REPORT OF THE WORKING GROUP

WAYS TO BRUSSELS

EAJ – WARSAW MEETING – APRIL 2024

INTRODUCTION

The "Ways to Brussels" working group was established by the EAJ for the purpose of monitoring legislative initiatives, and implementing actions, by institutions of the European Union that have the potential to impact on the judiciaries of member states, or more widely. This is with a view to making timely representations to the legislators or policy makers concerned in the hope that legitimate concerns of EAJ members would be recognised and considered.

The work of the working group took place via e-mail, and at the beginning of March we had an on-line meeting.

We went through the work programme of the European Commission, looking for the proposed measures that may impact directly on our work as judges or the work of the courts. This was not an easy work. The European Commission has prepared a very comprehensive programme for 2024, which includes as many as 223 proposals and initiatives. We synthetised in this report the projects which seem to be of potential interest on the European level, as far as the judiciary is concerned. We also followed the legislative process of some proposals that we dealt with in previous years.

FOLLOW UPS

1. The Anti-SLAPP Directive, which we paid special attention to last year, was adopted by the European Parliament with a large majority in February of this year, and was later approved by the Council of the EU. On the 16th of April 2024, the DIRECTIVE (EU) 2024/1069 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation") has been published in the Official Journal of the European Union. It will enter into force on the twentieth day following that of the publication in the Official Journal of the European Union. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 May 2026.

2. The Digital Services Act (DSA)- Regulation (EU) 2022/2065[1] - the most important regulation in the field of the protection of the digital space against the spread of illegal content, and the protection of users' fundamental rights - came into effect for very large online platforms and very large online search engines on 25 August 2023. It becomes fully applicable to other entities on 17 February 2024.

[1] **Regulation (EU) 2022/2065 of the European** -We dealt with this document in depth in 2022

LEGISLATIVE PROPOSALS

I- CRIMINAL LAW

In the criminal field, the EU wants to expand the EU list of criminal offenses in the context of hate speech and hate crime, take measures to prevent violence against women and domestic violence, measures to prevent and eliminate human trafficking and protect victims. The draft regulation on the transfer of criminal proceedings and the directive on the cross-border exchange of information regarding traffic offenders are very important. The proposal for a directive on the definition of criminal offenses and penalties for the violation of restrictive measures of the Union obliges the member states to define new criminal offenses for cases of violation of Union restrictive measures. The new proposal for the directive envisages the consolidation and update of existing provisions on combating corruption.

To learn more: see Annex 1

II – MIGRATION AND ASYLUM LAW

Numerous wars, armed conflicts and massive violations of fundamental human rights are the reasons for the increase in the number of migrants and asylum seekers in EU member states. The EU has been striving for an effective migration policy for many years and wants to harmonize this area as much as possible, which is why there are more proposals for directly applicable regulations and fewer directives in this area. It is essential that any legislative proposal is accompanied by a guarantee of respect for fundamental principles and human rights and that this guarantee is then effective in practice. An effective migration policy should also take into account the possible impact of certain regulatory choices on the judicial system and thus on the work of judges.

To learn more: see Annex 2

III – CONSUMER PROTECTION LAW

In the area of consumer law protection, three proposals are important - the proposal on the Green Claims Directive and the Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation on air carrier liability in respect of the carriage of passengers and their baggage by air

To learn more: see Annex 3

IV - LABOUR LAW

Proposals of both Directives propose to establish binding standards for equality bodies in the field of equal treatment and equal opportunities and combat discrimination on all grounds.

To learn more: see Annex 4

V – CIVIL AND INSOLVENCY LAW

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on

combating late payment in commercial Transactions (COM (2023) 533 final)
The key points of the proposed Late Payment Regulation are:

- Stricter Maximum Payment Limit: The proposal introduces a maximum payment limit of 30 days for settling invoices. This measure aims to ensure timely payments and prevent undue delays.
- Elimination of Ambiguities: The new regulation addresses ambiguities present in the current directive. By providing clearer guidelines, it aims to promote fair payment practices and protect businesses, especially **small and medium-sized enterprises** (SMEs).
- Automatic Payment of Accrued Interest and Compensation Fees: Under the proposed text, companies that experience late payments will be entitled to automatic payment of accrued interest and compensation fees. This provision aims to compensate businesses for the financial impact of delayed payments.
- Enforcement and Redress Measures: The Late Payment Regulation introduces new enforcement and redress measures to safeguard companies against bad payers. These measures enhance legal protections and encourage prompt payment.
- Support for Subcontractors in Public Works Contracts: The proposal also seeks to strengthen synergies between public procurement and prompt payment objectives. It includes provisions to support timely payments to subcontractors involved in public works contracts.

This proposal is part of the SME Relief Package, which aims to address the needs of SMEs in the current economic environment.

Proposal for a directive that aims to amend Directives 2009/102/EC and (EU) 2017/1132. The proposed changes focus on enhancing and expanding the use of digital tools and processes in company law (COM(2023) 177 final)
The proposal will:

1. increase the amount of company data available in business registers and/or Business Registers Interconnection System (BRIS) and improve its reliability;
2. enable direct use of company data available in business registers when setting up cross-border branches and subsidiaries, and in other cross-border activities and situations.

Key Measures:
- Enhanced Ex-Ante Controls: The proposal introduces measures to enhance ex-ante controls of company data.
- Increased Transparency: It contributes to the fight against abuse of company law structures and facilitates the effective imposition of EU sanctions.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform Work (COM(2021) 762 final)
The directive introduces the presumption of employment – to be applied following national rules – as well as the first EU rules to regulate algorithmic management in the workplace. Platform work is an umbrella concept covering a heterogeneous group of economic activities completed through a digital platform. Platform workers' rights are not enshrined in EU labour law and this is increasingly leading to problems relating to various aspects of their work and human development. To remedy this situation, the European Commission submitted a proposal for a directive aimed at improving the working conditions of platform workers, clarifying their employment status, and establishing the first EU rules for the use of artificial intelligence in the workplace.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on liability for defective products (COM(2022)495 final) revises the existing Product Liability Directive (PLD), which was adopted before almost 40 years. The purpose of the proposal is to introduce an EU product liability regime in line with the digital age and the need to ease the burden of proof for consumers who claim compensation for damage suffered as a result of defective products. PLD introduces the concept of no-fault liability of manufacturers for damages caused by defective products. No liability based on fault means that the liability is not dependent on the fault or negligence of the manufacturer. For compensation under the no-fault regime of PLD, the burden of proof for the injured party is only to prove that:

• the product was defective

• he suffered damage

• there is a fortuitous connection between the damage and the product defect.

