign languages, translating, certifying or authenticating documents ,and non-electronic procedural steps.

The proposal provides for the following:

- where a service provider plans to provide a service temporarily cross-border, the e-card would be issued by the home Member State. The host Member States would be able to object to issuance of the e-card where the Services Directive already allows them to do so under one of the overriding reasons of public interest. Once issued, the e-card would allow the service provider to provide services on a temporary cross-border basis in the host Member State;

- where a service provider plans to provide services through a branch, agency or office in another Member State, the e-card would be issued by the host Member State. In this case, service providers would still request the e-card with their home country authorities, who would check that the service provider is established on their territory in line with their applicable rules. But in a second step, the home Member State's authorities would initiate a process with the relevant host country administration to allow the latter to verify if the requesting service provider meets their host country's regulatory requirements in compliance with the Services Directive.

Procedure: 2016/0403(COD)
Rapporteur: Evelyne Gebhardt
Administrator: Andrea Scrimali
Committee responsible: IMCO
Preliminary Timetable
Exchange of views: 12-13.07.2017
Consideration of a draft opinion: 07.09.2017
Deadline for amendments: 15.09.2017

The European services e-card would also:

- offer technical facilities to facilitate compliance with administrative formalities related to posting of staff into the territory of those Member States that have communicated to the Commission that they wish to make use of the Internal Market Information System for this purpose;
- include rules to facilitate obtaining insurance coverage for services provided across borders.

The European services e-card would apply in a first stage to business services and construction services to the extent that the related activities fall already under the Services Directive.

This proposal also includes review clauses for future consideration of the effectiveness of the European service e-card, including as regards compliance with the formalities necessary for the posting of workers.

At this meeting a first exchange of views will take place.

Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation .... [ESC regulation].

The proposed Directive lays down a legal and operational framework for the European services e-card (ESC), introduced by the ESC Regulation (see previous item). It sets out the rules governing access to and exercise of service activities by holders of an e-card.

Procedure: 2016/0402(COD)
Rapporteur: Evelyne Gebhardt
Administrator: Andrea Scrimali
Committee responsible: IMCO
Preliminary Timetable
Exchange of views: 12-13.07.2017
Consideration of a draft opinion: 07.09.2017
Deadline for amendments: 15.09.2017

In particular, this proposal:

- sets the scope of this Directive as including the business and construction services listed in its Annex;
- clarifies the evidentiary value throughout the Union of an ESC in relation to establishment in the home Member State of the provider, from where the provider expands operations by making use of the e-card;
- details the effects of the ESC as proof of the ability of the e-card holder to provide services in the territory of the host Member State, either temporarily or through a branch, agency or office located therein;
- determines the validity of the ESC as not being time-limited unless suspended, revoked or cancelled, and encompassing all of the territory of the host Member State;
- determines that the application for an e-card should be submitted to the coordinating authority of the home Member State;
- safeguards the right of Member States to invoke those overriding reasons of public interest;
- describes procedural steps for issuing an ESC for providing services through establishment in the form of branches, agencies or offices. The coordinating authority of the host Member State informs of requirements applicable on its territory in order for access to be granted. The applicant needs to prove the necessary compliance. If no decision is taken by the coordinating authority of the host Member State after a proper due process with the applicant and in spite of any warning to react, the e-card is issued;
- provides a right of redress against decisions by coordinating authorities of the home or host Member States;
- introduces a 'once-only' principle at domestic level, under which information and documents in the possession of home Member State authorities need not be supplied again by the applicant for an ESC;
- provides a list of events in the host Member State which mandatorily trigger the suspension or revocation of an ESC.

At this meeting a first exchange of views will take place.

REPORT BACK

Interpretation and implementation of the interinstitutional agreement on better law-making

On 13 April 2016 the European Parliament, the Council and the Commission signed a new interinstitutional agreement (IIA) on better law-making. The Committee on Legal Affairs and the Committee on Constitutional Affairs have therefore created a joint Working Group (WG) on the interpretation and implementation of the IIA with a view to preparing a joint own-initiative report on the same topic (rapporteurs: Pavel Svoboda for the Committee on Legal Affairs; Richard Corbett for the Committee on Constitutional Affairs).

On 10 May 2016 the WG held its constituent meeting, at which it also adopted its mission statement and an indicative timetable, and held an exchange of views with Deputy Secretary-General Francesca Ratti, who is in charge of Parliament's Task Force on the implementation of the IIA on Better Law-Making.

