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Editorial

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A word of most sincere gratitude is due to the anonymous peer reviewers of the current issue.

We encourage the reader to consider the PJIEL as a venue for your publications. With your contributions, PJIEL aims to remain a trustworthy and up-to-date journal of international and EU law issues.

Selected Standards of Preparatory Proceedings in European Legal Systems

*Tomasz Bojanowski**

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Contents

Abstract

The subject of this article is an attempt to establish coherent standards for preparatory proceedings within European legal systems. Substantive, procedural, and executive criminal law in continental European countries share a common foundation in Roman law. Nevertheless, sovereign states are free-within the limits set by international law-to shape their legal provisions, particularly in this area. Despite numerous differences, the author argues that certain common elements can be identified which link the models of preparatory proceedings across European states. The author highlights shared standards in preparatory proceedings through the lens of accepted human rights protection frameworks, such as those established by the Council of Europe and the European Union, which exert significant influence on criminal law. Moreover, the article underscores a fundamental issue for the European model of preparatory proceed-

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ings: the involvement of judicial authorities in such proceedings, which ensures the protection of human rights and fundamental freedoms. In conclusion, the author points to the challenges and ongoing transformations occurring in the broadly understood domain of European criminal procedural law.

Keywords: criminal law, preparatory proceedings, human rights, ECHR, EU Charter of Fundamental Rights

I. Introduction

A distinct and structured preparatory proceeding is, as a rule, not present in common law jurisdictions; however, it constitutes an integral component of criminal procedure in continental European countries based on the civil law system.[1] It should be emphasized that criminal law-substantive, procedural, and enforcement-is a specific area of legislation, which is subject to harmonization under special principles and forms part of international legal instruments.[2] Nevertheless, sovereign states are generally reluctant to allow external interference in this field. As a result, individual legal systems and models retain their own specific features and unique solutions.

Accordingly, it is difficult to identify a uniform standard for preparatory proceedings that would correspond to specific solutions or institutions across the Member States of the European Union or those belonging to the Council of Europe. However, following the jurisprudence of the European Court of Human Rights, reference should be made to the developed standard of an effective investigation.[3] This standard should be understood *sensu largo*, meaning that it encompasses not only the investigation phase (preparatory proceedings) but the entire criminal process-from its initiation, through the trial, and up to the execution of the sentence.[4]

The purpose of this article is to present common standards applicable to preparatory proceedings, that is, in practice, the period from the initiation of the pre-

[1] Alfred Kaftal, 'Model postępowania przygotowawczego de lege ferenda w prawie polskim' (1989) 1 Studia Prawnicze 53; Krzysztof Eichstaedt, 'Czynności sądu w postępowaniu przygotowawczym' in Piotr Hofmański and Ryszard A. Stefański (eds), *System Prawa Karnego Procesowego* (Wolters Kluwer 2016).

[2] Andrzej Adamski, 'Europeizacja prawa karnego' in A. Adamski and others (eds), *Prawo karne i wymiar sprawiedliwości Unii Europejskiej. Wybrane zagadnienia* (Toruń 2007) 429; Magdalena Perkowska, International Criminal Law (Temida 2 2008).

[3] Michael O'Boyle, 'Duty to Carry Out an Effective Investigation under Article 2 of the ECHR' in Luis López Guerra and others (eds), *El Tribunal Europeo de Derechos Humanos: una visión desde dentro. En homenaje al Juez Josep Casadevall* (Tirant lo Blanch 2015) 215.

[4] Jakub Czepek, *Standard skutecznego śledztwa w sferze ochrony prawa do życia w systemie Europejskiej Konwencji Praw Człowieka* (Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego 2021).

paratory stage up to the submission of the indictment to the court. The author intends to examine this issue from three selected perspectives. First, through the lens of Council of Europe instruments and the case law of the European Court of Human Rights. Second, through the legislation of the European Union and the jurisprudence of the Court of Justice of the European Union. Third, by analysing a conglomerate of specific legal provisions and institutions constituting the involvement of the judiciary in the preparatory phase, which serves as both a benchmark for the observance of human rights and fundamental freedoms, and as an essential element of a democratic state governed by the rule of law.

II. Standards of The Council of Europe

The Council of Europe standard is based on three pillars: 1) the European Convention on Human Rights;[5] 2) the case law of the European Court of Human Rights; and 3) the recommendations of the Committee of Ministers of the Council of Europe.

The fundamental Convention standard is the right of the suspect to defence from the earliest stage of criminal proceedings. Article 6(3)(c) of the European Convention on Human Rights expressly states that everyone charged with a criminal offence has the right to defend himself, including the right to legal assistance of his own choosing, or, if he has insufficient means, to free legal assistance where the interests of justice so require. Within this context, three core components of this right are identified: 1) legal assistance must be ensured from the moment of the first interrogation or detention; 2) consultations between the suspect and legal counsel must be conducted confidentially; 3) the absence of legal counsel during the preparatory stage constitutes a violation of the right to a fair trial. In the judgment of *Salduz v. Turkey*, the European Court of Human Rights held that access to a lawyer must be granted from the initial stages of criminal proceedings, unless there are compelling, specific, and proportionate reasons to restrict this right-and even then, only temporarily.[6] A similar position was taken by the Court in *Ibrahim and Others v. the United Kingdom*.[7] Furthermore, in *Dayanan v. Turkey*, the Court emphasized that the presence of legal counsel at the stage of police custody is a fundamental safeguard against abuse by state authorities.[8]

The right to information holds fundamental importance in the preparatory stage of criminal proceedings-both for the suspect and for the victim. The legal basis

[5] Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005).

[6] *Salduz v Turkey* App no 36391/02 (ECtHR, 27 November 2008).

[7] *Ibrahim and Others v United Kingdom* App nos 50541/08, 50571/08, 50573/08, 40351/09 (ECtHR, 13 September 2016).

[8] *Dayanan v Turkey* App no 7377/03 (ECtHR, 13 October 2009).

for this right can be derived from two provisions of the European Convention on Human Rights. Article 5(2) ECHR provides that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. Article 6(3)(a) ECHR further states that everyone charged with a criminal offence has the right to be informed promptly and in detail, in a language which he understands, of the nature and cause of the accusation against him. In the context of preparatory proceedings, these provisions apply in particular to the suspect. From them, the following core elements of the right to information can be inferred: 1) the right to be informed of the legal and factual grounds for deprivation of liberty (arrest or detention); 2) the information concerning the charges must be clear, detailed, and communicated in a language the suspect understands; 3) the right to information is intrinsically linked to the effective exercise of the right of defence. For example, in *Fox, Campbell and Hartley v. the United Kingdom*, the European Court of Human Rights held that a vague reference to "reasonable suspicion of involvement in terrorist activity" was insufficient to justify detention—real and concrete reasons must be provided by the authorities.[9] Other cases have affirmed that failure to inform a suspect of the reasons for their detention and the restriction of access to legal counsel constitute a clear violation of the suspect's fundamental procedural safeguards.[10]

Another key aspect concerns the lawfulness and judicial oversight of detention, derived from Article 5(1) of the European Convention on Human Rights, which prohibits deprivation of liberty except in cases prescribed by law and in accordance with a procedure established by law, and Article 5(3), which provides that everyone arrested shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release pending trial. Accordingly, detention must satisfy the following conditions: 1) compliance with both domestic and Convention law; 2) necessity and proportionality (e.g., to prevent flight, interference with evidence, or the commission of further offences); 3) prompt appearance before an independent court; 4) the right to challenge the lawfulness of detention before a judicial authority. This standard was affirmed in *Brogan v. the United Kingdom*, where the Court held that, regardless of the seriousness of the offence-even in the context of combating terrorism-a four-day detention without judicial control amounted to a violation of the Convention.[11] Similarly, in *Assenov v. Bulgaria*, the Court found that the lack of an effective remedy to

[9] *Fox, Campbell and Hartley v United Kingdom* App nos 12244/86, 12245/86, 12383/86 (ECtHR, 30 August 1990).

[10] *Murray v United Kingdom* App no 18731/91 (ECtHR, 8 February 1996); *Pélissier and Sassi v France* App no 25444/94 (ECtHR, 25 March 1999); *Simeonovi v Bulgaria* App no 21980/04 (ECtHR, 12 May 2017).

[11] *Brogan and Others v United Kingdom* App nos 1209/84, 11234/84, 11266/84, 11386/85 (ECtHR, 29 November 1988).

challenge the legality of detention was incompatible with the Convention; the state must ensure real and effective access to a court for detained persons.[12] In other judgments, the European Court of Human Rights has reiterated that the detained individual must be brought before a "judge or other officer authorised by law to exercise judicial power," who must be independent from the executive and competent to assess the legality of the detention and order release if appropriate.[13]

In preparatory proceedings, the right to remain silent and the privilege against self-incrimination are also binding principles.[14] These rights stem directly from the broadly understood right to a fair trial under Article 6(1) of the European Convention on Human Rights, as well as from the presumption of innocence guaranteed by Article 6(2) ECHR. As a result, a suspect is under no obligation to cooperate with law enforcement authorities if doing so would be detrimental to their legal position. Moreover, no individual may be coerced-whether physically or psychologically-into confessing guilt. Importantly, in a democratic state governed by the rule of law, the exercise of the right to remain silent must not be interpreted as evidence of guilt; it is the responsibility of the prosecution to provide objective evidence substantiating the charges. This standard was confirmed in *Funke v. France*, where the European Court of Human Rights held that compelling an individual to produce documents that could lead to their conviction constituted a violation of the right to a fair trial.[15] Likewise, in *Saunders v. the United Kingdom*, the authorities used statements made by the suspect under compulsion in a financial crime investigation, which the Court found incompatible with the privilege against self-incrimination.[16] The far-reaching nature of this right was further emphasized in *Jalloh v. Germany*, where the police forcibly administered an emetic to a detainee-against his will-in order to recover ingested narcotics as evidence. The Court ruled that such treatment, aimed at compelling the body to "produce evidence," violated both the privilege against self-incrimination and the right to physical integrity.[17]

Authorities conducting preparatory proceedings are under a duty to disclose evidence to the suspect, including both incriminating and exculpatory material. This obligation is derived from the right to a fair trial under Article 6(1) of the European Convention on Human Rights, as well as from the broadly construed

[12] *Assenov and Others v Bulgaria* App no 24760/94 (ECtHR, 28 October 1998).

[13] *A. and Others v United Kingdom* App no 3455/05 (ECtHR, 19 February 2009); *McKay v United Kingdom* App no 543/03 (ECtHR, 3 October 2006).

[14] *Heaney and McGuinness v Ireland* App no 34720/97 (ECtHR, 21 December 2000).

[15] *Funke v France* App no A 256-A (ECtHR, 25 February 1993).

[16] *Saunders v United Kingdom* App no 19187/91 (ECtHR, 17 December 1996).

[17] *Jalloh v Germany* App no 54810/00 (ECtHR, 11 August 2006).

right to defence under Article 6(3). Three essential components can be identified within this obligation: 1) the right of the suspect to be informed about the evidence collected by the prosecution; 2) the disclosure duty must be interpreted broadly-it applies to both incriminating and exculpatory evidence; 3) any restriction on the suspect's access to evidence must be exceptional (e.g., based on public security grounds), proportionate, and subject to judicial oversight. In *Edwards and Lewis v. the United Kingdom*, the European Court of Human Rights found that the refusal to disclose certain materials-specifically, evidence obtained through undercover agents-violated the right to a fair trial.[18] The undisclosed information related to the conduct of agent provocateurs, which could have had a significant bearing on the outcome of the proceedings and a possible acquittal. A similar position was adopted in *Rowe and Davis v. the United Kingdom*, where the Court held that the non-disclosure of evidence adversely affected the right of the defence and the principle of equality of arms, particularly where exculpatory materials were withheld.[19] While certain limitations on disclosure may be permitted, they must always be justified, proportionate, and subject to review by an independent and impartial judicial authority.[20]

Criminal proceedings, including the preparatory stage, must be concluded within a reasonable time, as reflected in the right to a fair trial under Article 6(1) of the European Convention on Human Rights. Undue delay in proceedings may have an adverse impact on the suspect's situation, particularly where pre-trial detention is involved, as well as causing psychological distress due to prolonged uncertainty. According to Convention standards, preparatory proceedings must be conducted without unnecessary delay. However, in assessing what constitutes a "reasonable time" for their completion, the following factors must be taken into account: the complexity of the case, the conduct of the investigative authorities, the conduct of the suspect, and the significance of the case for the suspect (e.g., where the individual is in pre-trial detention, heightened diligence is required). Excessive duration of criminal proceedings has been observed in the Polish justice system, as confirmed in *Kudła v. Poland*, where the suspect was held in pre-trial detention for an unreasonably long period. The Court found that the right to a hearing within a reasonable time was not respected, and that there was no effective remedy available to challenge the protracted length of the criminal proceedings.[21] However, this issue is not unique to Poland; it is also present in the justice systems of other European states.[22]

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[18] *Edwards and Lewis v United Kingdom* App nos 39647/98 and 40461/98 (ECtHR, 27 October 2004).

[19] *Rowe and Davis v United Kingdom* App no 28901/95 (ECtHR, 16 February 2000).

[20] *Fitt v United Kingdom* App no 29777/96 (ECtHR, 16 February 2000).

[21] *Kudła v Poland* App no 30210/96 (ECtHR, 26 October 2000).

[22] *Boddaert v Belgium* App no 12919/87 (ECtHR, 12 October 1992); *Scordino v Italy* App no

In preparatory proceedings, the presumption of innocence-enshrined in Article 6(2) of the European Convention on Human Rights-constitutes a fundamental standard. This right becomes operative from the moment the proceedings are initiated and applies to the conduct of investigative authorities (such as the police, prosecution, and judiciary), public communications, and the treatment of the suspect by those authorities. It entails that no one shall be treated as guilty before a final conviction by a court of law. As a result, any public statements or conduct that could imply guilt must be avoided-even following arrest or the issuance of a decision to bring charges. This obligation extends to the media and, in particular, to statements made by political figures. Potential violations include not only prejudicial remarks but also actions such as parading the suspect in handcuffs before the media. An example of such a breach occurred in Switzerland, where a court's press release described the suspect as "guilty of the offence".[23] A similar violation was identified in France, where the Minister of the Interior publicly suggested that the suspect had committed murder prior to any judicial finding.[24] Comparable cases have arisen in countries such as Lithuania and Serbia,[25] where the European Court of Human Rights has reiterated that judicial authorities bear a positive obligation to protect the suspect's image and dignity.

As a rule, the purpose of preparatory proceedings is to establish the prohibited act and its perpetrator, to collect evidence, and to file an indictment with the court. However, the structure of such proceedings is also intended to prevent inhuman or degrading treatment during evidentiary actions aimed at establishing the truth. This obligation stems directly from Article 3 of the European Convention on Human Rights, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. In the context of preparatory proceedings, this provision must be interpreted in light of the conditions of detention and arrest, methods of interrogation, the treatment of the suspect by public officials, as well as access to medical care and the fulfilment of basic needs. In practical terms, the standard extends to: 1) the right to be treated with dignity, regardless of the charges brought; 2) the prohibition of torture, threats, intimidation, and coercion to obtain statements; 3) the obligation to provide minimum standards of living for detained and remanded persons (e.g. overcrowding, lack of lighting, unsanitary conditions, no access to toilet facilities, or medical care); 4) the duty to investigate any allegations of such violations.

36813/97 (ECtHR, 29 March 2006); *Zimmermann and Steiner v Switzerland* App no 8737/79 (ECtHR, 13 July 1983).

[23] *Minelli v Switzerland* App no 8660/79 (ECtHR, 25 March 1983).

[24] *Allenet De Ribemont v France* App no 15175/89 (ECtHR, 10 February 1995).

[25] *Daktaras v Lithuania* App no 42095/98 (ECtHR, 10 October 2000); *Matijašević v Serbia* App no 23037/04 (ECtHR, 19 September 2006).

An example of a breach of these standards is found in the case of *Selmouni v. France*, where a Moroccan national was subjected to brutal police interrogation, including beatings, insults, and sleep deprivation by the French authorities.[26] In another case in Greece, a suspect was held in an overcrowded, filthy cell without natural light and access to toilet facilities.[27] The Court also held in a case against Belgium that a police officer slapping a suspect constituted degrading treatment and a disproportionate infringement of the individual's physical integrity.[28]

The foregoing has outlined the elements of the standards applicable to preparatory proceedings in the member states of the Council of Europe. The analysis demonstrates that states are obliged to respect the provisions of the Convention and to ensure their proper implementation in order to prevent violations thereof. There is no requirement to introduce uniform legal provisions or institutions; however, it is essential that states fulfil their international obligations. There is no requirement to introduce uniform legal provisions or institutions; however, it is essential that states fulfil their international obligations.

III. Standards of European Union

When turning to the human rights protection system of the European Union, it should be noted that it is also based on the following pillars: 1) Primary law – the Treaty on European Union and the Treaty on the Functioning of the European Union[29]; 2) The Charter of Fundamental Rights,[30] as a legal instrument modelled on the European Convention on Human Rights; 3) The so-called "procedural rights package" adopted after the Treaty of Lisbon,[31] i.e., directives aimed at harmonizing minimum standards in criminal matters; 4) The case law of the Court of Justice of the European Union. The provisions of the Treaties and the Charter of Fundamental Rights serve as a "mirror reflection" of the provisions of the European Convention on Human Rights. Pursuant to Article 52(3) of the Charter of Fundamental Rights of the European Union (CFR), where the rights recognized by the Charter correspond to those guaranteed by the European Convention on Human Rights (ECHR), their meaning and scope shall be the same as those laid down by the Convention. This implies that: the EU institutions and national courts, when applying the Charter, are required to interpret

[26] *Selmouni v France* App no 25803/94 (ECtHR, 28 July 1999).

[27] *Peers v Greece* App no 28524/95 (ECtHR, 19 April 2001).

[28] *Bouyid v Belgium* App no 23380/09 (ECtHR, 28 September 2015).

[29] Consolidated Version of the Treaty on European Union [2012] OJ C326/13; Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

[30] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

[31] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

it in conformity with the ECHR and the case-law of the European Court of Human Rights (ECtHR) an EU law adopts the ECHR standard as the minimum level of protection, which must not be reduced or undermined.[32] Therefore, any case under analysis could be examined through the lens of the Charter's provisions. However, for the purpose of a more in-depth analysis, this segment will be based on selected directives.