Among its main provisions, the proposal to revise the existing PLD:

• clarifies that software should be considered as a product within the scope of the directive;

• the lack of software updates under the control of the manufacturer, as well as the inability to address cyber security vulnerabilities, is considered a product shortcoming;

• introduces liability for defective products when refurbished and put back on the market and when manufactured outside the European Union;

• eases the burden of proof for victims in certain circumstances; and

• extends the nature of harm to include medically recognized harm to psychological health and loss or corruption of data.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL harmonising certain aspects of insolvency law (COM(2022)702 final)

In December 2022, the European Commission presented a draft Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law, opening discussions on some of the potential changes into national laws, together with the remarks and positions towards the Proposal.

The proposal for a directive deals with 7 different areas of insolvency law:
1. avoidance actions;
2. the tracing of assets belonging to the insolvency estate;
3. pre-pack proceedings;
4. the duty of directors to submit a request for the opening of insolvency proceedings;
5. simplified winding-up proceedings for microenterprises;
6. creditors' committees;
7. the drawing-up of a key information factsheet by Member States on certain elements of their national law on insolvency proceedings.

The challenge of legal actions, the tracing of assets that are part of the bankruptcy estate, the duty of managers to file a proposal for the initiation of insolvency proceedings and the rules on the creditors' committee belong to the first group. The second group includes pre-pack procedures and proposals for provisions on the insolvency of micro-enterprises.

The proposed rules on contestation of legal acts would also mean an extension of the right to appeal in favour of the bankrupt debtor.

Much more surprising is the regulation proposal regarding pre-pack procedures and the insolvency of micro-enterprises. As part of the pre-pack procedures, the managing person would retain the right to manage the business even in bankruptcy proceedings, but at the same time would be allowed to look for a buyer for the operating company. Creditors should only comment on the proposed asset sale, but not vote on it. You should file an appeal only if you post a bond for damages that might arise from the appeal due to the delay in the sale of the property.

The insolvency procedure for micro-enterprises provides that a bankruptcy administrator should be appointed in the process only if the bankruptcy estate would be sufficient to pay the costs of the bankruptcy administrator or if the costs would be covered by the proposing creditor. As a rule, the procedure would therefore be conducted without a bankruptcy

administrator. If the bankruptcy administrator was not appointed, his work would have to be done by the court, and to a certain extent by the managing person himself. The proposed rules on the conduct of insolvency proceedings without a receiver have met with sharp criticism from the vast majority of member states.

Finally, it is worth mentioning what the proposal for the directive does not attempt to harmonise. This is insolvency. Its definition should remain within the competence of the member states.

VI- ARTIFICIAL INTELIGENCE

Proposal for a REGULATION of the European Parliament and of the Council laying down harmonised rules on artifical inteligence (artificial intelligence act) and amending certain Union legislative acts (COM(2021)206 final)

and

Proposal for a DIRECTIVE of the Europaean Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive – COM(2022)496 final)

The European Union strongly supports the introduction of artificial intelligence in Europe by promoting excellence and trust, and has therefore adopted a set of measures, including the aforementioned Regulation - Act on Artificial Intelligence and the directive. Because they bring important innovations that will also affect the work of judges, more about the innovations in the appendix.

The European Parliament adopted the Artificial Intelligence Act on 13 March 2024.

To learn more: see Annex 5

VII- FAMILY LAW – CHILD SEXUAL ABUSE

Proposal for a DIRECTIVE of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (COM(2022)209 final)

This Regulation lays down uniform rules for dealing with the misuse of relevant information society services for child sexual abuse online in the internal market.

To learn more: see Annex 6

VIII - DATA PROTECTION LAW

Proposal for a Regulation of the European Parliament and of the Council l*aying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679* *specifies the rules of cooperation and proceedings in the course of enforcement of GDPR. It does not at any stage involve judicial control. Disputes are resolved in administrative way. Therefore, the Regulation should not affect the work of the judges in EU countries.*

IX – ASSEST RECOVERY AND CONFISCATION

Proposal for a DIRECTIVE of the European Parliament and of the Council on assest recovery and confiscation (COM(2022)245 final)

The purpose set out in the Directive is to “establish minimum rules on tracing and identification, freezing, confiscation and management of property in criminal proceedings.” We already dealt with this area last year, but due to the situation in the world, it is even more relevant this year.

The proposal requires initiation of asset tracing investigations to facilitate cross-border cooperation and easy accessibility through asset recovery offices to enable a Member State to act swiftly to temporarily freeze assets, upon the request of another Member State (70% of criminal groups are active in more than 3 Member States).
In 2022 the landscape became more complicate with the Russian offensive against Ukraine. Restrictive measures, initially established in 2014, have been expanded to include clauses to prohibit knowing and intentional participation in activities that seek to circumvent the restrictive measures imposed on Russia.
This proposal may be one which would warrant further consideration. It contains elements of cooperation but also important elements of Human Rights law as well as the necessity to keep at the forefront of any 4 legislation the rule of law, and international financial regulations, together with interplay between bona fide activities and corruption both on a macro and micro scale.
The proposal aims at ensuring a common minimum standard for freezing and confiscation methods, as well as imposing obligations, and legal clarity, which aim to reduce differences in the jurisdictions in Member States that can pose obstacles in cooperation. There are 4 options being considered, ranging from non-legislative measures through targeted amendments, or detailed requirements for all phases of the recovery process, or, the most prescriptive, to extend the provisions of the requirements to extend to all crimes.
With the financial aspect to crime, this is also important in the context of judicial independence.

X - THE RULE OF LAW WITHIN EU

The 2024 Rule of Law report is due in July. This annual European Commission’ report presents a synthesis of the rule of law situation in the EU, with the objective of promoting and defending the values of the EU. It also includes an assessment of the situation in each Member State and recommendations addressed to Member States to encourage positive developments, needed improvements and reforms.

Janja Roblek
President of the working group

Annex 1

A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime

Purpose of legislative proposal:
In December 2021, the European Parliament and Council issued a proposal to extend the list of areas of EU crimes, under *Article 83(1) of the TFEU* to include hate speech and hate crime. If successful the proposal will allow for the establishment of secondary legislation concerning hate speech and hate crime, including definitions and sanctions.