On 7 June 2016 the WG held its second meeting. In particular, the WG discussed the possible arrangements to implement the IIA provisions on programming and verification of legal bases, and considered the changes to the Rules of Procedure which may be necessary following the entry into force of the IIA. These issues were discussed in the presence of Jerzy Buzek, Chair of the Conference of Committee Chairs, and Rainer Wieland, Chair of the AFCO Working Group 'Revisiting the Rules of Procedure', who also contributed to the exchange of views.

On 4 July 2016 the members of the WG had the opportunity to join an extraordinary meeting of the Committee on Constitutional Affairs and to ask questions to First Vice-President Timmermans on better law-making. On the same day, the WG held its third meeting and, notably, an exchange of views with Elmar Brok, Chair of the Committee on Foreign Affairs, and Bernd Lange, Chair of the Committee on International Trade, on the improved practical arrangements for cooperation and information-sharing in relation to the negotiation and conclusion of international agreements referred to in paragraph 40 of the new IIA.

On 3 October 2016 the WG held its fourth meeting. The WG focused on the delineation criteria between delegated and implementing acts and held an exchange of views with the two EP negotiators, namely József Szájer and Richard Corbett, who both agreed on the importance of the concessions made to the Council in the new IIA with a view to encouraging it to accept delegated acts more easily.

On 24 November 2016 the WG held its fifth meeting. The Members of the WG mainly discussed impact assessments and other tools for better law-making, and held an exchange of views with Angelika Niebler, rapporteur on guaranteeing independent impact assessments, and Wolfgang Hiller, Director of Parliament's Directorate for Impact Assessment and European Added Value.

On 26 January 2017 the WG held its sixth meeting. Its members held an exchange of views with Markus Winkler, Deputy Secretary-General, in charge of Parliament's Task Force on the implementation of the IIA on Better Law-Making, including on transparency issues in the context of the legislative process. They also held an exchange of views on the experience of various committees with regard to the transparency and coordination of the legislative process within the framework of the IIA.

On 27 March 2017 the WG held its seventh meeting. Its members held an exchange of views with Norbert Sagstetter, acting head of the unit 'Evaluation, Regulatory Fitness and Performance' in Directorate C of the Secretariat-General of the Commission, and with Sylvia-Yvonne Kaufmann, JURI rapporteur on 'Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook'. The exchange of views focused on the provisions of the IIA on simplification.

On 21 June 2017 the WG held its eighth meeting. The Members heard René Slootjes, head of the unit 'Application of EU law' in Directorate C of the Secretariat-General of the Commission, who presented the Commission communication 'EU Law: Better results through better application'. An exchange of views followed in the presence of Heidi Hautala, JURI rapporteur on 'Monitoring the application of Union law – 2014 Annual Report'.

At this meeting, Pavel Svoboda, the rapporteur for the Committee on Legal Affairs, will report back to the Committee on the latest developments in the WG.

Electronic publication of the Official Journal of the European Union

This proposal from the Commission aims at revising Regulation (EU) No 216/2013 on the electronic publication of the Official Journal (OJ) of the European Union, which established the rule that the electronic publication would equate to the default valid publication of the OJ and that the print edition of the OJ would only have legal value in exceptional and temporary cases of unforeseen disruption of the electronic publication.

This change was occasioned by the judgment of the Court of Justice in Case C-161/06, Skoma-Lux sro v Celní ředitelství Olomouc, ECLI:EU:C:2007:773, in which the Court found that legal acts of the Union are not enforceable against individuals if they have not been properly published in the OJ and that making such acts available online does not equate to valid publication in the OJ in the absence of any rules in that regard in Union law.

The 2013 regulation therefore aimed at enhancing legal certainty by broadening access to EU law and enabling everyone to rely on the electronic edition as the official, authentic, up-to-date and complete version of the OJ.

The regulation furthermore provided that the electronic edition of the OJ would bear an advanced electronic signature in accordance with Directive 1999/93/EC on a Community framework for electronic signatures. That directive has since been repealed and replaced by Regulation No 910/2014, which introduced the possibility of authenticating a document with an advanced electronic seal.

According to the Commission, the use of such an advanced electronic seal would make it possible to automate the electronic signature and accelerate the procedure for publication of the OJ on EUR-Lex, given that the use of an electronic seal rather than a signature would make a difference in legal terms, since the authentication method for a signature involves a specific natural person whereas when a seal is used it is created by a legal person with no indication of who within that legal person was responsible for authenticating the document.