The analysis should begin with the right to information in criminal proceedings, which is comprehensively regulated in Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.[33] This right comprises the following elements: 1) the right to information about procedural rights (Article 3); 2) the right to receive a written Letter of Rights (Article 4); 3) the right to be informed of the accusation (Article 6); 4) the right of access to the case file (Article 7)[34]. On this basis, the right to information may be understood as the obligation to immediately inform the suspect of the reasons for their arrest-namely, why they have been deprived of liberty-and of their procedural rights (such as the right to a lawyer, the right to remain silent, and the right to an interpreter), as well as to provide a detailed description of the charges, including the alleged act and its legal classification, in order to enable the preparation of an effective defence.[35] An inherent component of the right to information is also the suspect's right of access to the case file, provided that such access does not prejudice the proper conduct of the investigation.[36]

A fundamental right under European Union law is the right of access to a lawyer.[37] As with Convention rights, access to a lawyer is guaranteed at the earliest

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[32] Example: Article 7 of the Charter of Fundamental Rights of the European Union (right to respect for private and family life) corresponds to Article 8 of the European Convention on Human Rights - they are interpreted in parallel. It should also be borne in mind that the European Union is not a party to the European Convention on Human Rights (despite Article 6(2) of the Treaty on European Union), which limits the direct interconnection between the two legal orders. See Case C-617/10 *Åkerberg Fransson* [2013] ECLI:EU:C:2013:105.

[33] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.

[34] Steven Cras and Luca De Matteis, 'The Directive on the Right to Information: Genesis and Description' (2013) 1 Eucrim 22.

[35] Case C-216/14 *Covaci* [2015] ECLI:EU:C:2015:686.

[36] Case C-615/15 *Kolev and Others* [2018] ECLI:EU:C:2018:392.

[37] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1; See: Vincent Glerum, 'Directive 2013/48/EU and the Requested Person's Right to Appoint a Lawyer in the Issuing Member State in European Arrest Warrant Proceedings' (2020)

stage of proceedings-prior to the first interrogation, as well as before other investigative measures such as identity parades or searches.[38] Moreover, the lawyer has the right to be present during questioning and to actively participate, including by intervening during questioning, or advising the suspect on whether to answer questions or to remain silent.[39] In addition, the Directive provides for the confidentiality of communications between the suspect and their lawyer, both oral and written-meaning that investigative authorities may neither interfere with nor supervise such communications.[40] Through their legal representative, the suspect also has the right to have a third party informed of their detention, and to notify a consular authority or embassy where applicable.[41]

European Union law expressly provides for the right to interpretation and translation also during the preparatory stage of criminal proceedings.[42] This right includes the right to oral interpretation during interrogations, at trial hearings, and during communications with defence counsel, in order to ensure that the suspect understands the charges brought against them and is able to effectively exercise their right of defence.[43] It also applies to essential procedural documents, such as: the decision on arrest or detention, the statement of charges, indictments, and any other decisions issued by the court that are crucial to the conduct of the proceedings.[44] Furthermore, interpretation and translation assistance must be provided free of charge, must cover the entire duration of the proceedings, and may not be restricted for procedural or financial reasons.[45] At the same time, the State is under a duty to ensure the quality and accuracy of interpretation and translation, including the obligation to consider complaints regarding interpreters or interpretation-related procedural actions.[46]

41(2) *Review of European and Comparative Law* 7.

[38] Directive 2013/48/EU, art. 3.

[39] Case C-15/24 PPU *Stachev* [2024] ECLI:EU:C:2024:388.

[40] Directive 2013/48/EU, art. 4; See: Case C-819/21 *Staatsanwaltschaft Aachen* [2023] EU:C:2023:386.

[41] Directive 2013/48/EU, arts. 5-7.

[42] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1; See: Magdalena Kotzurek, 'Directive 2010/64/EU on Translation and Interpretation Services in Criminal Proceedings: A New Quality Seal or a Missed Opportunity?' (*Eucrim*, 2019) <https://eucrim.eu/articles/directive-201064eu-on-translation-and-interpretation-services-in-criminal-proceedings-a-new-quality-seal-or-a-missed-opportunity/> accessed 2 June 2025.

[43] Directive 2010/64/EU, art. 2.

[44] Directive 2010/64/EU, art. 3.

[45] Directive 2010/64/EU, art. 4; See: Case C-338/20 *Prokuratura Rejonowa Łódź-Bałuty v D.P.* [2021] ECLI:EU:C:2021:805.

[46] Directive 2010/64/EU, art. 5.

A separate Directive sets out the presumption of innocence under European Union law.[47] To be specific, the presumption of innocence is understood in the same way as under the provisions of the European Convention on Human Rights, meaning that a suspect shall be considered innocent until proven guilty by a final judgment of a court of law.[48] This principle entails a prohibition on public statements made by public authorities that suggest the suspect's guilt, as well as a ban on the use of measures or practices that imply guilt before a final conviction.[49] An exception is made for the provision of information in a neutral manner, where such disclosure is strictly necessary for the purposes of the criminal investigation or in the interest of the public.[50]

The right to legal aid should be understood more broadly than the right of access to a lawyer.[51] It is triggered when the suspect lacks the financial means to retain legal counsel, in which case they are entitled to state-funded legal aid.[52] Crucially, such legal aid must be effective and genuine, not merely formal or illusory.[53] It must be available from the earliest stage of the proceedings, including the moment of arrest, and the legal assistance must be provided by a competent and active lawyer, capable of ensuring a real and substantive defence before the investigative authorities.[54] The decision on whether to grant legal aid should be prompt, transparent, and subject to judicial review, so as to avoid any infringement of the right of defence.[55] The relevant provisions also define the right to legal aid for persons subject to a European Arrest Warrant, ensuring access to legal assistance both in the executing Member State and in the issuing Member State, where the individual has been arrested or is awaiting surrender.[56]

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[47] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings [2016] OJ L65/1; Steven Cras and Anže Erbežnik, 'The Directive on the Presumption of Innocence and the Right to Be Present at Trial: Genesis and Description of the New EU Measure' (2016) 1 *Eucrim* 25.

[48] Directive (EU) 2016/343, art. 3; Case C-467/18 *Rayonna prokuratura Lom* (2019) ECLI:EU:C:2019:765.

[49] Directive (EU) 2016/343, arts. 4-5.

[50] Directive (EU) 2016/343, art. 8.

[51] Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings [2016] OJ L297/1; See: Tomasz Markiewicz, 'Access to a Lawyer for Suspects at the Police Station and During Detention Proceedings' (2020) [41](2) *Review of European and Comparative Law* 129.

[52] Directive (EU) 2016/1919, art. 4.

[53] Directive (EU) 2016/1919, art. 7.

[54] Directive (EU) 2016/1919, arts. 4-5; Case C-435/22 PPU *HF v Generalstaatsanwaltschaft München* [2022] ECLI:EU:C:2022:838.

[55] Directive (EU) 2016/1919, art. 6.

[56] Directive (EU) 2016/1919, art. 5.

A distinct segment of EU law concerns the protection of the rights of children in the preparatory stage of criminal proceedings. This area is governed by Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.[57] This standard is broad in scope. It includes, among others, the child's right of access to a lawyer from the first interrogation onward.[58] Importantly, a child cannot waive this right independently. In practice, this constitutes both an extension and clarification of the general right of access to a lawyer.[59] Throughout procedural actions, parents or legal guardians have the right to be present with the child, which is essential for emotional support and oversight of the proceedings-though exceptions to this principle are permitted in specific circumstances.[60] The interrogation of a child must be conducted without undue delay, by personnel specially trained for this purpose, and in conditions that minimize stress and pressure, while ensuring the child's freedom of expression.[61] As a rule, interrogations should not be repeated, although the Directive provides for exceptions to this general principle.[62] The standard also includes protection of the child's privacy, notably through the safeguarding of personal data. Furthermore, the Directive addresses several additional rights and protections for children, including: 1) the assessment of the child's individual needs;[63] 2) the limited and exceptional use of detention;[64] 3) access to education and contact with family during deprivation of liberty;[65] and 4) appropriate conditions to ensure the child's effective participation in trial proceedings.[66]

Similar to the Convention system of the Council of Europe, the European Union's human rights protection framework also establishes standards regarding the privilege against self-incrimination and the right to remain silent.[67] The

[57] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings [2016] OJ L132/1; Stephanie Rap and Daniella Zlotnik, 'The Right to Legal and Other Appropriate Assistance for Child Suspects and Accused. Reflections on the Directive on Procedural Safeguards for Children Who are Suspects or Accused Persons in Criminal Proceedings' (2018) *European Journal of Crime, Criminal Law and Criminal Justice* 26 110.

[58] Directive (EU) 2016/800, art. 6.

[59] Case C-603/22 *M.S. i in.* [2024] ECLI:EU:C:2024:632.

[60] Directive (EU) 2016/800, art. 15.

[61] Directive (EU) 2016/800, arts. 6, 8, 9, 20.

[62] Directive (EU) 2016/800, arts. 6, 8.

[63] Directive (EU) 2016/800, art. 7.

[64] Directive (EU) 2016/800, art. 12.

[65] ibid.

[66] Directive (EU) 2016/800, arts. 4, 16.

[67] Directive (EU) 2016/343; See: Anita Zsuzsanna Nagy, 'The Presumption of Innocence and the Right to Be Present at Trial in Criminal Proceedings in Directive (EU) 2016/343' (2016)

first element of this standard affirms that a suspect may not be compelled to provide explanations or to produce evidence that could be used against them.[68] Law enforcement authorities are obliged to respect and accept the suspect's decision to remain silent or to withhold self-incriminating material.[69] The second component emphasizes that a suspect's silence must not be interpreted as an admission of guilt, and a refusal to cooperate with investigative authorities must not adversely affect the assessment of the suspect's conduct either by the investigating body or by the court.[70] It is also worth noting Article 48 of the Charter of Fundamental Rights of the European Union, which enshrines these principles within the primary law of the EU.[71]

In the context of the European standard governing preparatory proceedings under EU law, the right of access to evidence must be duly addressed. Its implementation should be as broad as possible. For instance, the suspect should receive all documents necessary to understand and challenge the decision to bring charges. At the same time, full disclosure by the competent authorities entails providing access to both inculpatory and exculpatory evidence.[72] It is essential that all relevant documents be disclosed in a timely manner, to allow the suspect to prepare an effective defence.[73] This right, however, is not absolute—it may be subject to limited and exceptional restrictions, justified by the seriousness of the investigation, the protection of witnesses, or overriding public interest considerations.[74]

The presented standards of preparatory proceedings under EU law demonstrates a high degree of similarity and complementarity with the system of the Council of Europe. In practice, the provisions of the Charter of Fundamental Rights, as previously mentioned, are virtually identical to those of the European Convention on Human Rights.

IV. The judical factor in preparatory proceedings

A characteristic feature of the preparatory proceedings model in civil law countries is the involvement of the judicial factor in the preparatory stage. Moreover,

12(1) *European Integration Studies* 5.

[68] Directive (EU) 2016/343, art. 7.

[69] Case C-481/19 *DB v Commissione Nazionale per le Società e la Borsa (Consob)* [2021] EU:C:2021:84.

[70] Directive (EU) 2016/343, arts. 3-6; Case C-660/21 *K.B. i F.S. (C-660/21)* [2023] ECLI:EU:C:2023:498.

[71] Charter of Fundamental Rights of the European Union, art. 48.

[72] Case C-216/14 *Covaci* [2015] ECLI:EU:C:2015:686.

[73] Case C-612/15 *Kolev i in.* [2018] ECLI:EU:C:2018:392.

[74] Directive 2012/13/EU, arts. 10, 14, 27, 28, 41.

this is a standard that developed in the 19th century.[75] It has undergone certain evolution alongside other procedural institutions, but it still serves as a measure of the adherence to human rights and freedoms, reflecting the principles of a democratic rule of law.[76]

The legal systems of the Council of Europe and the European Union establish minimum standards to guarantee the involvement of the judicial factor in preparatory proceedings, while leaving the Member States the discretion to regulate this matter. It should be noted that, according to the theory of criminal procedure, judicial activities in preparatory proceedings can be classified into three types: 1) Decision-making activities – decisions taken by the judicial authority as a result of the legal and substantive review of the preparatory proceedings. These may be triggered by a request from the prosecutor, but this is not a rule;[77] 2) Supervisory activities – the review of certain decisions made by pre-trial authorities (prosecutor, police, and other bodies), examining their legality and the thoroughness of the actions taken;[78] 3) Evidentiary activities – procedural (evidentiary) actions reserved for the judicial authority.[79] The core of judicial powers typically includes a broad range of decision-making and supervisory activities, but the evidentiary component is also crucial, as in certain cases, it allows for the interrogation of specific participants in the criminal proceedings by an independent court.[80] It seems that it is not an overstatement to assert that the wide scope of judicial activities is a key indicator of the rule of law within a given model of preparatory proceedings and the entire criminal process.

A comprehensive discussion of all judicial activities in preparatory proceedings would exceed the scope of this analysis. Therefore, it is necessary to highlight the most significant elements derived from the provisions constituting the Council of Europe and European Union systems.

Article 5(3) of the European Convention on Human Rights (ECHR) is of fundamental importance, as it stipulates that any person arrested or detained shall

[75] Jarosław Zagrodnik, *Model interakcji postępowania przygotowawczego oraz postępowania głównego w procesie karnym* (CH Beck, 2013) 253.

[76] Stanisław Waltoś and Piotr Hofmański, *Proces karny – zarys systemu* (Wolters Kluwer Polska 2018) 514-515.

[77] Karolina Malinowska-Krutul, 'Czynności sądowe w postępowaniu przygotowawczym' [2008] 10 *Prokuratura i Prawo* 65.

[78] Cezary Kulesza, 'Postępowanie przygotowawcze. Rozwiązania modelowe' in Piotr Kruszyński (ed), *Nowe uregulowania prawne w kodeksie postępowania karnego z 1997 r.* (ABC 1997) 269.

[79] Jan Grajewski, Lech Krzysztof Paprzycki and Sławomir Steinborn, *Kodeks postępowania karnego. Komentarz t. I* (Wolters Kluwer 2006) 893.

[80] Marek Skwarcow, 'Sprawa zabójstwa w Lisewie Malborskim. Głos w dyskusji nad rozszerzeniem udziału czynnika sądowego w postępowaniu przygotowawczym' [2023] 11-12 *Przegląd Sądowy* 153.

be brought promptly before a judge or another officer authorized by law to exercise judicial power. This provision indicates the judicial review of the lawfulness and justification of detention-it cannot be solely an arbitrary decision made by law enforcement (extension of executive authority). The European Court of Human Rights emphasizes the importance of "independence and impartiality" of the reviewing body – this must be a judge, not a prosecutor.[81] Furthermore, the Court held that the detention of a suspect without judicial oversight violated Article 5(3) ECHR.[82] It was also stated that "judicial review" must be genuine, not merely formal.[83] At the same time, the ECtHR emphasized the necessity of full independence of the decision-making authority, which is guaranteed only by judicial independence. In another judgment, the ECtHR underlined that abuses in the use of coercive measures may violate human rights if they are not subject to effective judicial control.[84]

Turning to EU law, it is important to reference Articles 47 and 48 of the Charter of Fundamental Rights. The first provision establishes the right to an effective remedy before a court, meaning the right to appeal decisions made by law enforcement authorities to a court. The second provision emphasizes the respect for the right to defence, including the rights of the suspect. These provisions form the basis for judicial control over investigative and procedural actions by questioning decisions—such as searches, arrests, or the use of coercive measures. An independent judicial authority serves as a guarantee of the proportionality and legality of actions taken by the prosecution and the police. Completing these framework regulations are, among others, Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer. These directives mandate that the suspect be informed of their right to a court, their right to legal counsel, and their right to appeal. While these directives do not explicitly mention the participation of the court in the preparatory proceedings, they imply the necessity of judicial oversight, as only such oversight can ensure the enforcement of these rights. In Case C-508/18, the CJEU held that a prosecutor does not meet the requirement of judicial independence if they are subject to executive power-therefore, decisions concerning the European Arrest Warrant (EAW) must be made by an independent judicial authority with the attribute of judicial independence.[85]

In conclusion, it should be stated that the involvement of the judicial factor is

[81] *Schiesser v Switzerland* App no 7710/76 (ECtHR, 4 December 1979).

[82] *Assenov and Others v Bulgaria* App no 24760/94 (ECtHR, 28 October 1998).

[83] *Mooren v Germany* App no 11364/03 (ECtHR, 9 July 2009).

[84] *Kudła v Poland* App no 30210/96 (ECtHR, 26 October 2000).

[85] Joined Cases C508/18 and C82/19 PPU *OG and PI (Public Prosecutor's Offices of Lübeck and Zwickau)* [2019] ECLI:EU:C:2019:456.

a requirement arising from both EU law and Council regulations. Its purpose is to protect against abuses and ensure the effective protection of individual rights. Therefore, this solution forms the basis of the European standard for fair preparatory proceedings and effective investigation.

V. Summary

The analysis presented above shows that European human rights protection systems-within the framework of the Council of Europe and the European Union-establish coherent and overlapping standards for preparatory proceedings. It should be noted that these systems are characterized by broad procedural guarantees for the parties involved in the proceedings, namely the victim and the suspect. On the other hand, they undergo a certain evolution and must respond to the challenges of a changing world, such as artificial intelligence.[86] An example of such an evolution is the process of moving away from the institution of the investigating judge in European preparatory models, a shift initiated by the Federal Republic of Germany and later followed by Italy, Austria, Switzerland, and Croatia.[87] Not all countries ultimately abandoned this model, including France, Spain, and Greece.[88] At the same time, it should be noted that this process is not uniform, as in some European countries, the model of preparatory proceedings without the investigating judge was forcefully imposed, such as in Poland, the Czech Republic, Slovakia, and Hungary.[89]

A procedural institution characteristic of the European standard of preparatory proceedings is the involvement of the judicial factor in the preparatory process and the judicial actions performed by an independent court.[90] This element is deeply rooted in the tradition of European preparatory models, as confirmed by historical regulations and literature.

The standards of preparatory proceedings and the scope of judicial involvement in preparatory procedures are not uniform. The regulations of the Council of Europe and the European Union, as well as the case law of the European Court

[86] Karolina Kiejnich-Kruk, 'Building blocks – strategia cyfryzacji wymiaru sprawiedliwości. Perspektywa estońska' (2025) 3 *Przegląd Sądowy* 86.

[87] Łukasz Wiśniewski, 'Sędzia dochodzenia w niemieckim postępowaniu karnym' (2011) 12 Państwo i Prawo 56.

[88] Cezary Kulesza, 'Ewolucja europejskich modeli postępowania przygotowawczego na przełomie wieków' in P. Kruszyński, Sz. Pawelec and M. Warchoł (eds), *Europejski kodeks postępowania karnego* (Stowarzyszenie Absolwentów Wydzialu Prawa i Administracji UW, 2010).

[89] Józef Koredczuk, 'Ewolucja modelu postępowania przygotowawczego w polskim prawie karnym procesowym' in Ryszard Andrzej Stefański (ed), *System Prawa Karnego Procesowego* (C.H. Beck 2016) 101-102.

[90] Rudolf von Gneist, *Vier Fragen zur Deutschen Strafprozeßordnung mit einem Schlußwort über die Schöffengerichte* (Springer 1874).

of Human Rights and the Court of Justice of the European Union, set minimum standards, such as the requirement for a court ruling on the detention of a suspect.[91] It is up to sovereign states to decide whether to implement broader standards, including a wider range of judicial actions in preparatory proceedings. In addition to the rigid standards, which are generally of a broad nature, there are also provisions and guidelines that are more detailed; however, sovereign states have the discretion to participate in a given mechanism, such as the European Public Prosecutor's Office within the European Union framework.[92] Noticeable trends and efforts to standardize and harmonize national legal systems are evident, but recently these efforts have been slowed down, for example, in the area of the European Criminal Procedure Code.[93] Nevertheless, this in no way undermines the European standards of preparatory proceedings, which remain crucial for the protection of human rights.