Reason behind legislative proposal:
In the last decades, there has been a rise in hate speech and hate crime in Europe, targeting individuals and groups of people sharing 'a common characteristic', such as race, ethnicity, language, religion, nationality, age, sex, sexual orientation, gender identity, gender expression, sex characteristics or any other fundamental characteristic, or a combination of such characteristics.
The increase in internet and social media usage has also brought more hate speech online, which facilitates the fast sharing of hate speech through the digital word and across borders. The effects of hate speech and hate crime contribute to a climate of fear; the triggering of social conflicts; and the polarisation of public debate and democratic society.

Current protections:
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 requires Member States to criminalise hate speech, i.e. the public incitement to violence or hatred, on grounds of race, colour, religion, descent or national or ethnic origin. It also requires Member States to ensure, for offences other than hate speech, that such racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively that such motivation may be taken into account in the determination of the penalties. The limitation with this framework is that it only applies to racism or xenophobia, and many of the characteristics outlined above are excluded.

Main Changes:
Freedom of expression and information is enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and is an essential foundation of a democratic society. A proportionate balance needs to be struck between one's freedom of expression and criminalising hate speech to ensure that the pillars of a democratic and pluralist society are strongly protected.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence

Purpose of legislative proposal:
In March 2022, the European Parliament and Council issued a proposal to combat violence against women and domestic violence throughout the EU. The proposal aims to extend the list of areas of EU crimes, under *Article 83(1) of the TFEU* to include gender based violence and cyber violence. It will do so by criminalising relevant offences and providing sanctions for breaches; providing protections for victims; facilitating access to justice; providing victim

support; and establishing measures which facilitate the prevention, coordination and cooperation of criminalising these acts across Member States.

Reason behind legislative proposal:
Violence against women and domestic violence are matters of criminal and human rights law. Both matters disproportionately affect women, with 1 in 3 women in the EU being affected by such.
Violence will include anything that will result in, or likely to result in physical, sexual, psychological or economic harm or suffering, including threats of such acts. It will included forced marriages, stalking, cyber violence and sharing of intimate images, femicide and acts rooted in gender inequality used to discriminate against women.
Although these crimes disproportionately effect woman, men and non-binary persons will be included, except in gender specific acts such as rape and female genital mutilation.

Current protections:
No current specific EU legal instrument address violence against women and domestic violence. They are addressed in a number of Directives such as 'Victims' Rights Directive', 'European Protection Order Directive', 'Child Sexual Abuse Directive' and the 'Anti-Trafficking Directive'.
The 2014 Council of Europe Convention on preventing and combating violence against women and domestic violence is the most extensive international framework to comprehensively address violence against women and domestic violence. This proposal aims to achieve the objectives of the Convention, which would affect all Member States regardless of if they have ratified the Convention. It would also include addressing the recent phenomenon of cyber violence against women, which the Convention did not address. Recommendations from the Group of Experts Action against Violence against Women and Domestic Violence will also be considered.

Main Changes:
The proposal suggests a Directive as the appropriate instrument to implement the proposal as it will compile the relevant EU rules in a single, transparent instrument. It will strengthen a number of fundamental rights, in particular: non-discrimination and gender equality; victim's rights to an effective remedy and fair trial; rights of the child; right to life; and the right to integrity.
The following measures are proposed as part of the proposal: criminalising forms of violence which disproportionately affect woman (rape based on absent of consent and female genital mutilation); strengthening victims' rights and access to justice; ensuring gender specific supports for victims of crime; providing training for professionals who are likely to come into contact with victims; and strengthening coordination and cooperation at national and EU level to ensure a multi-agency approach to combat violence against woman and domestic violence.
Member States will be required to transpose the Directive 2 years after its entry into force. Further they will be required to report to the Commission on the Directive's implementation 7 years after it has entered into force.
In terms of impact on the judiciary, Chapter 3 of the proposal focuses on victims' rights. It hopes to establish the following:

- the efficient investigation and prosecution of offences under the Directive ensuring there are sufficient expertise and resources available;
- Individual assessments for victims under the Victims Right Directive, with tailored supports arising from such;
- the exclusion of victims past sexual conduct from criminal investigations and court proceedings, without prejudice to the defence;

- obligation to provide law enforcement and judicial authorities with guidelines to ensure that victims are treated appropriately; and
- afford national bodies legal standing to act on behalf of victims in criminal proceedings where they deem it appropriate.

Proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

Purpose of legislative proposal:
In December 2022, the European Parliament and Council issued a proposal to set out a series of measures to better prevent and combat trafficking in human beings and to protect its victims under the current legal framework, namely Directive 2011/36/EU ("the Anti-trafficking Directive").
This proposal seeks to address the challenges posed by the increasing digitalisation of trafficking in human beings and to enhance the criminal law response to technology-facilitated offences.
To reinforce the criminal justice response to trafficking in human beings, including in the cross-border context, three legislative measures have been identified: (i) addressing the online dimension explicitly in the Directive; (ii) explicitly referring to forced marriage and illegal adoption within the list of forms of exploitations; (iii) introducing two mandatory regimes of sanctions on legal persons, one to sanction standard offences and one to sanction aggravated offences. Non-legislative measures were also identified: (i) fostering cooperation between the Commission and internet companies in the context of the EU Internet Forum; and (ii) creating a focus group of specialised prosecutors against trafficking in human beings.

Reason behind legislative proposal:
Forms of exploitation have evolved since 2011. While sexual and labour exploitation have consistently been the main purpose of trafficking, both explicitly mentioned in the Anti-trafficking Directive, new forms such as forced marriages and illegal adoptions are not covered. Further, advancements in technology which allow traffickers to recruit, advertise and exploit victims remotely, have increased the threat of trafficking to human beings.
The Anti-trafficking Directive pre-dates EU legislation on freezing and confiscation of assets. This proposal will update the reference to these matters to explicitly reference Anti-trafficking matters.

Current protections:
Directive 2011/36/EU ("the Anti-trafficking Directive") provides common EU rules on (i) criminalisation, investigation and prosecution of human trafficking, including definitions of offences, penalties and sanctions; (ii) assistance, support and protection of victims of human trafficking; and (iii) prevention of trafficking in human beings.
In addition, the Commission has developed EU Strategy on Combatting Trafficking in Human Being 2021-2025, which outlined detailed actions aimed at improving the implementation of the Anti-Trafficking Directive.