The legal basis proposed by the Commission is Article 352 TFEU, the so-called 'flexibility clause', which was also used for the regulation to be amended and which calls for the use of the consent procedure, whereby Parliament is left with two options: it can either approve or reject the proposal.

The OJ was, however, created on the basis of Article 191 TEC by a Council decision of 1958, making use of the so-called 'implied competence' theory whereby the Union may adopt acts which are necessary for it to function and where there is no legal basis providing for a legislative procedure. Article 191 TEC simply stated that Union legislation was to be published in an official journal but did not provide for any legal basis. The 1958 Council decision was therefore adopted making use of the prevailing decision-making procedure at the time, whereby the Council took the final decision. Article 191 TEC corresponds today to Articles 287 and 297 TFEU, which maintain the obligation to publish in the OJ but without providing any legal basis.

In 2012, Parliament did nevertheless give its consent to the adoption of the regulation to be amended, on the basis that the precedent on implied competence from 1958 had been made obsolete by the many Treaty revisions and changes to decision-making procedures which had taken place in the more than 50 years that had since passed. Because publication in the OJ and the corresponding activities of the Publications Office of the European Union (OPOCE) constitute objectives which are to be attained under the Treaties, the use of the flexibility clause in Article 352 TFEU was therefore considered proper.

The proposed amendment is, however, occasioned by new provisions on electronic seals in the above-mentioned Regulation No 910/2014, which was adopted by making use of the ordinary legislative procedure (codecision) on the basis of Article 114 TFEU on harmonisation measures in the internal market. This raises the question of whether the legal basis for the revision of Regulation No 216/2013 on electronic publication of the OJ should be the flexibility clause.

At this meeting, the committee will adopt an opinion on the legal basis for the proposal in accordance with Rule 39 of the Rules of Procedure.

PAST EVENTS

Hearing on The insolvency proposal

Workshop on 'Potential and challenges of private international law in the current migratory context' (report by Claudia Aurora Pillosu, DG IPOL trainee)

On 20 June 2017, the Policy Department for Citizens' Rights and Constitutional Affairs organised for the JURI Committee a workshop dedicated to the interactions between migration law (and asylum law) and private international law (PIL) in the current context of global migration, including for the protection of unaccompanied and separated children.

Professor Jinske Verhellen, of Ghent University, presented the findings of a study on PIL in a context of increasing international mobility. Specifically, the study found that a better interplay between PIL, concerning relations between persons coming from or living in different states, and migration law, concerning the flow of people between states, as necessary. Interviews were carried out in Belgium, France, Germany, Italy and the Netherlands with Central Authorities, guardianship services, asylum and migration authorities, and the need for more cooperation between national authorities responsible for civil law matters and migration authorities became apparent for the recognition of personal status acquired abroad, such as minor status, existence of a marriage, family relationships, etc. Indeed, in some situations recognition of personal status under PIL is a necessary precondition for the application for migration status in an EU Member State, whilst in other situations there is no migration status despite the recognition of personal status under PIL. The study has thus found that further Union support to Member States, for development of alternative methods to replace missing personal status documents and more uniformity in age assessment methods across the EU would be needed. To this end, good practices in some Member States could serve as a basis despite the considerable variations between Member States.

Professor Sabine Corneloup, of the University of Paris II, focused on the protection of children on the move from a PIL perspective. More precisely, the scope of the study she conducted covered all unaccompanied and separated children. The study found that, although rules and cooperation networks on the protection of children already exist, they are uncoordinated and operate in different universes. Especially when it comes to children seeking asylum, better coordination between Brussels IIa and the Common European Asylum System instruments should be promoted, including via the insertion of cross-references in the relevant instruments to highlight their interactions. Additionally, with regards to cross-border cooperation mechanisms, the Commission's proposal on Brussels IIa Recast specifying the areas of cooperation between Central Authorities should be strongly supported. In the same direction, it was proposed that the EU urgently identify those third countries with which cooperation regarding migrant,

and in particular unaccompanied, children is necessary and possible, and encourage them to join the 1996 Hague Convention, providing assistance where needed in implementing the convention.