[91] Zagrodnik (n 75) 253.

[92] Gabriella Di Paolo, 'EPPO's Transformative Powers on Criminal Justice in the Member States: The Impact of International and European Law on Criminal Procedure' (2024) 33(5) *Studia Iuridica Lublinensia* 31.

[93] Piotr Kruszyński, Szymon Pawelec and Marcin Warchoł (eds), *Europejski kodeks postępowania karnego* (Stowarzyszenie Absolwentów Wydzialu Prawa i Administracji UW, 2010).

Integrity at Risk: Structural Weaknesses in the EU's Regulation of the Revolving Door

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Contents

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Abstract

The revolving door phenomenon, essentially describing the transition of public officials into private sector roles, has always been a prevalent, yet underestimated issue in bureaucratic environments such as the European Union's institutional system. Despite its systemic nature the problem remains insufficiently addressed in the regulatory sense. Following the specific definition of the problematic areas, this article offers a comprehensive legal analysis of the current regulatory framework concerning the revolving door phenomenon, highlighting its shortcomings particularly regarding post-employment restrictions, monitoring mechanisms and sanctioning capacities.

Keywords: revolving door, enforceability, effectiveness, democracy, ethics

I. Introduction

The President of the European Commission is one of the European Union's most important officials, given the vital nature of the body he or she heads.[1] José Manuel Barroso held this role between 2004 and 2014 and during his two mandates he strongly centralised the Commission's activities,[2] thus undoubtedly having a decisive influence on most EU policies.[3] With all this in mind, the public outcry was completely understandable after the former president was hired by Goldman Sachs International, which played a significant role in the "masking" of Greece's budget deficit[4] and the outbreak of the 2008 global economic crisis,[5] after the expiry of his 18-month cooling-off period.[6]

Barroso's example is just one of many, as six of the 13 commissioners who left between 2009-2010 went through the so-called revolving door to work for private companies such as the lobbying companies Fleishman-Hillard and Fipra,

[1] Ernő Várnay and Mónika Papp, *Magyarázat az Európai Unió jogáról* (Wolters Kluwer 2023) 86.

[2] Hussein Kassim and others, *The European Commission of the Twenty-First Century* (Oxford University Press 2013) 174.

[3] Zoltán Angyal, 'Az Európai Bizottság' in Osztovits András (ed), *EU-jog* (HVG Orac 2021) 105-110.

[4] Beat Balzli, 'How Goldman Sachs Helped Greece to Mask its True Debt' *Spiegel International* (8 February 2010) <https://www.spiegel.de/international/europe/greek-debt-crisis-how-goldman-sachs-helped-greece-to-mask-its-true-debt-a-676634.html> accessed 20 May 2025.

[5] 'Goldman Sachs Agrees to Pay More than $5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities Goldman Sachs Agrees to Pay More than $5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities' (*U.S. Department of Justice* 11 April 2016) <https://www.justice.gov/archives/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed> accessed 20 May 2025.

[6] 'Ex-European Commission head Barroso under fire over Goldman Sachs job' *BBC* (13 July 2016) <https://www.bbc.com/news/world-europe-36787931> accessed 20 May 2025.

the insurance company Munich Re or the banking conglomerate BNP Paribas.[7] Of course, this is not just a phenomenon that affects Commission officials, but similar movements can also be observed regularly within the European Investment Bank (EIB),[8] the European Central Bank (ECB)[9] and other EU bodies.

This undermines the integrity, transparency, democratic nature of- and public trust in the EU administration, as the private interests of officials are and may be in significant conflict with the public interest they serve. In addition, democracy also plays a key role in the European Union from a legal point of view, as Article 2 of the Treaty on European Union (TEU) names it as a fundamental value. Article 298 of the Treaty on the Functioning of the European Union (TFEU) gives the institutions, bodies, offices and agencies the right to have the support of an open, efficient and independent European administration. From the point of view of the citizen of the Union, Article 41 of the Charter of Fundamental Rights of the European Union (the Charter) is relevant, which mentions the right to good administration, giving them the right to have their affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

With this in mind, it cannot be said that the problem briefly illustrated above is of a purely ethical or political nature, since its EU law aspect is clearly visible. Accordingly, my aim in this article is to present the revolving door problem in the European Union as comprehensively as possible from a legal point of view and to analyse the practices of the bodies most affected. However, as a first step, it is essential to create a definition of the revolving door phenomenon that is appropriate and consistently applied from the point of view of the study.

II. Definition

The revolving door phenomenon does not presuppose a unilateral change of position, but the movement of public and private sector employees between the two sides of the 'door' in this sense. There is a so-called 'entrance' and an 'exit' rotation. The former is intended to express when a person from the private sec-

[7] Jens Clausen, 'Revolving door provides privileged access' (*Alter-EU* February 2011) <https://www.corporateeurope.org/sites/default/files/sites/default/files/files/resource/revolving_door_provides_privileged_access.pdf> accessed 20 May 2025.

[8] Anna Roggenbuck and Teodóra Dönsz-Kovács, Soft landing, 'New high-level EIB 'revolving door' revelations suggest systemic issue persists' (*Bankwatch Network* 1 March 2024) <https://bankwatch.org/blog/soft-landing-new-high-level-eib-revolving-door-revelations-suggest-systemic-issue-persists> accessed 20 May 2025.

[9] Hannah Brenton, 'Ombudsman investigates 'revolving doors' at ECB after senior economist leaves for US bank' *Politico* (3 March 2022) <https://www.politico.eu/article/ombudsman-investigates-revolving-doors-at-ecb-after-senior-economist-leaves-for-us-bank/> accessed 20 May 2025.

tor moves to the public service, while the latter means the opposite, i.e. leaving the public service and finding a job in the private sector. Entrance movements are rarely problematic, as in general, the Member States, the EU itself or EU citizens play a role in the appointment of individual officials, so access is not just a matter of individual decision. However, individual decisions and interests play a much greater role in finding employment after leaving the European administration, partly due to the shortcomings of the existing regulation. For this reason, there are two ways to define revolving door in the EU, using a narrower and a broader definition. EU institutions and bodies prefer to use the narrow variant, which focuses only on the exit movement, as opposed to the concept of revolving door phenomenon in the broad sense, which appears from time to time in the relevant literature, which considers both entry and exit style changes as conceptual elements.[10]

In addition to these, a further distinction must be made before defining the concept. This is the revolving door phenomenon in the strict and loose sense. A strict definition is when a former civil servant is employed in a branch of the private sector that is regulated by his former public employer; loose is only the later employment in the private sector, regardless of regulator.[11] This is of paramount importance because leaving the public service and taking up employment in the private sector cannot be considered problematic in itself.

With all this in mind, I consider a specific, *narrow* but *not strict*, definition to be suitable for the analysis of the problem at hand, which reads as follows: From the point of view of the European Union, the revolving door phenomenon means that a person who no longer actively performs his duties in the EU civil service–due to the termination of his or her service or unpaid leave–takes a job in the private sector, where he or she performs activities for which he or she uses his or her EU experience and contacts for his or her own or someone else's private interests, which may lead to a situation of conflict of interest.

In my opinion, the concept thus created adequately delimits the problem in the light of its questionable elements and does not allow the topic to be expanded in such a way as to trivialise its negative effects.

III. Abnormalities

In order to understand how current and profound the problem caused by the revolving door phenomenon is, it is essential to briefly introduce these abnormalities.

[10] David Coen and Colin Provost, 'Revolving doors' in Phil Harris and others (eds), *The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs* (Palgrave Macmillan 2022) 1170.

[11] Adam William Chalmers and others, 'In and out of revolving doors in European Union financial regulatory authorities' (2022) 16 Regulation and Governance 1233.

1. Conflict of interest

The Organisation for Economic Co-operation and Development (OECD) defines a conflict of interest as follows: "A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of their official duties and responsibilities."[12] The revolving door phenomenon can give rise to a number of situations which undoubtedly exhaust that concept. In the following, I will explain the typical manifestations of these.

1.1. Quasi-regulatory capture

The term regulatory capture is used when an industry regulator puts the interests of the industry it regulates over the public interest as a result of certain factors.[13] I call the current situation *quasi*-regulatory capture because the EU bodies cannot be said to serve the interests of regulated industries instead of the public interest in general, but such a tendency can be detected occasionally at the level of individual officials, especially at senior positions. This brings us to the threshold of the revolving door phenomenon, as these people may start to treat certain companies in a preferential way while still being public servants, in order for them to later repay the 'favour' by offering a well-paying job.[14] This is most often observed in the financial sector,[15] but the general political decision-making and executive bodies are not too underrepresented either, which I will later confirm. In this way, officials use positions that citizens have the greatest interest in the proper, fair and impartial functioning of as a mere stepping stone, creating a conflict of interest.

The illegality of the practice may also arise, the assessment of which depends on the legislation of the given Member State. However, such offers are usually made with subtle allusions that may not even be noticed by the official's colleagues, thus rendering the alleged crime essentially unprovable.[16]

An excellent example is the case of Vazil Hudák, who, as EIB Vice-President, played a significant role in approving a EUR 200 million loan for the expansion

[12] 'Managing Conflict of Interest in the Public Sector' (*OECD* 2005) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2005/08/managing-conflict-of-interest-in-the-public-sector_g1gh5807/9789264018242-en.pdf> accessed 22 May 2025.

[13] David Thaw, 'Enlightened regulatory capture' (2014) 89 Washington Law Review 329.

[14] 'Post-Public Employment' (*OECD* 23 August 2010) <https://www.oecd.org/en/publications/post-public-employment_9789264056701-en.html> accessed 22 May 2025.

[15] Chalmers and others (n 11).

[16] 'Post-Public Employment' (*OECD* 23 August 2010) <https://www.oecd.org/en/publications/post-public-employment_9789264056701-en.html> accessed 22 May 2025.

of the Budapest Liszt Ferenc International Airport.[17] His mandate lasted until October 2019, and in January 2020 he[18] was appointed as a member of the Board of Directors of Budapest Airport Zrt., before the expiry of his[19] 12-month cooling-off period under the rules in force at the time. However, for the sake of completeness, it is important to note that this is one of the rare cases where the mechanisms to prevent revolving door conflicts of interest from occurring have worked well and the EIB's Ethics and Compliance Committee has not allowed Vazil Hudák to fill the position.[20]

1.2. Influencing

Lobbying is not only a common and accepted activity in the United States, but also plays a significant role in the formulation of the European Union's policies, given the EU's ever-expanding competences[21] and complex legislative processes.[22] Although this activity is legal, it is far from free of conflicts, as European public opinion continues to take the view that too close a relationship between business and politics leads to corruption. In the Eurobarometer survey conducted in February-March 2024, 75% of respondents agreed with the above statement, and even Denmark, which produced the most divided results, is in last place with a result of 52%.[23]

It is often mentioned as an argument in favour of lobbying that this kind of exchange of ideas between the public and private sectors does not result in legislation being created in a hermetically sealed environment. In this way, the public sector can access the human capital of private entities and take a broader

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[17] 'Hungary: Investment Plan for Europe - EIB supports further expansion of Budapest's Liszt Ferenc International Airport' (*European Investment Bank* 14 December 2018) <https://www.eib.org/en/press/all/2018-345-investment-plan-for-europe-eib-supports-further-expansion-of-budapest-liszt-ferenc-international-airport> accessed 22 May 2025.

[18] 'EIB Management Committee Code of Conduct' (14 March 2019), <https://www.eib.org/files/publications/thematic/code_conduct_MC_en.pdf> accessed 23 May 2025.

[19] 'Sir Michael Hodgkinsont és Vazil Hudákot nevezte ki igazgatósági tagnak a Budapest Airport' <https://www.bud.hu/budapest_airport/media/hirek/aktualis_sajtokozlemenyek/hirek_2020/sir_michael_hodgkinsont_es_vazil_hudakot_nevezte_ki_igazgatosagi_tagnak_a_budapest_airport.html> accessed 23 May 2025.

[20] 'EIB Ethics and Compliance Committee Annual Report 2020' <https://www.eib.org/files/publications/ecc_annual_report_2020_en.pdf> accessed 23 May 2025.

[21] David Coen and Jeremy Richardson, 'Learning to Lobby the European Union: 20 Years of Change' in David Coen and Jeremy Richardson (eds), *Lobbying the European Union: Institutions, Actors, and Issues* (Oxford University Press 2009) 7.

[22] Heike Klüver and others, 'Legislative Lobbying in Context: Towards a Conceptual Framework of Interest Group Lobbying in the European Union' (2015) 22 Journal of European Public Policy 447.

[23] 'Citizens' attitudes towards corruption in the EU in 2024' <https://europa.eu/eurobarometer/surveys/detail/3217> accessed 24 May 2025.

perspective on regulating a given problem or industry.[24] However, it can be problematic that the public interest and lobbying interests often do not coincide, in which case officials and institutions have to weigh between the two.[25]

However, impartial weighing may be significantly hampered if the interests of one or more large companies are represented by a former colleague of the official who has to prepare or make the decision. This is where the revolving door problem comes into play, as the number of ex-EU officials who leave the public service and end up at a lobbying firm is not negligible at all. According to a report by Transparency International EU, 161 MEPs left politics after the 2009-2014 parliamentary term, of which 30%, or 48 people, were employed by registered lobbying organisations.[26] Of these, 26 people were employed by companies operating in Brussels within two years of the end of their mandate.[27] During the same period, those who left the Commission did not sit idly by, with 15 of the 27 Commissioners choosing the same career path as the above-mentioned MEPs.[28] These figures really show how common and deliberate it has become to employ outgoing high-ranking EU bureaucrats in certain areas of the private sector.

The problem lies mainly in the fact that these people 'take with them' their network of contacts, reputation and circle of friends acquired during their term of office,[29] i.e. the so-called bureaucratic capital,[30] so it is possible that they will be in a privileged position in front of their former colleagues and will have easier access to them.[31] As a result, a perpetual cycle may develop between the quasi-regulatory trap and the conflict of interest situations of influencing, as it is quite possible that ex-officials who are already working as lobbyists will also make current officials go through the revolving door.

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[24] Silvia Kotanidis, 'Rules on 'revolving doors' in the EU' (April 2024) <https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/762290/EPRS_IDA(2024)762290_EN.pdf> accessed 23 May 2025.

[25] Anne Rasmussen and others, 'With a Little Help From The People? The Role of Public Opinion in Advocacy Success' (2018) 51 Comparative Political Studies 139.

[26] Raphaël Kergueno, 'Access All Areas – When EU politicians become lobbyists' (31 January 2017) <https://transparency.eu/access-all-areas/> accessed 24 May 2025.

[27] ibid.

[28] ibid.

[29] Chalmers and others (n 11).

[30] Elise S. Brezis and Joël Cariolle, 'Financial Sector Regulation and the Revolving Door in US Commercial banks' in Norman Schofield and Gonzalo Caballero (eds), *State, Institutions and Democracy* (Springer 2016) 6.

[31] Post-Public Employment' (*OECD* 23 August 2010) <https://www.oecd.org/en/publications/post-public-employment_9789264056701-en.html> accessed 24 May 2025.

2. Transparency, integrity and public trust

The conflict of interest situations described above are recurring elements of European politics as part of the revolving door phenomenon, as the examples show. In an open letter to Ursula von der Leyen on 17 May 2024, Emily O'Reilly, then European Ombudsman, warns that this practice "can have a negative impact on public trust, feed Eurosceptic sentiment and undermine the EU's trade, competition or other interests."[32] The letter was sent by the Ombudsman as part of an inquiry into another incident, as Henrik Morch, a former high-ranking official in the European Commission's Directorate-General for Competition, had been hired at the Brussels branch of the US law firm Paul Weiss.[33] Another concern is that the Commission is not preventing revolving door movements that serve the interests of companies outside the EU, in particular with the internal information obtained in this way.[34] This could undermine the integrity of the body, as it should only promote and protect the interests of the EU in its operation.[35]

In addition, the principle of transparency, which is also enshrined in Article 15(1) of the TFEU, is significantly overshadowed when it comes to revolving door movements. At the Ombudsman's repeated requests, the Commission has set up a platform to publish the authorised professional activities of former Commissioners, together with the relevant Commission decisions and the opinions of the Independent Ethics Committee.[36] However, this solution is far from sufficient as regards the EU's institutional system, as no other institution has a similar database available to the public. The principle of transparency cannot be satisfied by the annual reports either, given that they do not contain data on all cases and that too long a period of time may elapse between the adoption of decisions on individual cases and their publication.[37] To detect these, investigations

[32] 'How the European Commission handles revolving door moves by senior staff members from its Directorate-General for Competition to corporate law firms' (24 September 2024) <https://www.ombudsman.europa.eu/en/opening-summary/en/186549> accessed 24 May 2025.

[33] 'Leading EU Competition Lawyer Joins Paul, Weiss as Firm Opens Office in Brussels' (08 May 2024) <https://www.paulweiss.com/insights/firm-news/leading-eu-competition-lawyer-joins-paul-weiss-as-firm-opens-office-in-brussels> accessed 24 May 2025.

[34] 'How the European Commission handles revolving door moves by senior staff members from its Directorate-General for Competition to corporate law firms' (24 September 2024) <https://www.ombudsman.europa.eu/en/opening-summary/en/186549> accessed 24 May 2025.

[35] Angyal (n 3) 95.

[36] 'Former European Commissioners' authorised occupations' <https://commission.europa.eu/about/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/former-european-commissioners-authorised-occupations_en?prefLang=hu> accessed 24 May 2025.

[37] 'Decision of the European Ombudsman in case OI/1/2021/KR on how the European Commission deals with the 'revolving door' phenomenon of staff members' <https://www.

are often required by NGOs or news portals operating in this sector. It should be pointed out that transparency does not reach the desired level on the subject under discussion to such an extent that in some literature articles the movements between EU bodies and the private sector are labelled as less obvious,[38] in my opinion, incorrectly, in the light of the data mentioned.

Finally, based on surveys, it can be stated that since the 2006-2007 period, there has not been a time when more than 50 percent of those surveyed have said they trusted the EU.[39] Of course, it is not only the improper management of ethically questionable career paths that affects trust in the EU, but it certainly does not change the opinion of the sceptics in the light of the aforementioned shortcomings.

3. Fair competition

The fairness of economic competition is of fundamental importance in modern democratic societies.[40] Against that background, Article 3(3) TEU sets the objective of establishing an internal market for the European Union. And Protocol No. 27 to the TEU and TFEU states that the system thus established ensures that competition is not distorted. However, this fundamental institution is also being undermined by the revolving door phenomenon. All of the conflicts of interest situations described above may give the beneficiary company an unfair advantage, although in most cases without prejudice to EU competition rules. However, there are also aspects that can result in distortions of economic competition.