Main Changes:
The main changes to be established under the proposal are:
- Specify forced marriage and illegal adoptions within the list of exploitations;
- Update to include online element of trafficking;
- Introduce mandatory regime of sanctions for standard offences, and aggravated offences;
- Establish new offences concerning use of services with knowledge that the person

is a victim of trafficking;
- Update framework around freezing and confiscating of assets;
- Establish National Referral Mechanisms;
- Introduce reporting requirements and data collection for key indicators in the area of human trafficking.

Proposal for a Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

Purpose of legislative proposal:
In July 2023, the European Parliament and Council issued a proposal of targeted measures to improve victims' ability to rely on their rights under Directive 2012/29/EU ("the Victims' Rights Directive or VRD"). The amendments to the Victims' Rights Directive target provisions aiming to: improve victims' access to information and crime reporting, facilitate access to specialist support for vulnerable victims, including children and improved access to justice for victims with disabilities, more effective victims' participation in criminal proceeding, improved access to compensation for victims, better aligning victims' protection measures with victims' needs, use of electronic means of communication and specific obligations on victims of violence against women and domestic violence.

Reason behind legislative proposal:
In June 2022, a number of shortcomings associated with the VRD were identified to the Commission in an evaluation report. The problems are linked to the lack of clarity and precision with which certain rights are formulated in the Directive and to the large margin of discretion for Member States to transpose them. This has led, in some cases, to limitations on the practical application of victims' rights and differences in how Member States have transposed the Directive. The 5 main problems outlined in the report are:

3. Victims not receiving any or adequate information about their rights;
4. Vulnerable victims not benefiting from a timely assessment of their needs to protections;
5. Vulnerable victims cannot rely on specialist or multi-agency support;
6. Victims' participation in criminal proceedings is difficult due to lack of guidance and differences in rules on victims' status in proceedings;
7. Access to compensation for victims in domestic and cross-border cases is difficult due to a lack of state support in enforcing compensation orders, which leads to secondary victimisation.

In addition, standards on what constitutes 'child friendly' and 'victim-centred justice' have increased over the past decade, and this needs to be reflected in developments in justice and technology.
In April 2023, the Commission proposed a Regulation for the transfer of criminal proceedings between Member States. For this to happen, trust in equal access to victims' rights is an essential facet, as it is a factor which can be relied upon by judicial authorities in considering the transfer of proceedings.

Current protections:
Directive 2012/29/EU (the Victims' Rights Directive or VRD) lays down rights for all victims of all crimes, including the right to information, the right to support and protection based on victims' individual needs, procedural rights, and the right to receive a decision on compensation from the offender at the end of criminal proceedings. The VRD has been applicable since November 2015 in all EU Member States, except Denmark, which is not

bound by the Directive.
In June 2020, the European Commission adopted the EU strategy on victims' rights (2020-2025) to step up its efforts to ensure access to justice for all victims of crime. The strategy identifies five key priorities: (i) effective communication with victims and a safe environment for them to report crime; (ii) improving support and protection for the most vulnerable victims; (iii) facilitating victims' access to compensation; (iv) strengthening cooperation and coordination among all relevant actors; and (v) strengthening the international dimension of victims' rights.
It is noted that many EU Directives include legislation on victims' rights. These Directives supplement the VRD by providing additional rights to victims of specified crimes and they do not replace the rights or entitlements established under the VRD.

Main Changes:
This revision aims to respond to the above-mentioned specific problems by targeting a set of general and specific objectives. The general objective of this revision is to contribute to a well-functioning area of freedom, security and justice based on:

- an efficient recognition of judgments and judicial decisions in criminal matters;
- a high level of security due to improved crime reporting;
- victim-centred justice, where victims are recognised and can rely on their rights.

The specific objectives of this revision include:

- a significant improvement in victims' access to information;
- a better alignment of protection measures with victims' needs to ensure the safety of vulnerable victims;
- an improved access to specialist support for vulnerable victims;
- more effective participation in criminal proceedings for victims; and
- facilitated access to compensation from the offender in all cases, including national and cross-border cases.

PROPOSAL for a REGULATION OF THE COUNCIL AND THE EUROPEAN PARLIAMENT on the TRANSFER of CRIMINAL PROCEEDINGS
This proposed Regulation lays down rules on the transfer of criminal proceedings between Member States. It applies to all cases of transfer of proceedings in the Union from the time where a person has been identified as a suspect.
In outline, a court or public prosecutor dealing with criminal proceedings in one Member State – "the requesting State" may ask a court or prosecutor having competence in another Member State – "the requested State" – to accept the transfer of the criminal proceedings.
The Regulation confers on the requested State jurisdiction over any criminal offence to which the law of the requesting State is applicable in a number of specified situations. These are –

(a) the requested State refuses to surrender a suspect or accused present in and a national of or a resident of the requested State on the basis of Article 4 (7), point (b) of Framework Decision 2002/584/JHA;
(b) the requested State refuses to surrender a person subject to a European Arrest Warrant on the grounds of Art 6 ECHR;
(c) the effects of, or a substantial part of the damage caused by, the criminal offence occurred in the territory of the requested State;
(d) there are ongoing criminal proceedings against the person concerned in respect of other matters in the requested State and the person is a national or resident of the requested State; or
(e) there are ongoing criminal proceedings in the requested State in respect of the

same or partially the same facts and the person to be transferred is a national or resident of the requested State.

This jurisdiction may be exercised only in respect of the transfer of proceedings.

A request for transfer may only be made if the requesting authority considers that the objective of the efficient and proper administration of justice would be better served by conducting the relevant criminal proceedings in another Member State. In reaching its decision on that question the requesting authority must take into account a number of criteria, many of which reflect the grounds of jurisdiction summarised above but also include whether the suspect or accused is serving, or due to serve, a custodial sentence in the requested State and whether the majority of the alleged victims are nationals or residents of the requested State.

The suspect or accused, or the majority of the victims, may request a transfer but there is no obligation to accede to such a request.

So far as protections for the suspect or accused are concerned, he or she must have an opportunity to express an opinion orally or in writing and the requesting authority must take that opinion into account in reaching its decision. It must also give due consideration to the legitimate interests of the accused or suspect and ensure respect for their procedural rights under Union and national law. Suspects, accused persons and victims are to have the right to effective legal remedies in the requested state against a decision to accept the transfer of the criminal proceedings.

The Regulation sets out grounds upon which the requested authority must refuse the request –

(a) the conduct in question does not constitute a criminal offence under the law of the requested State;
(b) taking over the proceedings would offend against *ne bis in idem*;
(c) the suspect or accused is below the age of criminal responsibility;
(d) the proceedings would be time-barred under the law of the requested State;
(e) the criminal offence is covered by an amnesty in the requested State; or
(f) the requested State lacks jurisdiction (but such jurisdiction may be conferred by the Regulation).