Martina Erb-Klunemann, Judge at the Hamm District Court and member of the European Judicial Network, shared her professional experiences in the field. In Germany, the principle is that the protection of unaccompanied minor migrants is of absolute priority since they are first and foremost considered as minors and only afterwards as foreigners. Ms Erb-Klunemann explained that where parents or legal guardians are not available, the state has to take child protection measures. Accordingly, one of the most common practical problems in this process is to determine who is a refugee or a displaced child following disturbances occurring in their country. What is more, German substantive law establishes that if parents are in fact not capable of exercising parental custody for a longer period of time, then someone else has to be appointed in loco parentis. Ms Erb-Klunemann offered several examples of practical problems (e.g. determination of the child's age, nature of the guardian's responsibilities or age at which minors reach majority), for which representation of the child is needed and how they can be solved.

Lastly, the Fundamental Rights Agency's study on 'Guardianship systems for children deprived of parental care in European Union' was presented by its main author, Georgia Dimitropoulou. Specifically, it was pointed out that the terminology used at national level varies significantly between Member States, so that a distinction between the so-called 'legal representatives' and 'guardians' is needed. The former, unlike guardians, have a restricted mandate, which is often precisely defined when they are appointed (e.g. to represent the child in particular proceedings), while a guardian's role and mandate extend beyond pure legal representation to include tasks relating to the promotion of a child's wellbeing and the safeguarding of the best interests of the child. Accordingly, the appointment of a guardian should take place as soon as possible, although in most cases there is no timeframe in the legislation. Priority to be appointed as guardian is given to the child's relatives, but also eligible are legal persons such as NGOs, child protection employees, or individuals such as volunteers. Guardians are appointed after their moral and professional qualifications and independence have been evaluated and it has been established that there is no conflict of interest. However, actual guardianship practice can vary even within the same Member State, and only in a minority of cases are guardians' tasks precisely defined in national law or through (non-binding) guidelines. This, combined with the precedence of migration and asylum law over child protection rules and the difficulties of identifying the status of a child, especially when it comes to child marriage cases, makes it all the more challenging to protect children from trafficking or forced marriages.

Hearing on whistleblowers

On 21 June 2017, between 9 a.m. and 11 a.m. ,the JURI Committee, together with the PANA Committee, held a hearing on the question of the EU-wide protection of whistleblowers.

The hearing brought together Members of the European Parliament and legal experts, academics and representatives of the civic society and the industry, to examine the current status of whistleblowers from the perspective of their legal protection.

Vigjilenca Abazi, Assistant Professor at Maastricht University, spoke on the current whistleblower rules in the Member States. She presented a general overview concerning the legal situation in Member States with regard to the whistleblower rules. Furthermore, she discussed features of the legal framework in place, and, finally, outlined challenges and future perspectives on the issue of whistleblower rules. Ms Abazi particularly stressed that the EU offers only fragmented legal protection when it comes to whistleblower protection, and that whistleblower rules are generally limited in scope.

Charlotte Grass, Head of Competition and Conformity with Groupe Vallourec, an industrial group in France, said that a cross-sectoral legislative tool should be set up at EU level in order to deliver certain advantages for European companies. She emphasised that it is of crucial importance that the conditions for benefiting from whistleblower status are defined in a practical and explicit manner.

Cathy James, Chief Executive of the whistleblowing helpline 'Public Concerns at Work', stressed that there is a significant lack of practical assistance for individuals who have witnessed malpractice, wrongdoing or risk within the work place. She pointed out that one important question is how whistleblowing fits into risk management and governance structures in different organisations. Ms James particularly underlined the need to raise public awareness regarding whistleblowing, and argued that the definition of 'whistleblower' should be based on the information disclosed rather than a person's position. Finally, she concluded that the burden of proof should be as low as possible and should rest with the employer.

Frédérique Berrod, Professor, at the College of Europe, discussed a possible legal basis for a general EU action. She suggested that Article 352 TFEU (the flexibility clause), in conjunction with Article 114 TFEU, could be applied in order to adopt wider measures at the EU level and would help broaden the definition of whistleblowers. She pointed out that this combined approach would make possible to defend the idea that protection of whistleblowers is a part of European governance for companies and that this could serve as a precondition for companies to be able to benefit fully from the internal market.