By regularly employing high-ranking officials from the EU administration, some large companies accumulate significant bureaucratic capital. This is capable of creating a level of influence that gives these companies an unfair advantage over others, that do not have the opportunity to employ similar people.[41] The advantage may take the form of privileged access to funding, special treatment in public procurement,[42] or a better ability to assert interests vis-à-vis the institution of the former official.[43]

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ombudsman.europa.eu/hu/decision/en/155953> accessed 24 May 2025.

[38] Coen and Provost (n 10) 1174.

[39] 'Standard Eurobarometer 98 - Winter 2022-2023' <https://europa.eu/eurobarometer/surveys/detail/2872> accessed 24 May 2025.

[40] 'Are Competition and Democracy Symbiotic?' (*OECD* 7-8 December 2017) <https://one.oecd.org/document/DAF/COMP/GF/WD(2017)1/en/pdf> accessed 25 May 2025.

[41] Elise S. Brezis and Joël Cariolle, 'The revolving door, state connections, and inequality of influence in the financial sector' (2019) 15 Journal of Institutional Economics, 595.

[42] Brezis and Cariolle (n 30) 1.

[43] Simon Luechinger and Christoph Moser, 'The European Commission and the revolving door'

The biggest problem, however, lies in the information that is 'exported' to the private sector through the revolving door. This can primarily be organisational knowledge, with which the hiring company gets an insight into the operation of an EU institution, possibly ongoing cases or legislation that is still being adopted.[44] Secondly, it is possible that the former bureaucrat is providing sensitive and, in the worst case, secret information about competitors to his new employer.[45]

It is true that Article 339 of the TFEU requires the staff of the institutions to maintain confidentiality even after the end of the civil service. However, we cannot rule out the possibility that confidential information will fall into the hands of competitors, who may gain an unfair advantage, as compliance with the regulations is practically untraceable.

Even the illusion of the abovementioned situations reflects poorly on the institutions of the European Union, and it is therefore vital that we keep the practices that have led to this under control through appropriate regulation and its effective implementation.

IV. Regulatory background

I have already mentioned that, in my opinion, the regulation of revolving doors in the EU is not effective enough. In order to support this, it is essential to examine the legal background in force. I consider it worth emphasising that I do not consider it necessary to carry out an in-depth analysis of the text of the TEU and the TFEU, since they contain general, framework-like requirements for the conduct of individual officials. Thus, secondary law forms a special system of norms that fills the framework in accordance with these and in accordance with them. However, we must not forget that the need to create a regulation on the conduct of officials is provided by the primary sources of law. Based on these, the EU public administration must comply with various guarantee requirements, such as transparency[46] or impartiality,[47] for the creation and maintenance of which it is essential to prescribe the appropriate behaviour of individuals.

1. General Staff Regulations

The Staff Regulations of Officials of the European Union[48] in principle applies

(2020) 127 European Economic Review <https://doi.org/10.1016/j.euroecorev.2020.103461> accessed 24 May 2025.

[44] ibid.

[45] ibid.

[46] TFEU art 15; Charter of Fundamental Rights, art. 42.

[47] Charter of Fundamental Rights, art. 41.

[48] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the

to the staff of all the EU institutions and agencies,[49] therefore I will refer to it in some places as the General Staff Regulations. The legislation is published in the form of a regulation. This grants employees almost complete immunity from national labour law, in line with the principle of primacy of EU law. So we can say that we are talking about the EU's internal labour code.

The current regulation addresses the issue of the impartiality of officials and the elimination of conflicts of interest in a number of places.[50] Article 11 contains such essential provisions. In particular, it requires staff to carry out their duties solely in the interests of the Union in mind.[51] Gifts, recognitions, honours, and benefits may not be accepted without the permission of the appointing authority.[52] And in close connection with this, Article 12 provides that "[a]n official shall refrain from any action or behaviour which might reflect adversely upon his position." These clauses may be suitable in principle to prevent influence by external persons. The real problem, however, lies in the uncontrollability and thus the unenforceability of compliance with the rules.

However, the above can only be considered tangential in terms of eliminating the negative effects of the revolving door phenomenon. The *corpus* of the legislation is embodied in Article 16 of the General Staff Regulations. Paragraph 1 of that provision also requires an official to behave with integrity and discretion in accepting appointments and benefits after leaving the service. Paragraph 2 creates a specific obligation to provide information for 2 years after leaving the service if the official wishes to take up gainful occupational activity. Any investigation is only included if the activity is related to the work carried out by the official during the last three years of his service and is likely to conflict with the legitimate interests of the institution.[53] In the latter case, the appointing authority may prohibit the exercise of the activity or impose conditions not specified by law. In this respect, the European Union therefore applies a strict definition of the revolving door phenomenon, and in the context of the loosely defined mode, only the obligation to provide information by means of a standardised form arises.

The answer to the question of what constitutes an activity which is "related to the work carried out by the official during the last three years of service" and which may lead to a "conflict with the legitimate interests of the institution"

Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community [1962] OJ P045/1385. (hereinafter: Staff Regulations).

[49] Staff Regulations, arts. 1-1a.

[50] Staff Regulations, arts. 11, 12 and 12b.

[51] Staff Regulations, art. 11(1).

[52] Staff Regulations, art. 11(2).

[53] Staff Regulations, art. 16(2).

within the meaning of the second sentence of Article 16(2) is provided by the case law of the Court of Justice of the European Union (CJEU). The Civil Service Tribunal first dealt with this issue in the case of Robert van de Water v. European Parliament. The applicant was a member of the temporary staff of the European Parliament in the third highest grade, namely AD14.[54] After his retirement, he wanted to work as an adviser to the then Prime Minister of Ukraine, Mykola Azarov,[55] which he was prohibited from doing by the appointing authority.[56] Mr. van de Water argued that the new activity to be taken up was not linked to the work carried out during the last three years of his service[57] and could not lead to a conflict with the legitimate interests of the institution, since the EP's activities were public.[58] With regard to the first complaint, the Tribunal found that it was clear from the wording of Article 16 that it was sufficient that the planned activity had *any* connection with the work carried out previously.[59] With regard to the second complaint, it also held that the appointing authority has a wide discretion as to whether the planned activity is contrary to the legitimate interests of the institution.[60] Building on that argument, in another case, the link between the planned work and the work carried out was also established by the fact that the applicant was the Head of the Delegation of the European Union to Cape Verde and subsequently wished to act as the diplomatic representative of the Sovereign Order of Malta in the same state.[61]

Knowing the relevant case law, we can continue with the details of the clause on the prohibition of lobbying and advocacy of senior officials which is also an undefined concept.[62] This covers the period of 12 months after leaving the service, but as with other activities, it also applies only to 'rotation' in the strict sense. Therefore, they may not take up such activities in areas for which they were responsible during the last three years in their service. In my opinion, this unnecessarily and excessively narrows the applicability of the restriction.

As I have already mentioned, even in the case of active employees, monitoring compliance with the provisions is an almost impossible task, which the insti-

[54] Case F-86/13 *Van de Water v European Parliament* [2014] ECLI:EU:F:2014:233 (hereinafter: F-86/13), para. 6.

[55] ibid para. 7.

[56] ibid para. 12-13.

[57] ibid para. 41.

[58] ibid para. 42.

[59] ibid para. 48.

[60] ibid para. 51.

[61] Case T-667/18 *José Manuel Pinto Teixeira v European External Action Service* [2019] ECLI:EU:T:2019:821.

[62] Staff Regulations, art. 16(3).

tutions are either unwilling or unable to do. The control after the termination of service is an even greater challenge. The problem also lies in the fact that in the latter case, the violations will almost certainly remain unsanctioned or, if imposed, they will no longer achieve their original purpose. Certain types of disciplinary sanctions are set out in Article 9(1) and (2) of Annex IX to the Staff Regulations. The applicability of these is illustrated in the following table for persons no longer employed by the EU:

Table 1: Sanctions regime of the General Staff Regulations for former employees [63]

Sanction	Applicability
(a) a written warning;	APPLICABLE
(b) a reprimand;	
(c) deferment of advancement to a higher step for a period of between one and 23 months;	NOT APPLICABLE
(d) relegation in step;	
(e) temporary downgrading for a period of between 15 days and one year;	
(f) downgrading in the same function group;	
(g) classification in a lower function group, with or without downgrading;	
(h) removal from post and, where appropriate, reduction pro tempore of a pension or withholding, for a fixed period, of an amount from an invalidity allowance […]	
(2) […] withhold an amount from the pension or the invalidity allowance for a given period […]	APPLICABLE IN SOME CASES

It is clear that the measures of paragraph (1) c)-h) of the disciplinary regime may only have an effect on persons who are employed by the European Union. These are therefore unsuitable for sanctioning those who have been employed in the private sector and have subsequently violated their obligations. Points (a) and (b) of paragraph (1), which are fully applicable, have a purely moral content, and there is no real disadvantage for the person subject to the sanction in connection with them. Paragraph (2) may be a realistic instrument if the former official who offended the rules is in receipt of an EU pension or a invalidity allowance. It is questionable whether this will achieve its purpose when the problem we are trying to remedy is precisely that bureaucrats are migrating to the private sector

[63] Author's own creation.

in order to achieve higher incomes.

It may be envisaged that, if no disciplinary measure can be imposed, the appointing authority should exercise its right to prohibit or impose conditions under Article 16(2). However, these are quite difficult to exercise if even high-ranking officials do not comply with their obligation to provide information. As was the case, for example, with former EU Ambassador to Washington John Bruton or Petra Erler, former Chief of Staff of Commissioner Verheugen.[64] Given that the European Union does not have a body specifically monitoring the further employment of its former officials, and that these individuals simply do not inform the appointing authority of this, it is often unaware that it can exercise these rights.

Based on the above, I believe that I have clearly supported the inadequacy of this segment of the current regulation to completely exclude the negative effects caused by the revolving door phenomenon. Given that the Staff Regulations of Officials of the European Union do not apply to the Members of the European Commission or to Members of the European Parliament, while they are the institutions most affected by this problem,[65] I shall now analyse the specific legislation of these two institutions.

2. European Commission

The Commission also mentions in the preamble to its Code of Conduct, which has been in force since 1 February 2018,[66] that the aim of the new regulation is to take into account the experience gained during the review and application of the previous Code of 20 April 2011 and the high ethical standards expected of the members of the Commission.[67] The preamble also refers to the taking of the oath by the members of the Commission, which explicitly covers that they would behave with integrity and discretion as regards the acceptance of certain appointments or benefits, after they have ceased to hold office.[68] In my opinion, the idea formulated in these two paragraphs of the preamble can be a great starting point for overcoming the problem, since the first step is to recognise the disorder. On this basis, it can be concluded that the Commission is certainly

[64] Jens Clausen and Vicky Cann, 'Block the revolving door: why we need to stop EU officials becoming lobbyists' (*Alter-EU* November 2011) <https://www.alter-eu.org/sites/default/files/documents/AlterEU_revolving_doors_report_0.pdf> accessed 25 May 2025.

[65] Kergueno (n 26).

[66] Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission [2018] OJ C65/7 (hereinafter: Commission Code of Conduct) Article 14 (3).

[67] ibid preamble (5).

[68] ibid preamble (4).

aware of the ethical and integrity implications of the practice under discussion. However, high-sounding principles and promises do not always lead to effective regulation.

Like the General Staff Regulations, the Commission's Code contains provisions that we need to examine, such as those relating to the preservation of the dignity of office,[69] the acceptance of gifts,[70] conflicts of interest[71] and lobbying.[72] It is also worth mentioning the transparency register standard, which stipulates that "Members and their members of Cabinet shall meet only those organisations or self-employed individuals, which are registered in the Transparency Register established pursuant to the Interinstitutional agreement on this matter between the European Parliament and the Commission inasmuch as they fall under its scope."[73] This is a rather positive element in terms of transparency and accountability, as it allows only those who are registered in the register to represent their interests in relation to the signatory institutions, i.e. the Commission, the EP and the Council.[74]

In addition, the rules of the Code tend to set out stricter or more precise requirements than those laid down in the TFEU and the General Staff Regulations, but rarely differ from them in their essential elements. One of the most important differences is contained in Article 2(6), which states that "Members shall avoid any situation which may give rise to a conflict of interest or which may reasonably be perceived as such." This can definitely be seen as a step forward in the sense that this provision requires the members of the Commission to refrain not only from situations that lead to a conflict of interest, but also from situations that may be *perceived* as such. Thus, expecting behaviour from the commissioners in order to avoid the appearance of a conflict of interest, which can be considered an extremely strict (but difficult to control) requirement.

The provisions for the period after the term of office are also more significant than the general rules. In terms of its essential elements, it prescribes a 2-month in advance notification requirement if the former commissioner intends to carry out professional activities–with or without remuneration–within 2 years after they have ceased to hold office.[75] At first glance, this is quasi-identical to the

[69] Commission Code of Conduct, art. 2 (5).

[70] ibid art. 6 (4).

[71] ibid arts. 2 (6), 3, 4.

[72] ibid art. 11 (4).

[73] ibid art. 7.

[74] Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register [2021] OJ L207/1 preamble (7).

[75] Commission Code of Conduct, art. 11 (2).

general rules. At this stage, however, the possibility–or if the planned activity is related to the former member's portfolio, the requirement–of the procedure of an Independent Ethical Committee intervenes.[76] In my opinion, this appears as an important and forward-looking new element, as the establishment of an independent ethics body in such sensitive cases can be imperative for proper implementation.

At the request of the President of the European Commission, the Independent Ethical Committee, consisting of three members, advises on ethical issues related to the Code of Conduct and can also make general recommendations.[77] A further significant role is played by that body in the event of a breach of the Code by the addressee, in the course of which it has the right to give an opinion, which the Commission takes into account in its decision.[78] It is also worth highlighting here that in the case of such an offence, when there is no reason to turn to the CJEU, the only sanction is a reprimand, which may be made public if necessary.[79]

In the context of lobbying, the Code of Conduct prohibits former members, namely that they may not engage in such activities with current members or their employees, either for themselves or on behalf of others. The ban is also narrowed immediately, as it is only to be applied in the area that belonged to the portfolio of the former member in the two years preceding the termination of his or her term of office.[80] It is interesting that the provision does not contain a temporal clause *expressis verbis*, based on which it can also be interpreted as meaning perpetual prohibition. The General Staff Regulations, as detailed earlier, provide for a period of 12 months regarding this issue, for senior officials. The question may also arise as to whether this could be applied *mutatis mutandis* in the present case. At the same time, Article 11(5) of the Code of Conduct extends the President's obligation to provide information and his or her obligation to refrain from lobbying after the end of his or her term of office to three years. It is questionable what this provision extends in connection with lobbying to three years. Is the former president not allowed to lobby on matters for which he was responsible for in the three years before the end of his term of office? This does not seem to be a logical solution. The answer may come from practice, as in the case of two former Commissioners, Violeta Bulc[81] and Günther Oetting-

[76] Commission Code of Conduct, art. 11 (3).

[77] Commission Code of Conduct, art. 12 (1).

[78] ibid art. 13 (3).

[79] ibid.

[80] ibid art. 11 (4).

[81] See: Decision of the European Commission on the post-mandate activities of former Commissioner Violeta Bulc in relation to her consultancy firm 'Vibacom' C (2021) 9000 final art. 2 (a).

er[82], the Commission has decided that, as the mandates of both of them expired on 30 November 2019, their new lobbying firms will not be allowed to lobby the Commission until 30 November 2021, i.e. for a period of two years. We can therefore conclude that, based on the Commission's practice, Commissioners may not lobby their former institution for two years after their term of office, and the former president–by analogy–is banned for a period of three years.

In the light of the presentation of the Commission's internal rules and ethical system, I must emphasise that the systemic deficiencies caused by the revolving door phenomenon cannot be adequately reinstated by the introduction of more and more administrative and pseudo-obligations, however potent they may seem. In the present case, the unclear nature of the regulation and its sometimes dubious wording do not help its effectiveness. In the words of the former European Ombudsman, I believe that this kind of 'soft corruption'[83] can only be eliminated if the relevant rules are properly implemented and monitored, as I have already pointed out.

3. European Parliament

Knowing the content of the Commission's Code of Conduct, it is clear that there is willingness on the part of the institution to set stricter requirements for officials in positions of greater influence. This was not the case with the European Parliament before the 'Qatar-gate' corruption scandal in 2022. Previously, the EP did not have its own code of conduct that could be applied to the period after leaving office and to issues of conflicts of interest.[84] The case acted as a kind of catalyst and started the process of developing the relevant regulation.[85] As a first step, Parliament's President Roberta Metsola presented a reform plan in February 2023 to strengthen the institution's integrity, independence and accountability, which was also supported by the political group leaders.[86]

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[82] See: Decision of the European Commission on the professional activities of former Commissioner Günther Oettinger after his term of office as Director of Oettinger Consulting, Wirtschafts- und Politikberatung GmbH C (2021) 9037 final art. 2 (a).

[83] Jack Power, 'Emily O'Reilly: Revolving door between EU and lobbying firms is 'soft corruption'' *The Irish Times* (5 May 2024) <https://www.irishtimes.com/world/europe/2024/05/05/emily-oreilly-revolving-door-between-eu-and-lobbying-firms-is-soft-corruption/> accessed 25 May 2025.

[84] Ekaterini Despotopoulou, 'Those doors that keep revolving: reflections on a subject with hardly any case law' (2021) 22 ERA Forum 643.

[85] Olivier Costa, 'The European Parliament and the Qatargate' (2024) 62 Journal of Common Market Studies 76.

[86] 'Group leaders endorse first steps of parliamentary reform' (8 February 2023) <https://www.europarl.europa.eu/news/hu/press-room/20230208IPR72802/group-leaders-endorse-first-steps-of-parliamentary-reform> accessed 26 May 2025.

The revised rules, which are currently in force, are the Code of Conduct for Members of the European Parliament regarding Integrity and Transparency, that is Annex I to the Rules of Procedure of the European Parliament. This now also contains norms that can be applied to eliminate problematic situations caused by the revolving door phenomenon. These include, for example, the obligation to avoid situations of bribery, corruption or undue influence,[87] the rules on the acceptance of gifts[88] and the set of rules on the publication of meetings, i.e. the transparency register,[89] which are essentially the same as the Commission's provisions on the same subject.

In this context, I consider Article 9 on the activities of former MEPs to be suitable for explanation and the decision of the Bureau of 17 April 2023 as a necessary element for its interpretation. The latter lays down the rights and obligations of former MEPs. Persons with such status will be able to enter the premises of the European Parliament, including parking lots and restaurants reserved exclusively for Members.[90] They may also have limited access to the EP's IT systems.[91] These would undoubtedly prove to be very useful for a brand new lobbyist, as these would make it easy for him or her to reach the people he wants to influence. However, the Code of Conduct rightly deprives those former Members of Parliament of these rights who "engage in professional lobbying or representational activities directly linked to the European Union decision-making process."[92] The following paragraph contains a ban. This essentially stipulates that active MEPs "shall not engage […] in any activity" with a specific group of persons that would allow them to be influenced by the latter. This includes former MEPs whose mandate expired less than six months ago and are lobbyists registered in the Transparency Register or representatives of third-country authorities.[93] The question may rightly arise as to what qualifies as such a prohibited activity. There is no broader interpretation or exemplary list of this in the regulation, so its content can be significantly individualized during its application, which I consider to be a positive element.