The requested authority may refuse to accept the request if –

(a) it is covered by an immunity in the requested State;
(b) the requested authority considers that the transfer would not be in the interest of an efficient and proper administration of justice;
(c) the criminal offence was not committed wholly or partly in the territory of the requested State, most of the effects or a substantial part of the damage caused by the offence did not occur in that territory, and the suspect or accused is nota national or resident of that State;
(d) the certificate required by the Regulation is incomplete or manifestly incorrect.

If the request is accepted, its effects are, in brief, that the proceedings in the requesting State are suspended or discontinued (but may be revived if discontinued by the requesting State, unless the decision in the State bars further prosecution). The transferred proceedings are governed by the national law of the requested State. However, if the jurisdiction of the requested State is based solely on the Regulation, the maximum sentence cannot be more severe than that in the requesting State and the maximum in that State may also be taken into account in other cases where the offence was committed on its territory.

Unsurprisingly, the Regulation contains detailed provisions on matter such as time-limits, the forms to be used, and the establishing of a decentralised IT system.

PROPOSAL for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE

COUNCIL AMENDING DIRECTIVE (EU) 2015/413 FACILITATING CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD-SAFETY-RELATED TRAFFIC OFFENCES

REF - COM(2023) 126 final 2023/0052 (COD) 1.3.2023

Directive (EU) 2015/413 facilitates access by the authorities in one Member State to vehicle and driver records in another Member State to assist in identifying the driver of a vehicle suspected of having committed a road traffic offence listed in the Directive in the first Member State. The current list of offences consists largely of offences detected by camera or radar.

The proposed directive extends the list of offences; makes various technical changes streamlining the mechanisms for exchanging information and aligns data protections with current data protection legislation.

PROPOSAL for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the DEFINITION OF CRIMINAL OFFENCES AND PENALTIES FOR THE VIOLATION OF UNION RESTRICTIVE MEASURES

REF – COM(2022)684final2022/0398(COD)02.12.2022

The proposed Directive establishes minimum rules concerning the definition of criminal offences and penalties with regard to the violation of Union restrictive measures such as asset freezing, travel bans, import prohibitions etc adopted on the basis of Art 29 TEU or Art 215 TFEU. The scope of those measures is set out in more detail in Art 2(1) of the draft directive as covering –

- measures concerning the freezing of funds and economic resources;
- prohibitions on making funds and economic resources available;
- prohibitions on entry into, or transit through, the territory of a Member State
- sectoral economic and financial measures; and
- arms embargoes.

Member States are required to ensure that a violation of a Union restrictive measure constitutes a criminal offence. Conduct constituting a violation, where committed intentionally, is specified as –

(a) making funds or economic resources available to, or for the benefit of, a designated person, entity or body in violation of a prohibition by a Union restrictive measure;

(b) failing to freeze without undue delay funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation to do so imposed by a Union restrictive measure;

(c) enabling the entry of designated natural persons into the territory of a Member State or their transit through the territory of a Member State in violation of a prohibition by a Union restrictive measure;

(d) entering into transactions with a third State, bodies of a third State, entities and bodies owned or controlled by a third State or bodies of a third State, which are prohibited or restricted by Union restrictive measures;

(e) trading in goods or services whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted by Union restrictive measures, as well as providing brokering services or other services relating to those goods and services;

(f) providing financial activities which are prohibited or restricted by Union restrictive measures, such as financing and financial assistance, providing investment and investment services, issuing transferrable securities and money market instruments, accepting deposits, providing specialised financial messaging services, dealing in banknotes, provide credit rating services, providing crypto assets and wallets;

(g) providing other services which are prohibited or restricted by Union restrictive measures, such as legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, public relations services, broadcasting, architectural and engineering services;

(h) circumventing a Union restrictive measure by:

(i) concealing funds or economic resources owned, held, or controlled by a designated person, entity or body, which should be frozen in accordance with a Union restrictive measure, by the transfer of those funds, or economic resources to a third party;

(ii) concealing the fact that a person, entity or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources, through the provision of false or incomplete information;

(iii) failing by a designated person, entity or body to comply with an obligation under Union restrictive measures to report funds or economic resources within the jurisdiction of a Member State, belonging to, owned, held, or controlled by them;

(iv) failing to comply with an obligation under Union restrictive measures to provide without undue delay information on funds or economic resources frozen or information held about funds and economic resources within the territory of the Member States, belonging to, owned, held or controlled by designated persons, entities or bodies and which have not been frozen, to the competent administrative authorities;

(v) failing to cooperate with the competent administrative authorities in any verification of information under points (iii) and (iv), upon their reasoned request;

(i) breaching or failing to fulfil conditions under authorizations granted by competent authorities to conduct activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure.

Conduct under points (a) to (g) shall also constitute an offence if committed through “serious negligence”. Legal professional confidentiality or secrecy is preserved, as is the right against self-incrimination.

In the case of natural persons, Member States must provide for a maximum penalty of imprisonment of at least one year where the funds or economic resources involved are less than € 100 000 and of at least five years where the amount involved is over that sum. They shall also ensure that additional penalties such as a fine may be imposed. Member States are also required to ensure that legal persons may be held liable for offences and are subject to appropriate fines or other penalties.

The proposed directive also contains various provisions on taking measures to establish jurisdiction in certain cases; on limitation periods; and on cooperation between authorities within a Member State and between Member States.

PROPOSAL for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on COMBATING CORRUPTION, REPLACING COUNCIL FRAMEWORK DECISION 2003/568/JHA AND THE CONVENTION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION AND AMENDING DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

REF – COM(2023)234final(COD)03.05.2023

The broad aim of this proposal is to consolidate, expand upon and update existing provisions on combatting corruption. The 1997 Convention ((OJ C 195, 25.6.1997, p. 2) is concerned with corruption in the public sector, including EU officials; the Framework Decision is directed towards corruption in the private sector and requires Member states to make bribery and similar conduct criminal. The proposed directive brings both together in a single instrument and amends and aligns provisions on matters such as minimum levels of maximum sentences and limitation periods for prosecution of offences. It also imposes obligations on Member States to take steps to prevent fraud. Directive (EU) 2017/1371 on fighting fraud against the Union's financial interests is amended to align its provisions on time-limits and penalties with those in the proposed Directive.