Rosita Hickley, Head of Strategic Inquiries for the EU Ombudsman, presented the outcome of the inquiry carried out into whistleblowing rules within the EU institutions. She stressed that an effective whistleblowing policy should: ensure the timely deterrence and detection of wrongdoing; demonstrate that senior management wants to hear about concerns early and will respond appropriately; signal to staff the appropriate way to raise concerns; reassure staff that they will be protected if they raise concerns; indicate that there are safe external routes to raise concerns (e.g. OLAF or the Ombudsman); and reduce the risk of wider public disclosures.

Mr Svoboda at the informal JHA Council at Tallin

IN CAMERA

DISPUTES INVOLVING PARLIAMENT

Case C-288/17- Fédération des fabricants de cigares e.a. – Reference for a preliminary ruling – Validity of Directive 2014/40 of the European Parliament and the Council (the 'Tobacco Products Directive 2014') – Possible submission of observations by Parliament

This case concerns a reference for a preliminary ruling made by the Conseil d'État (France), which raises the question of the validity of Article 13 of Directive 2014/40 of the European Parliament and the Council (the 'Tobacco Products Directive 2014').

At this meeting, the committee will decide, bearing in mind the Guidelines for the application of Rule 141 of Parliament's Rules of Procedure, whether to recommend to the President under Rule 141(4) that Parliament submit observations to the Court of Justice in order to defend the validity of the contested provisions.

Case C-220/17 Planta Tabak-Manufaktur Dr. Manfred Obermann GmbH & Co. KG – Reference for a preliminary ruling -Directive 2014/40/EU of the European Parliament and of the Council (the "Tobacco Products Directive 2014") – Possible submission of observations by the European Parliament

This case concerns a reference for a preliminary ruling made by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), which raises the question of validity of some articles of the Directive 2014/40/EU of the European Parliament and of the Council, in that they would infringe the principle of legal certainty, the principle of equal treatment, the principle of proportionality, Article 34 TFEU and Article 17 of the Charter of Fundamental Rights.

At this meeting, the committee will decide, bearing in mind the Guidelines for the application of Rule 141 of Parliament's Rules of Procedure, whether to recommend to the President, under Rule 141(4) that Parliament submit observations before the Court of Justice in order to defend the validity of the contested provisions.

VERIFICATION OF CREDENTIALS

The President has announced to plenary that the competent national authorities have given notice of the appointment of the following as Member(s) of the European Parliament, with effect from the dates shown below:

- Mr John FLACK (to replace Ms Vicky FORD), as from 28 June 2017.

In accordance with Rule 3 of the Rules of Procedure, on the basis of a report by the JURI Committee, Parliament will verify the credentials without delay and rule on the validity of the mandate of each of its newly elected Members. Parliament will also rule on any dispute referred to it pursuant to the provisions of the Act of 20 September 1976, except those based on national electoral laws.

Legal basis: Rule 3 RoP
Rapporteur: Pavel Svoboda
Administrator: Andrea Scrimali
Preliminary Timetable
Exchange of views: 12-13.07.2017
Adoption JURI: 12-13.07.2017

It is not possible to confirm the validity of the mandate of a Member unless the written declarations required on the basis of Article 7 of the Act of 20 September 1976 and Annex I to the Rules have been made. Until such time as a Member's credentials have been verified or a ruling has been given on any dispute, the Member will take his or her seat in Parliament and in its bodies and enjoy all the rights attaching thereto.

Legal basis: Rule 4 RoP
Rapporteur: Pavel Svoboda
Administrator: Andrea Scrimali
Preliminary Timetable
Exchange of views: 12-13.07.2017
Adoption JURI: 12-13.07.2017

Term of office

The following Members notified the President of their intention to resign their seat as Members of the European Parliament, with effect from the date shown below:

- Mr Petr MACH, as from 1 September 2017;
- Ms Glenis WILLMOTT, as from 3 October 2017.

Pursuant Rule 4 of the Rules of procedure, the Committee on Legal Affairs has to determine whether this resignation is in accordance with the spirit or the letter of the Act of 20 September 1976.

IMMUNITIES

Marie-Christine Boutonnet

CONSIDERATION OF A DRAFT REPORT + ADOPTION OF A DRAFT REPORT (tbc)

Type of procedure: Waiver

Procedure: 2017/2063(IMM)

Legal basis: RoP Rule 6

Notice to Members: 15/2017

Rapporteur: Heidi Hautala

Administrator: Robert Bray

Preliminary Timetable:

Consideration of a draft report + Adoption of a draft report (TBC): 12.07.2017

SUBSCRIPTIONS

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