Given that Article 9(2) refers to former MEPs whose mandate expired less than six months ago and who are already engaged in lobbying activities, it was pos-

[87] Rules of Procedure of the European Parliament Annex I: Code of Conduct for Members of the European Parliament on integrity and transparency (hereinafter: EP Code of Conduct) art. 2(b).

[88] ibid art. 6.

[89] ibid art. 7.

[90] Bureau Decision of 17 April 2023 on former Members of the European Parliament Article 2(1).

[91] ibid art. 5(1).

[92] EP Code of Conduct, art. 9 (1).

[93] ibid art. 9(2)

sible to guess that there was no cooling-off period for MEPs in this code. This results in a completely absurd situation, as the General Staff Regulations and the Commission's Code of Conduct contain a prohibition on lobbying. The office of MEP is a position with a great deal of responsibility and considerable influence, as the European Parliament as an institution to exercise its legislative, political and judicial control powers, through these individuals.[94] This is the first serious shortcoming in the EP's system of rules.

Like the structure of the Commission, Parliament has set up a committee on the conduct of Members, the Advisory Committee. From the point of view of the implementation of the regulations, I have already expressed my confidence in this solution. However, there is a glaring shortcoming here. The *independence of* the ethics committee is paramount to ensuring its effective and unbiased operation. The Advisory Committee is made up of eight MEPs with current mandates.[95] These members may *ipso facto* not be independent, for example, of the institution's presidency or of those belonging to their own political groups. Although the president must take into account gender and political balance when appointing members,[96] it is not possible to ensure that members are unbiased towards their own colleagues. We must also bear in mind that the European Parliament is a politically organised institution where, in proceedings against a particular person, there is a risk that members of other political groups will not necessarily be able to make recommendations guided solely by ethical rules. In order to avoid this, the participation of a member of the group of the person under investigation is always necessary in the committee,[97] but this is not necessarily sufficient to remedy the above-mentioned problem. The most appropriate solution would be for a professional apparatus completely independent of the European Parliament to deal with ethical issues, especially in view of the fact that the Advisory Committee also makes a recommendation on sanctions to the President after hearing the MEP concerned.[98]

On the basis of this, I can say that Parliament is taking a completely different approach to regulating the problem. It does not deal with the issues of the revolving door phenomenon after ceasing to be an MEP, but with the correct behaviour of MEPs *within* the organisation. However, I believe that the lack of a lobbying ban provision leaves a huge void. In addition, the six-month restriction imposed on active MEPs for activities with new lobbyists who have passed

[94] Marcel Szabó, 'Az Európai Parlament' in András Osztovics (ed), *EU-jog* (HVG Orac 2021) 117-121.

[95] EP Code of Conduct, art. 10 (2).

[96] ibid art. 10 (2).

[97] ibid art. 10 (3).

[98] ibid art. 11 (2).

through the revolving door cannot be said to be a sufficiently wide time interval. The six-month period can be interpreted as a pseudo-provision, as in the first few months after the formation of the EP, the emphasis is not necessarily on legislation, but rather on setting up various committees and preparing the substantive work.[99] Overall, although it is an unconventional concept, some elements of which can be used to eliminate anomalies, in its present form I believe that it is not comprehensive enough to fully achieve its purpose.

In addition, there is an interesting gap in time between the Commission's regulation, which has existed since 2018, and the regulation created by the EP in 2023. From this it can be perceived that the institutions are only willing to deal with the issue and introduce stricter regulations under the influence of a higher degree of social pressure.

4. Other institutions

I feel it is important to mention that I will omit a detailed analysis of the internal ethical regulations applied by the remaining institutions and bodies of the EU because they do not contain significant differences from the Commission's regulation[100] or the discussion of the revolving door phenomenon is not particularly relevant from their point of view.[101] However, I must highlight a few solutions that I consider to be particularly suitable for the effective enforcement of ethical standards.

For example, the Code of Conduct for high-level ECB officials lays down a general two-year obligation for those who leave the institution to provide information if they intend to engage in any gainful employment.[102] Similarly to the Commission's ethics requirement on the same subject, high-level ECB officials may not be employed by a credit institution for a period of 1 year from the end of their term of office.[103] In addition, the same applies to other financial institutions for a period of six months.[104] They are also not allowed to lobby the ECB for a period of six months.[105] I consider the marking of prohibited areas

[99] Amandine Hess, 'Former MEPs hunting for jobs: What are the EU's 'revolving doors' rules?' *Euronews* (13 September 2024).
<https://www.euronews.com/my-europe/2024/09/13/former-meps-hunting-for-jobs-what-are-the-eus-revolving-doors-rules> accessed 26 May 2025.

[100] See: Code of Conduct for senior ECB officials (2022/C 478/03) (hereinafter: ECB Code of Conduct).

[101] E.g. Council of the European Union, European Council.

[102] ECB Code of Conduct, art. 17.1.

[103] ibid art. 17.1(a).

[104] ibid art. 17.1(b).

[105] ibid art. 17.1(c).

of employment to be particularly useful in connection with the regulation of cooling-off periods, but this cannot be said to be new. The novelty lies in the fact that the Ethics Committee, which examines individual cases, has broader powers than similar bodies of other institutions. It may recommend that the cooling-off period be waived or reduced if there is no conflict of interest or is unlikely to arise in relation to future gainful occupation.[106] Furthermore, if necessary, if the former member wishes to work for a credit institution in the supervision of which he or she was directly involved, it may be recommended to double the grace period, i.e. to two years. This allows for significant individualization of the decisions to be made, so they can be expected to be more effective.

The internal rules of the European Court of Auditors also contain a unique obligation that can lead to the reduction of the abnormalities caused by the revolving door phenomenon. Members must immediately report *in writing* to the President and the relevant Dean if they become aware of a case of "any perceived undue influence on, or threat to, their independence by any entity external to the Court."[107] This is also important because, on the one hand, it lays the foundations of a simplified internal whistleblowing system, and on the other hand, if the members do not report such a case and it comes to light afterwards, this in itself is a basis for establishing a violation of ethical rules and initiating disciplinary proceedings.

5. Establishment of an independent ethics body

Learning from the example of the US federal government, some literature sources suggest, that the more shared the responsibility for implementing ethical regulations, the less likely it is that its application will be effective.[108] A recurring element of the EU legislation described so far is the participation of a number of separate committees regarding the application of codes of conduct. In addition, I have raised concerns about the independence of these institutional units in some places. Depending on this, it may be a legitimate question whether the European Union needs a centralized ethics body.

On 16 September 2021, the EP adopted a resolution in which it aimed to do just that.[109] The reasons for this include, for example, improving the enforcement

[106] ibid art. 17.3(a).

[107] Code of Conduct applicable to Members and former Members of the Court of Auditors, art. 19(2).

[108] Andrew Schmulow and others, 'Constructing an EU Ethics Oversight Authority A White Paper' (2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4298158> accessed 26 May 2025.

[109] European Parliament resolution of 16 September 2021 on strengthening the transparency and integrity of the EU institutions through the establishment of an independent EU ethics

of the ethical framework and[110] strengthening citizens' trust in decision-making processes.[111] Furthermore, perhaps the most important argument from the point of view of the article, which I cannot fail to quote verbatim:

"[W]hereas the 'revolving door' phenomenon in particular is very much on the rise; whereas many Commissioners and a third of those who were Members of the European Parliament from 2014 to 2019 have been recruited by organisations entered in the European Transparency Register; whereas this entails risks of conflict of interest with the legitimate areas of competence of the Member States and the EU institutions and of confidential information being disclosed or misused, as well as risks that former staff members may use their close personal contacts and friendships with ex-colleagues for lobbying purposes."[112]

This means full recognition by the European Parliament of what I describe as abnormal processes and events. This commitment has resulted in an interinstitutional agreement between eight institutions and advisory bodies on the establishment of an interinstitutional body on ethical standards.[113] I was sincerely happy to start interpreting the text of the agreement, thinking that its content would be something tangible and a step forward. However, the Body's mandate does not extend to anything other than the establishment of common minimum standards, the exchange of views, the interpretation of minimum standards and the promotion of cooperation between the parties.[114] Moreover, it does not have the power to apply the internal rules of the parties in individual cases.[115] Even more frustratingly, each signatory is represented on the board by one of its members, whose appointment is not subject to any ethical or educational requirements. Accordingly, a new ethics committee has been established, with non-expert and by no means independent members of the institutions, which further fragments the responsibility for the implementation of ethical rules, thus acting against their effectiveness.

The body thus created is completely different from what is described in the

body (2020/2133(INI)) (hereinafter: 2021 EP resolution).

[110] 2021 EP resolution, point G.

[111] ibid, point H.

[112] 2021 EP resolution, point L.

[113] Agreement between the European Parliament, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions setting up an interinstitutional body on ethical standards for the members of the institutions and advisory bodies referred to in Article 13 of the Treaty on European Union [2024] OJ L 2024/1365.

[114] ibid art. 6(2).

[115] ibid art. 6(3).

EP's resolution. Originally, it was envisaged with nine members, three of whom would have been elected by the Commission, three by the Parliament, and one each would have been a former judge of the CJEU, a former President of the Court of Auditors and a former European Ombudsman.[116] This is of particular importance, as the number of members would have been odd, as opposed to the current eight, so there could not have been a tie in voting. Furthermore, one third of the members would have been made up of people who were guardians of independence, fairness and ethical behaviour within the EU.[117] In addition, its powers have been significantly reduced, and it was originally supposed to monitor compliance with codes of conduct and rules on transparency, ethics and integrity, among other things.[118] This would have provided an appropriate framework for the performance of the tasks related to its purpose.[119] This, in my opinion, resulted in a terribly simplified and modified version of an exceptionally good idea.

V. Conclusions

European integration is unique in the world. After all, we are talking about a political-economic association in which the warring parties in World War II, just over 50 years after the end of the conflict, were already working together to create an area of freedom, security and justice.[120] Today, the European Union has 27 Member States and 24 official languages. However, there are times when money talks. The EU's inadequately designed ethical system allows its officials to be employed in the private sector seemingly without any effective restrictions. Those multinational companies and interest groups that spent an average of €113 million per year in the tech sector alone between 2021 and August 2023 to influence EU policies,[121] are still there and glad to employ them. These companies thus gain access to resources that are even reflected in their stock exchange statements.[122] It seems unbelievable that the stock market valuation of certain companies increased by 0.75% in terms of the weighted average of overnight returns on the news of the recruitment of former commissioners, but it is indeed true.[123] With the current rules, it is essentially impossible to monitor whether of-

[116] 2021 EP resolution, point 25.

[117] Schmulow and others (n 108).

[118] EP resolution 2021, point 10.

[119] Schmulow and others (n 108.).

[120] Conclusions of the European Council, Tampere, 15-16 March 1999.

[121] 'Lobbying power of Amazon, Google and Co. continues to grow' (*Corporate Europe Observatory* 8 September 2023) <https://corporateeurope.org/en/2023/09/lobbying-power-amazon-google-and-co-continues-grow> accessed 27 May 2025.

[122] Luechinger and Moser (n 43) 8-12.

[123] ibid 9.

ficials leaving the EU comply with their obligations related to revolving doors.[124] And in the event that such violations come to light, no substantive sanctions can be imposed.

The Commission is creating a very interesting, almost comical situation by consistently calling the Member States to account in its rule of law reports[125] in connection with the regulation of the revolving door phenomenon,[126] while the European Union's system of norms is not adequate at all in this regard. For example, in its 2022 report, it recommended the following for Germany: "Strengthen the existing rules on revolving doors by increasing consistency of the different applicable rules, the transparency of authorisations for future employment of high ranking public officials, and the length of cooling-off periods for federal ministers and federal parliamentary state secretaries."[127] It is also worth mentioning that it is not satisfied with the Czech, Danish and Hungarian rules either.[128]

It can also be observed that institutions are only willing to deal with ethical issues under greater social pressure. In such cases, they usually calm the lay public by making some kind of a pseudo-provision. Given the EU's ever-expanding powers and the increasing impact on the lives of its citizens, as well as the democratic principles by which it should operate, it is expected to lead by example in the coming period to implement reforms that will make its ethical system actually work. It should be highlighted that the priorities to be pursued in the 2024-2029 institutional cycle include the objective of a "free and democratic Europe". This includes, inter alia, the promotion and protection of the rule of law and the strengthening of democratic resilience.[129] However, the question remains unanswered as to whether the revolving door phenomenon, that in its current state erodes the integrity and democratic nature of the EU, will be eradicated in the near future.

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[124] '„Forgóajtó-jelenség": lazák az ügynökségekre vonatkozó szabályok' (*European Court of Auditors* 27 October 2022) <https://www.eca.europa.eu/lists/ecadocuments/inagencies_2021/inagencies_2021_hu.pdf>accessed 27 May 2025.

[125] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Rule of Law Report (hereinafter: 2022 RoL Report).

[126] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Rule of Law Report (hereinafter: 2023 RoL Report).

[127] 2022 RoL Report.

[128] 2023 RoL Report.

[129] See <https://www.consilium.europa.eu/hu/european-council/strategic-agenda-2024-2029/#democratic> accessed 27 May 2025.

Legacy of the Bracero Program: Shaping US-Mexico Relations and Labor Immigration Policies

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Contents

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Abstract

The Bracero Program, which ended over six decades ago, remains a defining era in the US- Mexico history. Not only did this bilateral labor agreement bring cooperation and conflict between the two states, but it influenced the modern labor legislation changes in the United States. This paper examines the legacy of the Bracero Program, its influence on the 21st century U.S. immigration policies, and its contribution to the discourse on labor rights. One of its key outcomes was the emergence of the H-2A visa program, which continues to be a focal point in immigration debates—particularly under the second Trump administration, which seeks to impose stricter immigration controls while simultaneously proposing limited exceptions for foreign-born agricultural workers. This paper seeks to reveal the differences in the practical applications of U.S. immigration and labor policies across two distinct eras. The paper also seeks to explore how the legacy of the Bracero Program influenced current U.S. immigration and labor policies, particularly when compared to the second Trump administration's strategies for addressing agricultural labor shortages.

Keywords: immigration legislation, USA-Mexico relations, bilateral agreement, labor policy changes, Trump

I. Introduction

During the early twentieth century, the United States and Mexico enjoyed relatively favorable diplomatic relations, facilitating cooperative initiatives such as the seemingly mutually beneficial Bracero Program. This collaboration arose during World War II, when the U.S. experienced a substantial agricultural labor deficit due to the military conscription of numerous American men. The labor shortage in the United States during the years of World War II coincided with high unemployment rates in Mexico, making the arrangement advantageous for both parties. As a result of bilateral discussions, the two governments signed the Emergency Farm Labor Agreement in 1942,[1] marking the official establishment of what came to be known as the Bracero Program. The term 'bracero' is originated from the Spanish word 'brazo,' meaning 'arm.' When combined with the suffix '-ero,' the term 'bracero' translates to 'he who works', emphasizing the physical labor provided by the workers. This initiative was created to attract Mexican laborers to the United States to fill the labor gap, initially focusing on

[1] Public Law 45, 78th Cong (1943).

agricultural work before expanding to include both agricultural and industrial employment. The Bracero Program officially came into effect in 1942, and by the following year, its scope had widened to encompass a broader range of occupations.

One notable aspect of the Bracero Program was the realization that a massive influx of laborers from Mexico might adversely affect the Mexican economy. The main goal of the program was to address labor shortages in the United States, but in the meantime it had to be carefully organized to ensure that Mexico's economic stability was not compromised. According to the terms of the bilateral agreement, the United States was responsible for informing Mexico of the expected workforce demands on a regular basis. In response, the Mexican government held the power to determine the number of workers it would send, with the stipulation that such decisions should not harm Mexico's economic well-being. This consideration reflected a delicate balance between fulfilling U.S. labor demands and safeguarding Mexican economic interests.[2]

During its twenty-two-year existence, the Bracero Program underwent various phases of expansion, interruption, renegotiation, and reinstatement. During this period, Mexican laborers were viewed as an important asset to the U.S. agricultural and industrial sectors. This perspective stood in contrast to contemporary concerns regarding border security and the potential negative impact of immigration on economic stability. In fact, many members of the U.S. Congress supported the unlimited entry of Mexican immigration for economic reasons, viewing the influx of labor as beneficial rather than detrimental. This favorable attitude was further reinforced by the fact that Mexicans were not subject to the restrictions of the National-Origin Immigration Act,[3] which otherwise limited immigration based on national quotas.

The Bracero Program officially concluded in 1964, and the reasons for its discontinuation are still being questioned by historians and scholars. Over the course of the program, numerous Mexican laborers arrived in the United States, many of whom worked as seasonal or temporary employees, while others settled permanently. Mexican workers, like other minority group members, faced challenges such as discrimination and racism; however, public sentiment towards Mexican laborers was not consistently negative. Instead, their contribution to the agricultural and industrial productivity of the United States was appreciated and welcomed by many fellow Americans.

Although the Bracero Program ended sixty years ago, its legacy continues to

[2] Charles I Bevans, *Treaties and Other International Agreements of the United States of America, 1776–1949* (Department of State, US Government Printing Office 1968) 1074.

[3] Immigration Act of 1924, Pub L 68-139, 43 Stat 153 (1924).

shape modern American immigration policy and labor relations, influencing the dynamics of cooperation and conflict between the United States and Mexico. The program's impact can be seen in current debates surrounding immigration reform, border security, and the role of foreign labor in the U.S. economy. An examination of the Bracero Program's history offers essential insights into the complexities of immigration and labor policies. Its contemporary relevance is underscored by the current Trump administration's proposed fundamental reforms to the U.S. immigration system, which directly impact the domestic labor market too. A comparative analysis of the current administration's executive actions and possible H-2A visa program modifications reveals both resemblances and distinctions with the historical Bracero Program. Despite the Bracero Program's cessation over six decades ago, issues of labor scarcity remain intricately linked with the challenge of unauthorized immigration.

II. History

In the early twentieth century, the end of the Mexican Revolution in 1920 marked a major turning point in Mexico's political, social, and economic landscape. The decade-long conflict caused millions of deaths, devastated infrastructure, and exacerbated economic challenges. This period of agrarian reform under President Lázaro Cárdenas also coincided with broader socio-economic challenges facing Mexico. After becoming president in 1934, Cárdenas sought to address social inequalities through implementing land reforms. He dismantled large haciendas and redistributed land to rural communities as ejidos—collectively owned farms. While this policy aimed to empower the rural poor, it also had unintended economic consequences. The fragmentation of land into smaller units led to reduced agricultural productivity, economic stagnation, and widespread underemployment in rural areas.[4]

The country was grappling with the need to transition from a predominantly agrarian economy to a more diversified one, in order to foster industrial growth and urban development. However, the diminished productivity of the agricultural sector, coupled with the scarcity of employment opportunities in rural areas, led to increased migration to urban centers, as well as emigration to the United States in search of better economic prospects. This rural-to-urban migration placed additional pressure on Mexico's urban infrastructure and labor market, creating new challenges for the nation as it sought to modernize and industrialize.