Tara Burns and Ronald Mackay

Annex 2

126. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of instrumentalisation in the field of migration and asylum
COM(2021)890 final 2021/0427 (COD) 14.12.2021

Reasons for and objectives of the proposal: to give a response to instrumentalisation situation from the migration, asylum and return perspective of migrants at the EU's external borders.

Objective: to support the Member State facing a situation of instrumentalisation of migrants by

- setting up a specific emergency migration and asylum management procedure
- where necessary, providing for support and solidarity measures to manage in an orderly, humane and dignified manner the arrival of persons having been instrumentalised by a third country, with full respect for fundamental rights

The proposal preserves the right to access the EU's territory for the purpose of seeking asylum and access to the international protection procedure itself. Furthermore, the safeguards applicable under EU law continue to apply to ensure the protection of vulnerable persons, including children. These measures are accompanied by a series of further safeguards.

This proposal sets up:

(g) an emergency migration and asylum management procedure at the external borders in situations of instrumentalization of third-country nationals and stateless persons.

The main features of this procedure are as follows:

- possibility for the Member State concerned to register an asylum application and offer the possibility for its effective lodging only at specific registration points located in the proximity of the border including the border crossing points designated for that purpose
- possibility to extend the registration deadline to up to four weeks
- possibility to apply the asylum border procedure to all applications and possibility to extend its duration (the measures should support the Member State facing an instrumentalisation of migrants in preventing the entry of those who do not fulfil entry conditions, while protecting fundamental rights)

(h) support and solidarity measures
(in this situations there is a need for all Member States to quickly react and rally support to the Member State concerned: is included the possibility to resort to all the measures that could address the instrumentalisation of migrants. For example, a possible support and solidarity measures could support return operations)

(i) a specific procedure to authorise the application of the emergency migration and asylum procedure
(the Member State facing instrumentalisation of migrants and intending to apply the emergency migration and asylum management procedure must request the Commission the application of the derogations they aim to use, as well as any support and solidarity measures. The Commission will prepare a proposal for a Council Implementing Decision setting out the derogations that can be applied. The Council Implementing Decision will authorise the derogations to be applied and set out their temporal application)

128. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union
COM(2021)753 final 2021/0387(COD) 23.11.2021

Reasons for and objectives of the proposal: to adopt legislation (that should be applicable across

the Union) targeted at transport operators that facilitate or engage in the trafficking in persons, or the smuggling of migrants in relation to illegal entry into the Union territory

The measures that should be addressed against transport operators that engage in the aforementioned activities should include, in particular, the prevention of any further expansion or the limitation of current transport operations, the suspension of licences or authorisations granted under Union law, the suspension of the right to fly over the Union, transit through the territory of the Union or call into Union ports, the suspension of the rights to refuel or carry out maintenance within the Union or the suspension of rights to operate to, from and within the Union.

129. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
COM(2020)614 final 23.09.2020

This proposal amending the 2016 proposal for a recast Eurodac Regulation:

- puts in place a clear and consistent link between specific individuals and the procedures they are subjected to in order to better assist with the control of irregular migration and the detection of unauthorised movements
- supports the implementation of the new solidarity mechanism and contains consequential amendments that will allow Eurodac to function within the interoperability framework between EU information system

Objectives of the proposal:

- to enlarge the scope of Eurodac
  (e) adding new categories of persons for whom data should be stored
  (f) allowing its use to identify irregular migrants
  (g) lowering the age for fingerprinting
  (h) allowing the collection of identity information together with the biometric data
  (i) extending the data storage period
- to transform Eurodac into a common European database to support EU policies on asylum, resettlement and irregular migration

130. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum
COM(2020)613 final 2020/0277 (COD) 23.09.2020

This legislative proposal is also part of the general aims pursued by the New Pact on Migration and Asylum.
This proposal addresses both situations of crisis and situations of force majeure in the field of asylum and migration management within the Union.

Definitions of crisis (art. 1)
The "situation of crisis" covers exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional, or an imminent risk of such exceptional situations of mass influx.
Such situations are covered by the proposal only if it is demonstrated that they would have serious consequences for the functioning the Common European Asylum System or the Common Framework as set out in the proposed Regulation on Asylum and Migration Management.

The proposal establishes specific rules on the compulsory application, in a situation of crisis, of the solidarity mechanism set out in the Regulation on Asylum and Migration Management.

Key points:

1. Are provided compulsory measures in the form of relocation or return sponsorship.

   In particular, this mechanism provides for a wider scope for relocation and reinforces the possibility for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship (Member States providing return sponsorship commit to returning irregular migrants on behalf of another Member State, carrying out all the activities necessary for this purpose directly from the territory of the benefitting Member State).
   The scope for compulsory relocation is extended to include all applicants, be they subject to the border procedure or not, irregular migrants, and persons granted immediate protection.

2. Are established shortened timeframes for triggering the compulsory solidarity mechanism procedure
   (For example: transfer of illegally staying third-country nationals or stateless persons subject to return sponsorship, from the Member State in crisis to the sponsoring Member State, would intervene if return has not been successfully completed within four months, i.e. following a period shorter than the one set in the Regulation on Asylum and Migration Management that is eight months).

3. With respect to the asylum and return procedures in a situation of crisis:

- (asylum procedures) the border procedure may be applied by Member States for an additional period of eight weeks, extending the period of twelve weeks provided for by the Asylum Procedures Regulation;
- (return procedures) the derogatory provisions extend the maximum duration of the border procedure for carrying out return, *including detention*, by an additional period of 8 weeks and introduces new specific cases in addition to the ones set in the proposal for a recast Return Directive, in which the existence of a risk of absconding in individual cases *can be presumed, unless proven otherwise*.

4. Member States can delay the registration of applications for international protection up to four weeks.

131. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817
COM(2020)612 final 2020/0278 (COD) 23.09.2020

This proposal puts in place a pre-entry screening that should be applicable to all third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation.

The screening should consist in particular in:

- a preliminary health and vulnerability check;
- an identity check against information in European databases;
- registration of biometric data (i.e. fingerprint data and facial image data) in the appropriate databases, to the extent it has not occurred yet;
- a security check through a query of relevant national and Union databases, in particular the Schengen Information System (SIS), to verify that the person does not constitute a threat to internal security.