In examining the broader implications of Cárdenas' land reforms, it becomes clear that while the redistribution of land represented a significant achievement

[4] Deborah Cohen, *Braceros, Migrant Citizens and Transnational Subjects in the Postwar United States and Mexico* (The University of North Carolina Press 2011) 71.

in terms of social justice, it also highlighted the complexities of balancing social equity with economic efficiency. The consequences of these reforms had a lasting impact on Mexico's agricultural productivity, rural development, and migration patterns, shaping the trajectory of the nation's economic and social evolution in the decades that followed.

Following the attack on Pearl Harbor on 7 December 1941, the United States entered World War II, prompting a dramatic shift in the nation's economic and social landscape. The mobilization of millions of American men into the armed forces, including over one million rural workers, led to severe labor shortages, particularly in agriculture. Many workers also migrated to urban areas to take advantage of industrial employment opportunities, further exacerbating the shortage of agricultural laborers, which threatened food production. Unemployment rates in 1942 were at 4.7 percent, leaving farmers facing harvest-time disasters without replacement workers.[5]

Bilateral talks between the United States and Mexico led to the signing of the Emergency Farm Labor Program in 1942, known as the Bracero Program. This agreement aimed to bring Mexican workers to the U.S. to fulfill the demand for agricultural labor and maintain essential food production levels. The measures taken to address wartime labor shortages had far-reaching implications for U.S.-Mexican relations, immigration policy, and labor dynamics, highlighting the complexities of balancing economic needs during times of global conflict.

During the war years (1942-1946) it was a government–to–government temporary guest worker program, which granted opportunities to young Mexican males to enter the USA and to work there for six months and to return in order to fulfill their contracts. As word spread in 1942, the influx of applicants was swift and massive. As mentioned, the agreement and the negotiations happened between the two countries, creating rights and obligations not just on a higher level, but on an employee and employer level too.

The first extension of the agreement happened in 1943 as the U.S. War Manpower Commission informed the State Department about the railroad industry's severe labor shortage.[6] 1943 was not a year without suspension either, because in February bracero recruiting was stopped by Mexico because of poor treatment of previous workers. Negotiations had to restart, and eventually, new braceros arrived at the northern side of the border. New recruitment for railroad workers

[5] Maria Elena Bickerton, 'Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program' (2001) 79 Texas Law Review 895.

[6] 'Bracero Timeline' (The Dallas Morning News, 2002) <https://www.latinamericanstudies.org/immigration/bracero-timeline.htm> accessed 28 April 2025.

stopped in August 1945.[7] Despite the end of the railroad contracts, a lot of railroad braceros did not return to Mexico as they were held at their camps where they worked without contracts for months. The last railroad braceros were repatriated in April 1946.

During the post-war years, in 1946 there was a will to end the agreement from the USA, but the pressure from the agricultural lobby made it possible to extend it until 1949. The contracts stayed the same, except for control. Between 1948 and 1951 the control shifted to the hands of the growers, and that is when the exploitation and the abuse of the guest workers started.[8] The government had been responsible for recruiting and transportation "passed the burden, financial and otherwise, of recruiting and transporting the guest workers on to the growers".[9]

In 1951, the United States Congress passed Public Law 78, commonly referred to as the Bracero Accord of 1951, which extended the Bracero Program until 1964. The passage of Public Law 78 institutionalized the Bracero Program, ensuring a continued supply of agricultural labor throughout the post-war period and into the early 1960s. Over the course of its existence, the Bracero Guest Worker Program facilitated the migration of more than two million Mexican workers,[10] many of whom participated in multiple contracts, to work on American farms. This large-scale labor migration had significant social, economic, and political implications for both the United States and Mexico, contributing to the development of U.S. agricultural practices and shaping the discourse around labor rights, immigration, and bilateral relations between the two nations. The Bracero Program's legacy remains a critical aspect of understanding mid-twentieth-century U.S. labor policies and their influence on subsequent immigration reforms.

[7] ibid.

[8] Bickerton (n 5) 897.

[9] Aili Palmunen, 'Learning from the Mistakes of the Past: An Analysis of Past and Current Temporary Workers Policies and Their Implications for a Twenty-First Century Guest-Worker Program' (2005) 6 Kennedy School Review 47.

[10] Kelly Lytle Hernández, 'The Crimes and Consequences of Illegal Immigration: A Cross-Border Examination of Operation Wetback, 1943 to 1954' (2006) 37(4) Western Historical Q 421, 426.

III. Effects of the Bracero Program

1. Wetbacks, and the problem of illegal immigration

As the Bracero Program gained popularity among Mexican workers, a significant number of individuals traveled to recruitment centers in the hopes of securing employment in the United States. However, many applicants were rejected based on criteria such as age, gender, or health status. Faced with rejection, rather than returning to their communities, some individuals chose to cross the U.S. border illegally, thereby becoming what were colloquially referred to as 'wetbacks.' This term specifically describes individuals who entered the United States without authorization by crossing the Rio Grande. The earliest unauthorized migrants under this category arrived in Texas, a state initially excluded from the Bracero Program due to concerns about its discriminatory practices towards Mexicans. As a result, the exclusion of Texas from the agreement, combined with the demand for labor, contributed to an influx of unauthorized migrant workers into the region.[11] Being classified as a 'wetback' signified a lack of contractual obligations, which, while providing certain freedoms, also resulted in the absence of protections typically afforded to laborers. Consequently, unauthorized migrants faced significant vulnerabilities, including the absence of guarantees related to wages, transportation, housing, and basic sustenance. Agricultural growers quickly capitalized on this lack of regulation, utilizing the labor of these unattached workers to their advantage. In response to their precarious circumstances, these laborers began to organize into what became known as 'mixed crews'. These mixed crews comprised braceros, 'wetbacks', and local American farmworkers, effectively blending different categories of laborers to meet the demands of agricultural production. This organization not only allowed for greater flexibility in labor management but also highlighted the complexities and challenges faced by workers within the agricultural sector during this period.

As Galarza says,[12] the 2000-mile-long border was understaffed, and no intention was shown by Congress to raise the finance that could lead to if not to stop but at least to lower the number of the incoming people. During the program's 22 yearlong existence, the negotiations between the two states were not always continuous thus during those times false news got out, that now on the northern side of the border 'wetbacks' were recruited and in need.[13] Mexican officials had to warn their citizens not to be fooled. The Mexican government actively opposed the illegal immigration of its nationals to the U.S. and cooperated in

[11] Jorge Durand, 'The Bracero Program (1942–1964): A Critical Appraisal' (2007) 2 Migración y Desarrollo 25, 31.

[12] Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story: An Account of the Managed Migration of Mexican Farm Workers in California 1942-1960* (McNally & Loftin Publishers 1964) 61.

[13] Cohen (n 4) 208.

border policing, driven by pressure from Mexican agribusiness in the northern region, which faced labor shortages.[14] Meanwhile, the U.S. government faced criticism for its apparent double standards: it operated a lenient and underfunded Border Patrol that permitted thousands of undocumented migrants, mainly 'wetbacks', to enter and be subjected to exploitation by American farmers. At the same time, the government would deport these individuals, usually after the harvest period had ended.[15]

Even though the program provided a legal way of admission to the States, the discontinuation of the Bracero program in 1964 led to an upsurge in illegal immigration. During the Bracero Program, both legal and illegal immigration grew. During the program's lifetime, there were frequently more illegal immigrants than braceros working in American agriculture.[16]

2. Domestic effects

When the program started, the United States had to reassure its citizens that having foreign workers would not affect their possibilities when it came to job opportunities or even wages. The biggest problem was that "Some employers favored Mexicans …for their tractability, deportability and willingness to work for lower wages".[17] As the program was progressing, braceros and 'wetbacks' were dominating certain fields on the job market. As the agreement stated, farmers could only hire braceros if there was a labor shortage. To have proof of it, they were given a certificate, which made it possible to hire braceros. The question remains, why did they not hire domestic workers in the first place? The domestic workers wanted more money, thus they were not hired, especially when the grower had access to braceros or/and illegal workers.[18] Hiring domestic workers had its own risks, as often times if they were not satisfied with the wages or working conditions, they just left, and the growers were left with not enough manpower for the harvesting. Farm Placement Service and media depict these workers as "unreliable, winos, incompetent, unstable or cantankerous".[19] In Harvest of Loneliness, Henry Anderson explains it as follows: "Growers were not going to go out and recruit domestic workers as long as they knew the government would provide [workers] at their doorstep".

[14] Hernández (n 10) 433-435.

[15] Eric Schlosser, 'In the Strawberry Fields' (1993) 276 Atlantic Monthly 98-99.

[16] ibid.

[17] Lilia Fernández, 'Of Immigrants and Migrants: Mexican and Puerto Rican Labor Migration in Comparative Perspective, 1942–1964' (2010) 29 Journal of American Ethnic History 6, 23.

[18] Don Mitchell, *They Saved the Crops* (The University of Georgia Press 2012) 90.

[19] Cohen (n 4) 58.

The bilateral agreement clearly states that the braceros and domestic workers should earn the same wages in the same areas. This wage, agreed upon by the growers, was publicly announced and formed the basis of the bracero contracts. Notably, these wage determinations were made without the inclusion of any workers or worker organizations, effectively allowing the growers to set the wages themselves.[20] The availability of low-paying braceros or illegal immigrants led to a decline in agricultural earnings. During the war, manufacturing industries offered safer and more lucrative employment opportunities. The importation of braceros enabled agribusiness to maintain a surplus labor pool, with more workers than available positions.

The Bracero program affected unionization too. During the post-war period, the Wagner Act of 1935.[21] Farmworker organizations became more significant after the dispute at the DiGiorgio Fruit Corporation in 1947. During the strike, braceros were used as strikebreakers, escorted by government authorities, to replace the striking domestic workers. The controversy was resolved after the harvest season, following several union protests and legal measures that resulted in the expulsion of the braceros.[22] As the program ended, no contract was in force that could prevent Mexican workers from joining or forming unions. César Chavez took advantage of the end of the contracts and started successfully mobilizing farm workers. Later on, he became one of the leaders of the Chicano Movement.

IV. Legislation changes

By the 1960s, the demographic composition of immigrants entering the United States had shifted significantly, with the majority originating from the western hemisphere, predominantly from Latin America and Canada. This change reflected broader geopolitical trends and migration patterns during the post-World War II era. A pivotal moment in this transformation was the enactment of the Immigration and Nationality Act (INA) of 1965,[23] commonly referred to as the Hart-Celler Act, which fundamentally altered the framework of U.S. immigration policy.

More than four decades after the passage of the Reed-Johnson Act of 1924,[24] Congress enacted a system for immigration control that replaced the discriminatory national origins system. Each country was assigned the same annual cap

[20] Fernández (n 17) 13-14.

[21] National Labor Relations Act, Pub L 74-197, 49 Stat 448 (1935).

[22] Cohen (n 4) 58.

[23] Immigration and Nationality Act of 1965, Pub L 89-236, 79 Stat 911 (1965).

[24] Immigration Act of 1942, Pub L 68-139, 43 Stat 153 (1942).

of 20,000. This shift was particularly significant for countries in the Americas, which had previously been exempt from strict numerical restrictions.

While the law represented a progressive step toward inclusivity, it notably excluded provisions for the immigration of 'unskilled' laborers in sectors crucial to the economy, such as agriculture, construction, and domestic work. This omission inadvertently contributed to an increase in the population of undocumented immigrants who sought employment in these sectors, often without the necessary legal documentation to support their immigration status. As a result, the act facilitated a rise in the number of individuals engaged in wage-earning activities outside the legal framework of immigration.

Moreover, enacting the Immigration and Nationality Act of 1965 catalyzed a broader sociocultural shift in the United States, moving away from a nationalistic paradigm toward a more multicultural approach to identity politics. This transition marked a significant departure from the previous emphasis on national origins as a basis for immigration eligibility. New categories of immigration were established, allowing for the admission of skilled professionals and promoting family reunification, thereby enhancing the diversity of the immigrant population.

The implications of the 1965 Immigration and Nationality Act were profound and far-reaching, marking a critical juncture in the history of Latino immigration and establishing foundational principles that continue to influence contemporary U.S. immigration policy. This legislative transformation not only reshaped the landscape of immigration in the United States but also laid the groundwork for ongoing discussions and debates regarding the complexities of immigration reform, labor rights, and the role of immigrants in American society.

In response to the significant increase in illegal border crossings from Mexico into the United States, both President Ronald Reagan and Congress found themselves compelled to address this pressing issue. Growing public sentiment increasingly favored the notion that undocumented immigration needed to be effectively curtailed. With the support of President Reagan, Congress enacted the Immigration Reform and Control Act (IRCA) in 1986,[25] a comprehensive legislative measure aimed at enhancing border enforcement and reducing the influx of undocumented immigrants.

The IRCA introduced a series of sanctions, including monetary fines, against employers who engaged in the practice of hiring undocumented immigrants crossing the 'green border'. In addition to these enforcement mechanisms, the legislation sought to regularize the status of numerous undocumented individ-

[25] Immigration Reform and Control Act, Pub L 99-603, 100 Stat 3445 (1986).

uals residing within the United States. Beyond its primary objectives, the IRCA established a program for undocumented workers and provided a pathway to legal status for many individuals who had been living in the country illegally. One of the best criticisms directed at the IRCA is in Schlosser's article, where he states that the legislative act "has been called one of the greatest immigration frauds in American history",[26] due to the extensive use of falsified documents.

This legislative framework not only aimed to address immediate concerns regarding undocumented immigration but also laid the groundwork for subsequent discussions on immigration policy in the United States. By balancing enforcement measures with provisions for the regularization of undocumented individuals, the IRCA represented a significant attempt to navigate the complexities of immigration reform during a pivotal period in American history.

1. *Eras of the development of the migration system between Mexico and the USA, introducing a new era*

Martínez, Damián and Angeles Jiménez divided the history of the development of the migration system between Mexico and the United States into five distinct phases.[27] The first is the 'enganche' phase (1900-1920), the second is the 'deportation phase' (1920-1942), the third is the Bracero phase (1942-1964), the fourth is the 'era of the undocumented' (1965-1986), and the final is the 'contemporary phase', which has continued from 1987 to the present.

The 'enganche' phase is mainly characterized by the entry of the United States into World War I. Since the war prevented European migrants from coming into the USA, the country needed cheap workers from a neighboring country, Mexico. These years were described as the loss of control of the border; thus Congress had to act, and they opted for deportations. With the deportations, the second phase started, and it was mainly marked by the Great Depression and the acute economic crisis it caused in the United States. As the USA joined World War II, the country once again faced a need for cheap labor. This prompted renewed bilateral negotiations between the United States and Mexico to establish agreements that would address both nations' requirements effectively. The third phase is centered around the Bracero Program, which facilitated the entry of seasonal agricultural workers from Mexico. Their periodization underscores the importance of the Bracero program and its decisive role in shaping U.S. immigration legislation. The Bracero program marks the end of an era, the conclu-

[26] Schlosser (n 15) 103.

[27] Palma Martínez, Enrique Damián and Alex Ángeles Jiménez, 'Migración y Políticas Públicas: Una Aproximación al Estado de México' in Norma Baca Travira, Francisco Herrera Tapia and Rocío Gonzáles Orihuela (eds), *Migración, Democracia y Desarrollo: La Experiencia Mexiquense* (Instituto Electoral del Estado de México 2009) 103-121.

sion of which heralds a new chapter for Mexico as well.

During the era of the undocumented, for the first time in history, there was an attempt to limit the number of entrants from Mexico, and in response to the growing number of undocumented immigrants, the United States government strengthened border controls and began systematic deportations, of those lacking valid residency permits.

The contemporary phase encompasses the measures of the past nearly four decades. One of the most significant of these measures was 1996. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[28] aimed at bolstering immigration control, with particular emphasis on the U.S.-Mexico border. IIRIRA expanded the powers of the Immigration and Naturalization Service (INS), aiming to deter illegal immigration through stricter enforcement of laws. Deportation policies played a prominent role, as the legislation made the deportation process more efficient. The Act also restricted immigrants' access to public services and introduced stricter criteria for eligibility for certain federal support programs.

A parallel can be drawn between the failed Proposition 187 [29] of the 1994 midterm elections and the IIRIRA. Proposition 187 stipulated that undocumented workers should be ineligible for the following: social services, healthcare (except for emergency care), and public education. A key provision was the requirement for state and local agencies to report individuals suspected of being undocumented. It also criminalized the production, distribution, and sale of false documents (citizenship or residency documentation). The proposal generated both support and opposition, but most notably initiated an anti-Hispanic and anti-Mexican rhetoric. Although voters approved it, the courts nullified it for infringing on federal jurisdiction. Similarities include restricting federal benefits to undocumented immigrants, denying assistance such as Medicaid and social welfare, and setting penalties for the production or trade of forged documents. Furthermore, the legislation called for additional border patrol officers along the U.S.-Mexico border and mentioned the strengthening and expansion of border fencing in the San Diego area.

The contemporary phase can be further divided into subcategories based on the periods of individual U.S. presidencies. Among the five major phases of the migration system between Mexico and the United States, each encompasses approximately twenty years, except of the latest phase. While this most recent

[28] Illegal Immigration Reform and Immigrant Responsibility Act, Pub L 104-208, 110 Stat 2009 (1996).

[29] Proposition 187, Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. Initiative Statute (1994).

phase can be subdivided based on the respective American administrations, it is essential to highlight the significant impact of the September 11, 2001, terrorist attacks, which stands out as a pivotal event in U.S. history. These attacks irreversibly shifted the focus of American politics, and thus, they can be considered a marker for the beginning of a sixth phase.

The September 11 attacks significantly influenced public perception regarding immigration. The attacks exposed long-standing deficiencies within the U.S. immigration system, particularly in the areas of visa management, internal enforcement, and information sharing. Consequently, since the late 1980s, shifts in immigration policy have ushered in a new era in the timeline of U.S. immigration history. The measures implemented during this period—characterized by increased surveillance, criminalization, and policies aimed at restricting or deporting immigrants—have been more stringent than ever before. These new conditions have also prompted changes in behavior among immigrants, with shifts in migration trends observed both within and outside the U.S. borders. The post-9/11 era was intended to mark a new phase in shaping the development of the migration system between Mexico and the United States.

2. The second Trump administration's approach to agricultural labor

During the Bracero Program it became apparent that the United States agricultural sector became reliant on the foreign-born workers. This dependence has persisted since the 20th century. Even though the Bracero Program was intended as a temporary measure, it remained in effect for two decades, and its termination in 1964 did not end the U.S. agricultural sector's reliance on immigrant labor. This temporary provision created a deep, structural dependence in the U.S. agriculture, as the program's discontinuation presented continuous labor challenges for farmers. Finding new labor became difficult, as domestic workers were unwilling to perform all the tasks previously conducted by guest workers. To bridge the labor shortage, efforts were made to mechanize and modernize the sector, thereby reducing the demand for manual labor.

In the 21st century, U.S agriculture continues to depend on foreign-born labor. Data proves that at least 70% of crop harvesters[30] working in the U.S. are foreign-born, and nearly half of the country's approximately 2 million agricultural workers are without legal status in the country. These immigrant agricultural workers "play a critical role that many U.S.-born workers are either unable or unwilling to take on,"[31] especially in physically demanding tasks.

[30] 'Farm Labor' (*USDA ERS,* 13 June 2025) <https://www.ers.usda.gov/topics/farm-economy/farm-labor> accessed 4 July 2025.

[31] ‚We'd starve in this country. What Trump's immigration policies mean for the Washington agriculture industry' (*KING 5 News*) <https://www.king5.com/article/news/community/facing-race/washington-immigration/what-promise-mass-deportations-doing-immigrant-wor-

Despite agricultural employers facing labor shortages for the past 5 years, the majority of American workers are unwilling to fill these agricultural positions. Data shows that only 5% of H-2A job offers[32] are accepted by Americans, and many of those who do accept either fail to report for work or quickly resign. From the perspective of the American economy and food supply, the agricultural industry is a multi-million-dollar sector that is extremely sensitive to the supply of immigrant labor. Experts warn that mass deportations could disrupt the food supply chain, leading to higher food prices and a decrease in the availability of certain labor-intensive crops. How do the legal and policy frameworks addressing agricultural labor shortages during the Bracero Program compared to those enacted during the second Trump administration?

Since taking office for the second time, Donald Trump has sought to fulfill his campaign promises regarding immigration policy, aiming, among other things, to strengthen border control and increase the number of deportations. Parallel to these policy objectives is the situation of domestic agriculture, which requires foreign labor. According to farmers, aggressive immigration enforcement directly impacts the supply of agricultural labor. Farmers insist that they cannot lose foreign labor, as it would lead to food shortages. The situation of agricultural stakeholders indicates that if the government wishes to pursue a purely enforcement-centric immigration policy, it must also create legal avenues that provide foreign labor to the market through legal means. As already mentioned, despite the rhetoric of mass deportations, the administration recognizes that the agricultural sector needs foreign labor. According to news from April 2025, the second Trump administration will consider expanding the H-2A visa program by the start of the harvest season to alleviate labor shortages.[33]

Agricultural lobbying groups, such as the International Fresh Produce Association, have actively urged Trump to consider the expansion, and leading advisors have also discussed the possibility.[34] Reliance on the H-2A program has quadrupled in the last decade, with the number of certified positions increasing from 48,000 in 2005 to over 378,000 in 2023, and is expected to exceed 400,000

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kforce-president-trump-ice/281-624dd7f8-8e23-4199-8f07-f738c883cd06> accessed 12 June 2025.

[32] 'Farm Labor' (*USDA ERS,* 13 June 2025) <https://www.ers.usda.gov/topics/farm-economy/farm-labor> accessed 4 July 2025.

[33] Jeff Mason and Leah Douglas, 'Trump suggests farmers could petition to keep workers without legal status' (*Reuters,* 10 April 2025) <https://www.reuters.com/world/us/trump-suggests-farmers-could-petition-keep-workers-without-legal-status-2025-04-10/> accessed 15 June 2025.

[34] Jessica Levy, 'Protecting Vulnerable Workers: Why H-2A Visa Protections Fall Short' (*Food Tank*, 19 February 2025) <https://foodtank.com/news/2025/02/protecting-vulnerable-workers-why-h-2a-visa-protections-fall-short/> accessed 12 June 2025.

in 2025.[35] The H-2A visa is heavily criticized for its high costs and complicated process, despite providing a legal pathway for foreign-born workers seeking employment in agriculture. Employers must pay wages according to the Adverse Effect Wage Rate (AEWR)[36], which can be higher than the state minimum wage, and must also provide free housing and transportation. These costs can make the program unsustainable, especially for small and medium-sized farms. The anticipated decrease in the supply of undocumented labor is expected to incentivize the agricultural sector to push for legislation that simplifies the H-2A program, modifies AEWR calculations, and extends eligibility to year-round positions. The latest rules from the Department of Labor (DOL) strengthen H-2A worker protections, including expanding anti-retaliation protections, clarifying termination conditions, allowing workers to receive guests (such as lawyers) at employer-provided housing, prohibiting employers from withholding identification documents, and mandating seatbelts in employer-provided transportation.[37]

As mentioned before, President Trump supported the possibility of a pathway to legal status for agricultural workers. For instance, at the Cabinet meeting back in April 2025, he suggested that certain agricultural workers "should be able to stay in for a while" and go through a "legal process" that would provide them with long-term stability.[38] Brooke Rollins, the U.S. Secretary of Agriculture, subsequently stated that the administration was looking into relaxing rules for non-citizen agricultural workers and would also support H-2A visa reforms. [39] At the same time, official proposals for these labor market reforms have not yet been put forward, and the administration's main emphasis undoubtedly remains on enforcement and deportations.

The Trump administration's approach to agricultural labor presents a seemingly contradictory dual strategy: simultaneously pushing for unprecedented mass deportations and strict border increasing enforcement, the administration gains

[35] Philip Martin and Zachariah Rutledge, 'Trump 2.0 and Farm Labor' (*Choices Magazine*) <https://www.choicesmagazine.org/choices-magazine/submitted-articles/trump-20-and-farm-labor> accessed 12 June 2025.

[36] 'Adverse Effect Wage Rates' (*US Department of Labor*, 30 December 2024) <https://flag.dol.gov/wage-data/adverse-effect-wage-rates#current-aewrs> accessed 15 June 2025.

[37] Jessica Levy, 'Protecting Vulnerable Workers: Why H-2A Visa Protections Fall Short' (*Food Tank*, 19 February 2025) <https://foodtank.com/news/2025/02/protecting-vulnerable-workers-why-h-2a-visa-protections-fall-short/> accessed 12 June 2025.

[38] Jeff Mason and Leah Douglas, 'Trump suggests farmers could petition to keep workers without legal status' (*Reuters,* 10 April 2025) <https://www.reuters.com/world/us/trump-suggests-farmers-could-petition-keep-workers-without-legal-status-2025-04-10/> accessed 15 June 2025.

[39] Joshua Baethge and Todd Fitchette, 'Can Trump Solve the Farm Labor Crisis Before Harvest?' (*FarmProgress*, 15 April 2025) <https://www.farmprogress.com/farm-policy/trump-administration-plans-to-ease-immigration-rules-for-farm-workers-by-harvest-season> accessed 12 June 2025.

leverage, potentially forcing the industry to rely more on controlled legal channels, while also reassuring influential agricultural lobbies. This dual strategy indicates a fundamental understanding of the agricultural sector's deep dependence on foreign labor, even alongside a broader anti-immigration political stance. The result could be a more tightly controlled and potentially less flexible agricultural labor market, where access to foreign labor is primarily managed through government-sanctioned guest worker programs, rather than informal or unauthorized channels.

3. Comparative analysis: Bracero Program vs. 2025 Trump administration policies

3.1. Common Approaches to Addressing Labor Shortages

Both periods show that the domestic labor supply was insufficient to fully meet agricultural tasks. Based on both the Bracero Program and the decisions of the second Trump administration to date, it can be stated that influential agricultural lobbies have played and continue to play a crucial role in shaping policies. With their significant economic influence, these agricultural lobbies ensure that their labor demands are always a primary consideration in policy debates. Yet, regardless of the different frameworks and protective provisions put in place, workers under both programs have been, or are expected to be, highly susceptible to exploitation, meager pay, and substandard work and living environments. Enforcement challenges and the inherent power imbalance between employers and temporary migrant workers continue to be a persistent problem. The most striking and perhaps most critical commonality between the Bracero era and the anticipated 2025 policies is the enduring structural dependence of U.S. agriculture on foreign labor. Even with evolving immigration policies and national priorities, the agricultural sector's dependence on foreign-born workers, firmly established by the Bracero Program, persists. Historically, braceros were subjected to widespread exploitation due to weak oversight and power disparities; similarly, modern H-2A workers, despite their documented safeguards, remain susceptible to harm.

3.2. Differences in political philosophy and execution

The Bracero Program operated as a formal agreement between the United States and Mexico to manage labor flow through cooperative measures. The 2025 Trump administration implements border control through unilateral measures and mass deportations as its main policy while using H-2A expansion as a controlled legal pathway for new workers. The Bracero Program established workers as contract employees who entered the country through a designated program. The Trump administration focuses on deporting undocumented workers who already reside in the United States while simultaneously expanding

the H-2A temporary visa program for new legal workers.

The Bracero program operated as a direct government system to facilitate labor through a wartime-style human resource mobilization. The Trump administration uses forceful border control measures to generate labor shortages and higher costs while promoting H-2A guest worker programs as a market-based solution which suggests long-term reliance on machines instead of human workers.

The Bracero Program and the 2025 Trump administration policies share a common goal to solve agricultural labor shortages, yet they differ fundamentally in their underlying philosophical approaches. The Bracero Program started as a mutually beneficial agreement and guest worker program despite its major flaws which presented a cooperative yet exploitative labor exchange. The 2025 Trump administration views immigration and agricultural labor through the lens of national security.

The border control measures, and deportation policies and detention facility expansion demonstrate that border control stands as the main objective. The H-2A legal labor pathway exists as a controlled economic necessity rather than a fundamental solution to labor supply needs. The program evolved from its original purpose of labor facilitation into a system that controls labor access even when this approach leads to increased costs and reduced domestic crop production. The availability of foreign labor would exist under strict management which would follow immigration enforcement priorities instead of economic requirements.

4. Emigration as a key concept of Mexican Politics

Throughout these phases, not only did migratory patterns undergo significant changes, but the characteristics of both sending and receiving countries also evolved. In the initial four phases, the profiles of Mexican emigrants exhibited a degree of homogeneity, predominantly consisting of young, uneducated men from rural areas with persistently high unemployment rates. However, during the contemporary phase, Mexico experienced various economic and geographical transformations that significantly altered the profile of the 'typical' Mexican immigrant. A Mexican immigrant may belong to either gender, can come from different educational backgrounds, and originate from either a traditionally migrant-sending region or an area where migration is a relatively new phenomenon. The spatial concentration has not changed; California and Texas continue to be among the primary destinations. It is also a common phenomenon for migrants to relocate to other states after leaving their initial entry areas. In terms of the current social status of Mexican migration, it primarily originates from the middle and lower middle classes. Therefore, according to Palma and Angeles, at

the beginning of the 21st century, migration has become a "survival strategy"[40] for the Mexican middle class.

It is essential to recognize that migration must also be examined from the perspective of the state's role as a country of origin for migrants. By the turn of the millennium, it became clear to the Mexican political elite that a significant portion of the country's population had emigrated, and this trend would continue as long as the economic situation in the sending country remained unchanged and income inequalities between the two countries did not begin to balance. Since this is a goal that can only be achieved in the long term, political attention has focused on strengthening ties with the diaspora and implementing measures to prevent emigration.

Mexico has instituted various courses of action aimed at supporting migrants and their families. The actions implemented by the federal government can be categorized into five areas: protection and information, education, health, promotion and dissemination, and retention.[41] Just to mention a few programs from each category: Migrant Protection Beta Groups, United States-Mexico Binational Migrant Education Program, Vete Santo Regresa Sano, North American Agreement for Labor Cooperation (NAALC), 3x1 Initiative for Migrants and the Remittance Transfer Program.

V. Conclusion

The two decade long Bracero Program provides valuable insights into how the immigration and labor policies are intertwined, and how these policy changes can alter the relations between two nations. While addressing significant agricultural labor shortages in the United States, and providing Mexican laborers with better opportunities, the program also raised concerns about labor exploitation and regulatory oversight. The program's flaws were meant to be alleviated and regulated by the H-2A visa program, however, many of the challenges faced by foreign born agricultural workers persist to this day.

The Bracero Program had a lasting impact on U.S. immigration legislation, eventually leading to the introduction of quotas that, for the first time, placed a cap on the number of Mexican immigrants. However, legislative changes alone were not sufficient; the American labor market, particularly the agricultural sector, continued to face structural challenges. To this day, it remains in need of comprehensive reform to meet the ongoing labor demands of farm owners while ensuring fair and ethical treatment of migrant workers.

[40] Martínez, Damián and Jiménez (n 27) 113.

[41] ibid 114.

Since Donald Trump's second inauguration, a wave of unprecedented executive orders, policy shifts, and enforcement directives has signaled the second Trump administration's intent to enact a profound transformation of the U.S. immigration system. With the current administration's actions, and the comparative analysis of the Bracero Program and the H-2A visa program it is clear that the latter is an extremely regulated and costly process, putting emphasis on the necessity of following laws rather than trying to solve the labor market demands. This regulatory emphasis reflects a broader enforcement-driven approach, rather than a pragmatic response to agricultural labor shortages. However, a critical question arises: can this administration restructure immigration policy in accordance with its political vision without undermining the broader national interest—particularly in relation to food security and persistent agricultural labor shortages?

Some thoughts about Francesca Albanese's expert lecture "Legal aspects of human rights violations and the Geneva Conventions in the occupied Palestinian territories" held in Maribor, Slovenia

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Abstract

On 8 July 2025, the Department of Criminal Law, Faculty of Law at the University of Maribor, hosted Francesca Albanese, the international law expert and UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. In this contribution, the views shared at her expert lecture titled "Legal aspects of human rights violations and the Geneva Conventions in the occupied Palestinian territories" are outpined. Additionally, some concerns are raised regarding implications of Albanese's views for the EU criminal law, in particular the legislative framework aiming at harmonization of the so-called hate speech offences under the Framework Decision 2008/913/JHA.

Keywords: genocide, hate speech, denial, trivialising, international criminal law

On 8 July 2025, the Department of Criminal Law, Faculty of Law at the University of Maribor, hosted Francesca Albanese, the international law expert and UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.[2] In this contribution, the views shared at her expert lecture titled "Legal aspects of human rights violations and the Geneva Conventions in

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[1] The event was organized by the Department for Criminal Law at the University of Maribor, Faculty of Law, and Zavod PIP - Legal counseling, education and support services for NGOs, in cooperation with the Association for Participatory Society and the NGO Pekarna Magdalenske mreže.

the occupied Palestinian territories" are presented. Additionally, I reveal my concerns regarding some implications of Albanese's views for the EU criminal law, in particular the legislative framework aiming at harmonization of the so-called hate speech offences.

However, firstly, the context surrounding the event and Albanese's work need to be briefly outlined. Francesca Albanese holds a law degree from the University of Pisa and a Master of Laws in human rights from SOAS University of London. She is described as an international lawyer, specialised in human rights and the Middle East.[1] As a scholar, she lectured at various universities in Europe and the Middle East and (co-)authored many publications on human rights and international law, including the 2020 monograph on Palestinian Refugees in International Law (Oxford University Press).[2] In May 2022, she was appointed by the UN Human Rights Council to take up the post of Special Rapporteur for a three-year term. In April 2025, her mandate has been extended to another three years.

Her visit to Maribor, Slovenia, came just a couple of days after she presented to the UN Human Rights Council her latest report titled "From economy of occupation to economy of genocide", released on June 16th 2025. In the report, she argues that "The complicity [of multinational companies] exposed by the report is just the tip of the iceberg; ending it will not happen without holding the private sector accountable, including its executives."[3] While her stance towards Israel has been criticized for years,[4] especially by the Israeli government,[5] her latest report culminated in the US unilaterally imposing sanctions against her due to her alleged "political and economic warfare" which supposedly threatens the US "national interests and sovereignty".[6] As a response, Volker Türk, the UN

[2] ‚Francesca Albanese: Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967' <https://www.ohchr.org/en/special-procedures/sr-palestine/francesca-albanese> accessed 25 July 2025.

[3] Francesca Albanese and Lex Takkenberg, *Palestinian refugees in international law* (Oxford University Press 2020).

[4] See the summary of the report, 1.

[5] See for example Tal Fortgang, ‚The "Occupation" Dodge; Anti-Semitism in the anti-Zionist movement is increasingly difficult to deflect or deny' (2024) City Journal <https://link.gale.com/apps/doc/A784368005/AONE?u=anon~87401870&sid=googleScholar&xid=e-9f70af5> accessed 25 July 2025. For a deep insight into how the academic sector reacted to the controversy, including increased cancellation and prohibition of events on Israel and Palestine, see Stefania di Stefano, ‚Silencing Palestinian voices: On freedom of expression and Gaza' (2025) 42 Netherlands Quarterly of Human Rights 3.

[6] See, for example Francesca Albanese, 'A Comprehensive Review of Misconduct as a UN Special Rapporteur' (2025) <https://govextra.gov.il/mda/francescaalbanese/un-misconduct-review> accessed 25 July 2025.

[7] Marco Rubio, ‚Sanctioning Lawfare that Targets U.S. and Israeli Persons' (*US Department of*

High Commissioner for Human Rights, and Jürg Lauber, President of the UN Human Rights Council, voiced their concerns and called for a "prompt reversal" of the sanctions.[7]

The event was opened by prof. dr. ddr. h. c. Vesna Rijavec, vice-dean for research and international relations at the Faculty of Law, University in Maribor, and moderated by assist. prof. dr. Miha Šošić from the Department for Criminal Law (a practicing attorney registered as a counsel before the ICC). While Rijavec welcomed the guest on the behalf of the Faculty of Law in Maribor, Šošić already set the tone of the discussion by emphasizing that "in today's World, where some States are openly challenging the concept of international law, it is important that we as lawyers and as citizens of the World hang on to the concept and seek to improve it. We should not give up on the idea that the World is based on rules and mutual respect of rules–otherwise, we might one day wake up to find a World based on power and conflicts."

Following this introduction, Albanese started her presentation by explaining the limits of her mandate. As a UN Special Rapporteur, she is limited to explore and report on the situation of human rights in the Palestinian territories occupied since 1967–this is without prejudice to the human rights situation before this date. What is more, she is limited only to a small part of what remains of the *historical* Palestine, as Israel was created inside the territory of Palestine in 1948. She then substantiated at length why each *colony* established by Israeli settlers on the occupied land between 1967 and the 1990s is, in itself, a war crime, including under Art. 49 (deportations, transfers, evacuations) of the Geneva Convention (IV) on Civilians. She also accused Israel of a "plethora of acts which are not only prohibited under the international human rights law and humanitarian law, but are also described as international crimes."

However, in recent years, the focus of the Special Rapporteur has shifted from individual breaches of human rights (such as establishing settlements, extrajudicial killings or forced displacements) towards examining the system of domination over the Palestinians. Doing so is limiting the right to self-determination of the Palestinians, and thereby their right to exist as a people.

State, 9 July 2025) <https://www.state.gov/releases/office-of-the-spokesperson/2025/07/sanctioning-lawfare-that-targets-u-s-and-israeli-persons> accessed 25 July 2025.

[8] See Volker Türk, ‚Comment by UN High Commissioner for Human Rights Volker Türk on U.S. sanctions against Francesca Albanese' (*United Nations Human Rights Office of the High Commissioner*, 10 July 2025) <https://www.ohchr.org/en/press-releases/2025/07/comment-un-high-commissioner-human-rights-volker-turk-us-sanctions-against> accessed 25 July 2025; ‚Statement by Ambassador Jürg Lauber, President of the United Nations Human Rights Council, on sanctions imposed on Special Rapporteur Francesca Albanese' (*United Nations Human Rights Office of the High Commissioner*, 10 July 2025) <https://www.ohchr.org/en/press-releases/2025/07/statement-ambassador-jurg-lauber-president-united-nations-human-rights> accessed 25 July 2025.

In this light, she also underpinned the importance of the ICJ opinion[8] of 19 July 2024, which stressed that Israel's policies and practices in the occupied Palestinian Territory constitute an unlawful act of a continuing character.[9] It called for Israel to "bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible," which includes the obligation to "immediately cease all new settlement activity" as well as "all measures aimed at modifying the demographic composition of any parts of the territory."[10]

Albanese argued that none of this was upheld by Israel as it still maintains control of the territories and, even worse, still exploits the occupied territories as well. What to do in face of this blatant disregard of international law? Albanese strongly argued in favour of "not recognizing as legal the consequences of the occupation and refraining from providing aid or assisting this unlawful endeavour."

She also touched upon the escalation of the Israeli-Palestinian conflict in light of the October 7th attacks by Hamas. While condemning the kidnappings of civilians by Hamas, she tried to provide a broader context by pointing out at the Israeli systemic approach towards Palestinian people, for example pointing out at the increasingly escalatory settling efforts, ethnic cleansing of the Jordan valley, and raiding of the Palestinian refugee camps by Israel. Albanese also emphasized that, already the collective punishment of the Palestinian people by the unilateral blockade of Gaza is a war crime in itself.

She compared the situation with a jailor and a tortured prisoner. If the prisoner manages to lose his shackles and turns on his captor, physically hurting him as an act of revenge, how do we assess the prisoner's reaction? Surely we cannot condone such an attack out of revenge, but we also cannot disregard the broader context of the attack.

Be that as it may, focusing on the Israel's response to Hamas attacks, Albanese went straight to the point by calling it a genocide. In how Israel approaches the latest Gaza war, she believes that all the elements of genocide, including the element of intentional destruction of a group "as such" are given. Palestinians are not being target person by person, but indiscriminately, because they are Palestinians, while Gaza is being "pulverized".

She finds unacceptable the opposing views of those who argue for caution in labelling Israel's action as genocide because the courts have not yet decided on

[9] Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem. Advisory Opinion of 19 July 2024.

[9] ibid para. 265.

[10] ibid para. 268.

the matter. This is a legal paradox, Albanese argued. It does not matter if a court has already ruled on the genocide issue or not–if a crime is happening, it must be prevented, stopped and prosecuted!

How to respond to such genocidal action which is also, as maintained by Albanese, destroying the multilateral order? She called for the responsibility of the States (as well as personal responsibility) to prevent this from happening. We need to apply the international law to remind States and leaders of their limits– this is "not the time of kings or queens" anymore. If we fail in this endeavour, lawlessness will be the new normality, Albanese warned.

During the lively discussion following the presentation, Albanese also touched upon her latest report[11], including the responsibility of multinational corporations profiting from the Gaza situation, while also providing additional insights into why she considers the latest Gaza war as satisfying all the elements of the international crime of genocide.

However, I believe that Albanese's strong opinions on classifying the situation in Gaza as genocide open some uneasy questions in terms of the application of national and EU criminal law provisions. To properly understand what is at stake, we should recall some provisions of the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.[12]

It is widely believed that this Framework Decision aims at the harmonization of (at least particular forms) of hate speech.[13] Under Art. 1 Para. 1 Lett. (c), MSs are obliged to ensure that the conduct of "publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes […], directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group" is punishable.

MS may decide to soften this provision by either choosing "to punish only conduct which is either carried out in a manner likely to disturb public order or

[11] 'A/HRC/59/23: From economy of occupation to economy of genocide - Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967' (*United Nations Ruman Rights Office of the High Commissioner*, 16 June 2025) <https://www.ohchr.org/en/documents/country-reports/ahrc5923-economy-occupation-economy-genocide-report-special-rapporteur> accessed 25 July 2025.

[12] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] OJ L328/66.

[13] Jan Stajnko, Petra Weingerl and Miha Šepec, 'Further Areas' in: Kai Ambos and Peter Rackow (eds), *The Cambridge Companion to European Criminal Law* (Cambridge University Press 2023).

which is threatening, abusive or insulting" (Art. 1 Para. 2) or make punishable such acts "only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only" (Art. 1 Para. 4). However, when transposing the Framework Decision into national law, not all the MS limited the criminal responsibility for denial of genocide by implementing these clauses.

The question which arises under the situation discussed by Albanese is the following: In MS which have not implemented the clauses for limiting the criminal responsibility, should people who doubt or deny the supposed genocide in Gaza be criminally prosecuted? For example, in Slovenia, *Borut Pahor*, who used to serve as a prime minister, a president of Slovenia and the head of the Social Democrats' party, recently stated (when interviewed by the national broadcaster) that, while war crimes and crimes against humanity may have been committed, he does not believe that Israeli conduct amounts to genocide.[14] Similarly, there is an ongoing scholarly discussion regarding this topic, where some authors are sceptic towards the genocide position.[15] Should such voices be prosecuted? Scholarly articles and interviews deleted and broadcasters fined? Social media posts removed from social media platforms and access to social media accounts of those who share such content restricted in line with the Digital Services Act?[16]

Such cases call for a re-evaluation, I believe, of the hate speech legislation in the EU, particularly for publicly condoning, denying or grossly trivialising genocide and other core international crime. Already for years, critical voices have been warning that such extensive criminalization might be problematic from the perspective of limiting the freedom of expression.[17] However, prhaps due to the symbolic value of this criminal offence, such issues were largely ignored. In light

[14] ‚Pahor dogajanja v Gazi ne bi označil za genocid. Ostri odzivi iz koalicije' (*MMC RTV SLO*, 2 June 2025). <https://www.rtvslo.si/slovenija/pahor-dogajanja-v-gazi-ne-bi-oznacil-za-genocid-ostri-odzivi-iz-koalicije/747698> accessed 25 July 2025.

[15] See, for example, Paul James, 'Is it Genocide?' (2025) 22 Journal of Bioethical Inquiry 37. Compare with views held by Zohar Lederman, Anne Irfan and Shmuel Lederman 'Is it Genocide? Yes, It Is—A Response to Paul James' (2025) 22 Journal of Bioethical Inquiry 471.

[16] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1.

[17] See, for example, Paolo Lobba, 'Punishing Denialism Beyond Holocaust Denial: EU Framework Decision 2008/913/JHA and Other Expansive Trends' (2014) 5 New Journal of European Criminal Law 75, who argues that „ unqualified incrimination of denialism at large ought to be ruled out due to its excessive curtailment of the fundamental right to free speech," and Roger Smith, ‚Legislating against genocide denial: Criminalizing denial or preventing free speech?' (2010) 4 University of St. Thomas Journal of Law and Public Policy 137, who fears „that a government that can tell us what not to say can also tell us what we must say."

of the recent Gaza situation, this issue is returning with a vengeance and should now be critically re-assessed.

Research and Practice in Combating Trafficking Human Beings: Reflections on an International Conference in Pécs*

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Between 14 and 16 May, the Research Group on Combating Trafficking in Human Beings of the University of Pécs, Faculty of Law hosted an international conference, dedicated to the fight against human trafficking. Bringing together legal scholars, practitioners, and experts from across Europe, the event provided a platform for interdisciplinary dialogue.

The conference, which was entitled *"Innovative Research Approaches in Combating Human Trafficking"*, addressed various dimensions of trafficking-related crimes, ranging from legal and institutional responses to victim protection and international cooperation. The topics covered the practical challenges of criminal justice to the role of EU policies and prevention efforts, offering insights into both ongoing struggles and promising practices.

Beyond the academic context, the event highlighted the importance of working together across sectors and borders. It also reflected the faculty's strong commitment to support international dialogue on this complex issue. The following paragraphs offer a selection of the presentation that shaped the conference agenda.

The conference was opened on the afternoon of 14 May. The official opening ceremony featured remarks by H.E. Désirée Bonis, the ambassador of the Netherlands to Hungary, Ágoston Mohay, the vice-dean of the Faculty of Law and István Szijártó, a member of the Research Group on Combating Human

* The conference was financed by the Ministry of Culture and Innovation through the National Research, Development and Innovation Office as the managing body, under the MEC_SZ_24 subprogramme of the „Tudományos Mecenatura Pályázat Call", MEC_SZ_24, with the support of the winning application no. MEC_SZ 149138. In addition to that, the conference was organised in cooperation with the National Police of the Netherlands, the Embassy of the Netherlands in Budapest, Hungary and the Embassy of Hungary in the Hague, the Netherlands.

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Trafficking. Their speeches highlighted the importance of transnational cooperation and the central role of academic research in developing effective strategies against human trafficking.

Following the opening remarks, the keynote speech was delivered by Jorn van Rij, who is a senior analyst at the Netherlands National Police, and a visiting professor at the University of Pécs. In his keynote, he spoke about how third parties can help in preventing human trafficking. He explained that trafficking is a complex crime with many forms, such as sexual, labor or criminal exploitation, and he also mentioned that the number of cases is growing. Because of this, police work must go beyond reacting to crimes that have already happened. Instead, it should focus more on prevention and early detection, using up-to-date research and better cooperation with others. The presenter highlighted the importance of building strong partnerships – with public organizations, private companies, and universities. He shared how the Netherlands National Police is working with these groups to improve training, research and awareness. He also said that while partnerships should be based on trust and shared goals, there may be situations where some actors need to be required to take part in anti-trafficking efforts, since fighting this offense is a shared responsibility.

The second day of the conference began with a presentation by Gabriel Zaharia from the Technical University of Moldova. The presentation introduced the 'Trafficking Escape' platform, a digital simulation game designed to raise awareness among teenagers about the dangers of human trafficking – particularly in online environments. Zaharia emphasized the growing digital presence of children and the increasing risks raised by cyberbullying, online grooming, and misinformation. He demonstrated how the use of artificial intelligence within educational games can create more realistic scenarios, personalize content, and adapt dynamically to users' needs. The presenter highlighted the pedagogical potential of AI-driven tools and gaming in prevention education, especially, when addressing the vulnerability of minors to online exploitation. The project reflects a broader European effort to promote digital safety through legislation, innovation, and targeted awareness campaigns.

The second presentation of the morning was delivered by Liwia Palus from the University of Wroclaw, who examined the legal challenges of victim protection in cases of human trafficking under Polish law. She explained that despite various international and national efforts, victims still face major barriers in accessing legal protections, mainly due to fragmented regulations and unclear legal definitions. A key issue discussed was the lack of a single, comprehensive law that would gather all victim rights in one place. Palus also highlighted difficulties in identifying victims, especially in cases of forced labor, where the legal framework is vague. While she acknowledged Poland's recent improvements in combating trafficking, she stressed the urgent need for better-coordinated and more inclusive legal protection mechanisms.

The third presentation of the session was delivered by Tsisana Khundadze from Sulkhan-Saba Orbeliani University. The research focused on how financial difficulties, digital platforms, and social exclusion contribute to the vulnerability of sex workers, particularly trans and migrant women. Based on interviews with eleven sex workers, the study revealed that while online platforms offer more autonomy, they also expose workers to surveillance, abuse, and coercion. The study emphasized the urgent need for stronger protections, better-informed support systems, and more inclusive policy responses in Georgia.

The second section began with a presentation by Gillian Kane from Ulster University and Andrew Chisholm employed by the International Organization for Migration, focusing on the identification of modern slavery and human trafficking in cases of child criminal exploitation (CCE) in Northern Ireland. The presenters highlighted a striking gap: since 2015, only 45 child victims have been referred to the UK's National Referral Mechanism (NRM) from Northern Ireland, and none of them were UK-born male children despite thousands of similar referrals from other parts of the UK. The study explored why child victims exploited by paramilitary or organized crime groups in Northern Ireland are rarely recognized under the legal definitions of trafficking or modern slavery. The presentation concluded with a call for better training, clearer regulations, and stronger cross-sector cooperation to ensure children in Northern Ireland are properly identified and protected.

Sanne Spronk from the Rotterdam University of Applied Sciences shared good practices in cross-sector collaboration in human trafficking cases. She presented the work of the university's Expertise Centre on Trafficking in Human Beings. The presenter emphasized the importance of linking education, research, and fieldwork. The initiative focuses on training professionals, supporting predictive policing with tools like geovisualization, and raising international cooperation, including with institutions from Hungary, Georgia and Moldova. The presentation encouraged continued exchange of knowledge, joint research, and the creation of an international minor on human trafficking by 2027.

István Szijártó from the University of Pécs introduced a case study on the use of an innovative crime prevention method in Hungary, focusing on the *Escapetruck* – a mobile escape room designed by the Reshape Foundation to raise awareness about human trafficking. The Escapetruck uses interactive storytelling to simulate a realistic trafficking scenario set in a brothel, educating participants about grooming, manipulation, and exploitation. The mobile unit traveled to six Hungarian cities in 2024 and reached around 1.000 participants. Based on a follow-up questionnaire completed by nearly 300 participants, the projects showed strong results in raising awareness about digital recruitment methods, emotional grooming, and coercion tactics. Overall, the initiative demonstrates how experimental, mobile learning can effectively communicate complex legal and psychological concepts in crime prevention.

Péter Hudák, employed by the Ministry of Justice in Hungary, made a presentation about the national identification and referral system for victims of human trafficking. He started the presentation by outlining Hungary's legal framework, which is rooted in the Council of Europe Convention and aligned with the EU's Directive 2011/36/EU. A key component of the system is the 2012 Government Decree (THB Decree), which sets out procedures for victim identification and cooperation among responsible bodies, including provisions on shelters and cross-border cases. The presentation focused on the EKAT System which is Hungary's web-based IT platform, to centralize victim data and streamline the referral process. It was designed to replace the inefficient paper-based system, and the system enables authorities to collect, manage, and analyze victim-related information securely and effectively. The development project, expected to run from 2025 to 2027, aims to strengthen victim support through better data coordination and broader institutional engagement.

The afternoon session was opened by a joint presentation of Jan Stajnko from the University of Maribor and Michał Wawrzyńczak from the Adam Mickiewicz University in Poznań on the legal implications of the Poland-Belarus border crisis, particularly in relation to human trafficking and migrant smuggling. The speakers reviewed the events that began in 2021, when thousands of migrants were pushed across the EU's eastern border – often manipulated by Belarusian authorities and subjected to violence, coercion, or misleading promises of easy entry into the EU. From a criminal law perspective, the presentation explored the distinction between migrant smuggling and human trafficking. The speakers emphasized the lack of clarity in legal classification and called for more precise definitions and harmonized EU-level responses.

The next presenter was Stefan Coman from the International Justice Mission, Romania. He presented about the European Anti-Trafficking Program, which is a comprehensive model aimed at stopping cross-border human trafficking within the EU. The program focuses on three main pillars: enhanced European cooperation, stronger criminal justice system responses, and survivor empowerment. Coman highlighted recent successes, including over 700 justice system actors trained, dozens of convictions secured, and significant legislative reforms in Romania.

The third day of conference started with a presentation by Efthymis Antonopoulos, from the organization called Victim Support Europe. The main focus of the speech was about the early identification of labour trafficking victims, focusing on both adults and children. He outlined common forms of coercion – such as debt bondage, document retention, and constant threats – that often go unnoticed in sectors like agriculture, construction and hospitality. Antonopoulos stressed that frontline professionals, including teachers, healthcare workers, and labour inspectors, play a key role recognizing risk indicators. He advocated for trauma-informed, victim-centered approaches, emphasizing the need for early

support, coordinated referrals, and respectful communication.

In the second presentation of the final day, Ernesta Rousseva, from the Bulgarian National Commission for Combating Trafficking in Human Beings, examined whether prevention in the fight against human trafficking can be standardized. Her research was grounded in comparative analysis of international, EU, and national awareness campaigns. She applied a three-tiered model to evaluate strategic alignment and practical outcomes. Rousseva demonstrated how a structured, yet adaptable approach can produce effective results, especially when targeting vulnerable communities. While her findings suggest that some degree of standardization is possible, she stressed that prevention must remain flexible and context sensitive.

The final presentation of the conference was delivered by Angel Vadim from the "Stefan cel Mare" Police Academy of Moldova and focused on the special hearing procedures for minor victims and the innovative Escape Van Project. The speaker outlined Moldova's evolving legal and institutional response to child trafficking, highlighting law No. 66/2012 and the 2022 extension of protections following the Istanbul Convention. The presentation also showcased the Escape Van Project, a mobile outreach initiative launched in 2023 to raise awareness about human trafficking across Moldova. With support from multiple partners, including Open Gate International and the Netherlands Embassy, the project has reached thousands of citizens and trained hundreds of police officers. The recent transfer of the van's equipment to a local NGO ensures its continued use, with the program aiming to reach over 7.000 people in 20 communities.

The final day of the conference also featured two roundtable discussions, which offered the participants an opportunity to reflect critically on the practical dimensions of anti-trafficking efforts. The first panel, *"Partnership and Proactivity in Fighting THB"* was moderated by Jorn van Rij and focused on the importance of cooperation across sectors – including law enforcement, civil society, and international organizations. Speakers shared insights on building trust-based networks, improving information sharing, and supporting victims through coordinated responses. The second discussion, *"How Can Academia Effectively Contribute to the Fight Against THB"*, was chaired by Ágoston Mohay and brought together researchers and practitioners to examine the relationship between scholarship and practice. The panel explored how academic institutions can support evidence-based policymaking and conduct interdisciplinary research that informs legal reforms and social services.

Fighting human trafficking in the 21st century requires less reaction and more anticipation – a shift from responding to symptoms to addressing root causes.[3] The three-day conference in Pécs showed how complex and important the

[1] Jorn van Rij, 'Towards a New Human Trafficking Strategy: Proactivity at the Heart of the Ps

fight against human trafficking is. With more than thirty speakers from over ten countries, the event brought together researchers, law enforcement professionals, policymakers, and civil society actors to exchange ideas, discuss challenges, and explore ways to work together. Topics ranged from legal reforms and victim support to innovative technologies and education-based prevention, emphasizing that real change depends on cooperation, knowledge, and long-term commitment. The conference, which was organized by the Research Group on Combating Trafficking in Human Beings of the University of Pécs, Faculty of Law underlined the university's active role in international discussions on trafficking human beings. It also highlighted the value of working across borders and disciplines.

Finally, in connection with and building on the results of the conference, the Pécs Journal of International and European Law has issued a call for papers for a special issue on combating trafficking in human beings.[1]

Paradigm' (2023) 12 International Journal of Criminology and Sociology 151.

[2] 'Call for Papers – Pécs Journal of International and European Law' (*PJIEL,* 23 May 2025) <https://journals.lib.pte.hu/index.php/pjiel/announcement/view/55> accessed 23 May 2025.