The objective is to ensure

1) that the identity of the persons but also any health and security risks are quickly established;
2) that all third-country nationals who are present at the external border without fulfilling entry conditions or after disembarkation following a search and rescue operation are swiftly

referred towards the applicable procedure.

132. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
COM(2020)611 final 23.09.2020

Objectives: to establish a common asylum procedure, which replaces the various divergent procedures in the Member States and which is applicable to all applications made in the Member States and to put in place simpler, clearer and shorter procedures to ensure an effective and high-quality decision-making process.

Aim: to make targeted amendments to the 2016 Commission proposal for an Asylum Procedure Regulation to put in place (together with the proposal for a Regulation introducing a screening and the proposal amending the Return Directive) a seamless link between all stages of the migration process, from arrival to processing of asylum requests and granting of international protection, or, where applicable, the return of those not in need of international protection.

The proposal establishes:
- a new pre-entry phase consisting of: a screening in; a more developed accelerated procedure; a border procedure for asylum and return
- an asylum border procedure that should be applied to asylum claims that are clearly abusive, or where the applicant poses a threat to security or is unlikely to be in need of international protection due to their nationality's recognition rate
- that Member States can choose to use an asylum border procedure on the basis of the admissibility of the application or on the merits of the application, where the application should be examined in an accelerated procedure
- streamlining asylum and return procedures including appeals
- stronger rules for when Member States can authorise applicants to remain in the case of subsequent applications (in order to discourage abusive or last minute subsequent applications).

133. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]
COM(2020)610 final 2020/0279 (COD) 23.09.2020

This proposal for a new Regulation on Asylum and Migration Management:
- aims at replacing the current Dublin Regulation *
- provides for a new solidarity mechanism that is flexible and responsive to the different situations presented by the different migratory challenges faced by the Member States, by setting solidarity measures from among which Member States can choose to contribute (the solidarity measures will also include new possibilities for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship)
- includes provisions to strengthen the return of irregular migrants
- relaunches the reform of the Common European Asylum System (CEAS)

* It is important to notice that this proposal repeals and replaces Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ("the Dublin III Regulation").
On this way, the proposal aims to enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining an application for international protection.
In particular, it would limit the cessation of responsibility clauses as well as the possibilities for shift of responsibility between Member States due to the actions of the applicant, and significantly shorten

the time limits for sending requests and receiving replies, so as to ensure that applicants will have a quicker determination of the Member State responsible and hence a quicker access to the procedures for granting international protection.

It is important also that the proposal retains the current criteria for determining responsibility in the field of asylum, but proposes targeted changes, notably to strengthen family unity by extending the definition of family member, clarifying a Member State's responsibility following search and rescue operations, and introducing a new criterion relating to the possession of educational diplomas.

134. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals (recast)
COM(2018)634 final 2018/0329 (COD) 12.09.2018

At EU level, the return policy is regulated by Directive 2008/115/EC of the European Parliament and of the Council (the "Return Directive"), which lays down common standards and procedures to be applied in Member States for returning illegally staying third-country nationals in full respect of the principle of non-refoulement. But, since e the entry into force of the Return Directive in 2010, the migratory pressure on the Member States and the Union as a whole has increased.
An urgent adoption of a targeted recast of the Return Directive is needed to achieve a more effective and coherent European return policy, in line with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union.

It is important to notice that the proposed targeted changes do not change the scope of the Directive nor do they affect the protection of the rights of the migrants that currently exist, including with regard to the best interests of the child, family life and the state of health. The Directive continues to ensure the full respect of the fundamental rights of the migrants, in particular the principle of *non refoulement*.

This recast should:
- establish a new border procedure for the rapid return of applicants for international protections whose application was rejected following an asylum border procedure;
- provide clearer and more effective rules on the issuing of return decisions and on the appeals against such decisions;
- provide a clear framework of cooperation between irregular migrants and competent national authorities, streamline the rules on the granting of a period for voluntary departure and establish a framework for the granting of financial, material and inkind assistance to irregular migrants willing to return voluntarily;
- establish more efficient instruments to manage and facilitate the administrative processing of returns, the exchange of information among competent authorities and the execution of return in order to dissuade illegal migration;
- ensure coherence and synergies with asylum procedures; – ensure a more effective use of detention to support the enforcement of returns.

135. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council
COM(2016)468 final 2016/0225 (COD) 13.07.2016

The proposal aims to:
- provide a common approach to safe and legal arrival in the Union for third-country nationals in need of international protection, thus also protecting them from exploitation by migrant smuggling networks
- help reduce the pressure of spontaneous arrivals on the Member States' asylum systems
- enable the sharing of the protection responsibility with countries to which or within which a large number of persons in need of international protection has been displaced and help alleviate the pressure on those countries
- provide a common Union contribution to global resettlement efforts.

The proposal establishes a Union Resettlement Framework for the annual resettlement of a certain number of third-country nationals or stateless persons to the territory of the Member States.
It aims to enable the Union to provide for legal and safe arrival of third-country nationals or stateless persons in need of international protection, contribute to the reduction of the risk of a large-scale irregular inflow of third-country nationals or stateless persons in need of international protection to the territory of the Member States.

Key points:
- the establishment of common Union rules on admission of third-country nationals through resettlement, including the rules on eligibility criteria and exclusion grounds
- the standard procedures governing all stages of the resettlement process
- the status to be accorded to resettled persons
- the decision making procedures to ensure uniform conditions for the implementation of the Framework
- the financial support to the Member States resettlement efforts.

136. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of thirdcountry nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents
COM(2016)466 final 2016/0223 (COD) 13.07.2016

The Qualification Directive sets out criteria for applicants to qualify for asylum and subsidiarity protection, and rights for persons who benefit from these statuses.
But there are a lot of differences in recognition rates and in the level of rights in the national asylum systems attached to the protection status: so the need for a more harmonised approach.

It is proposed to replace the current Directive with a Regulation (that is direct applicable and by this way it could be possible to contribute to further harmonisations and to ensure coherence with the proposed Asylum Procedures Regulation).

The proposal aims at:
1. Further harmonisation of the common criteria for recognising applicants for international protection by
- providing for more prescriptive rules;
- replacing the current optional ones as regards the duty of the applicant to substantiate the application and the assessment of internal protection alternatives
2. more convergence of the asylum decisions across the EU by obliging determining authorities of the Member States, when assessing applications, to take into account the common analysis and guidance on the situation in the country of origin
3. further harmonising the rights of beneficiaries of international protection, in particular as regards the validity and format of the residence permits and by clarifying the scope of the rights and obligations of beneficiaries, in particular as regards social security and social assistance
4. addressing secondary movements of beneficiaries of international protection, by clarifying the obligations of a beneficiary to stay in the Member State which has granted protection.

137. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast)
COM(2016)465 final 2016/0222 (COD) 13.07.2016

The Reception Conditions Directive provides for minimum harmonisation of standards for the reception of applicants for international protection in the EU. Reception conditions however continue to vary considerably between Member States both in terms of how the reception system is organised

and in terms of the standards provided to applicants.

This proposal aims to:

1. further harmonise reception conditions in the EU
   - to ensure that the treatment of applicants is dignified across the EU, in accordance with fundamental rights and rights of the child, *including in Member States where there have been persistent problems in ensuring such dignified treatment*;
   - to contribute to a fairer distribution of applicants between the Member States
2. reduce incentives for secondary movements
   (it could be underline that to ensure an orderly management of migration flows, it is proposed the *introduction of more targeted restrictions to the applicants' freedom of movement* and strict consequences when such restrictions are not complied)
3. increase applicants' self-reliance and possible integration prospects
   (*except for those whose applications are likely to be rejected*, applicants should, as quickly as possible, be allowed to work and earn their own money, even whilst their applications are being processed).

Some brief considerations

Attention must be drawn to the fact that an overly rejectionist migration policy paradoxically risks increasing cases of human trafficking and smuggling, irregular stay on national territories and, therefore, illegality.

An effective migration policy should also take into account the possible impact of certain regulatory choices on the judicial system and thus on the work of judges. If migration policies are very rigid and difficult to reconcile in practice with the protection of fundamental human rights, this can lead to enormous legal disputes with necessarily long delays in resolution, especially in Member States close to external borders (think of countries bordering the Mediterranean).

It is essential that any legislative proposal is accompanied by a guarantee of respect for fundamental principles and human rights and that this guarantee is then effective in practice. This is especially the case in crisis situations due to the mass arrival of migrants in a Member State.

For example, the risk of accelerated procedures, especially for the return of migrants, is that there is a lack of investigation and justification of the measure from the point of view of the need to protect the individual migrant.

Detention pending return proceedings must also be conceived in terms of guaranteeing and protecting human rights without turning into forms of "detention without crime".

Certainly, there is a need to harmonise procedures in their application in individual states, but this cannot lead to excessive restrictions on a person's rights (such as freedom of movement and freedom of movement) and cannot result in a passive and/or indifferent attitude in cases where the migrant finds himself seeking protection in a Member State that does not guarantee adequate and dignified treatment.

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46. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2018/1139 as regards the capacity of the European Union Aviation Safety Agency to act as Performance Review Body of the Single European Sky

COM(2020)577 final 2020/0264 (COD) 22.09.2020

The Single European Sky (SES) initiative aims to improve the overall efficiency of the way in which European airspace is organised and managed through a reform of the industry providing air navigation services (ANS).

One important element consists in establishing a permanent Performance Review Body (PRB) function, to be exercised by the European Union Aviation Safety Agency.

The principal objective of this proposal is to ensure that the PRB functions are carried out with the

necessary independence and expertise and with the required resources.

Monica Mastrandrea

Annex 3

EAJ review of proposal no 18 and 109 from the 2024 European Commission proposals

For Ways to Brussels working group, Warsaw 2024
and for presentation to IAJ Cape Town 2024

Proposal 18.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive)

In March 2022 the Commission proposed to update Union consumer law to ensure that consumers are protected and to empower them to contribute actively to the green transition

The "green transition" is designed to ensure that consumers have comprehensive and honest communication concerning environmental issues around products and services, and is designed to combat the increasing prevalence of "greenwashing."

The commission is keen to ensure transparency of information to consumers to enable more informed decision making around issues that consumers face which impacts their individual and collective carbon footprint. To enable this to be effective, the commission envisages "solid and harmonised calculation methods."

The commission notes that although consumers on the whole wish to make more sustainable choices in their purchasing, in packaging as well as in product, there is a mistrust of information and of motive of the producers.

In order to establish a more trusted code for consumers, a definition of an environmental claim is envisaged to be "*any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time*"

The process of labelling, and the need for consistency across the Union has been emphasized and is central to this proposal.

The proposal mentions throughout the need for consistency of approach.

There is a suggestion that organisations with less than 10 employees may be exempt from the requirement of information and the analysis of environmental impact. This is an interesting exemption, and one which may warrant some inspection, as the implication is that the adoption of proposal 18 will be expensive in time and money, and possibly complexity, for organisations to ensure compliance.

For the purposes of the Ways to Brussels group and the EAJ generally, this is an important proposal. It carries with it multiple areas of interest to the judiciary across political and geographical Europe. There are issues of international compliance, of public and private production methods in addition to information passed to consumers at the point of sale.

There is, in the view of this author, a significant amount of work which could be undertaken with regards to this proposal going forwards, in terms of drafting and also of public confidence in the legal framework. This is a high profile area in which most of the public have an interest and about which most have an opinion. It crosses borders commercially and personally, and my view is that this is an area which will merit close monitoring by the EAJ and indeed the IAJ. I have in mind the speech of the President of the IAJ at the conferences in both Athens and Taiwan concerning the invitations to the Presidential Committee to attend international events and conferences on environmental law to ensure that practices are not corrupted by personal interest. This proposal seems to me to encapsulate much of these concerns, on a large and small scale, given that it is consumer based law, and it has implications also for internet based sales and productivity as well as physical.

Proposal 109

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of

passengers and their baggage by air

The current legislative framework concerning this area of the law dates back 20 years, a period of time which has seen many changes in how citizens travel, the increase in the low cost airlines and consumer expectations. The increase in number of flights, and the necessity which the providers now operate under has resulted in a different set of expectations than in 2004.

The 2004 regulation has been the subject of case law which has changed the interpretation of the rules as to when compensation is payable to the traveller:

In case C-344/04 (IATA), the ECJ confirmed its full compatibility with the Montreal Convention and the complementarities between the two legal instruments. In case C-549/07 Wallentin-Herrman, the Court clarified when a technical problem in an aircraft should not be regarded as an 'extraordinary circumstance'. In the Sturgeon case (Joined Cases C-402/07 and C-432/07), the ECJ held that a long delay of at least three hours at arrival entitles passengers to compensation.

The new proposal puts forwards some amended or revised definitions with a view to making the legislative framework fit for purpose in the current climate. It notes that there is limited capacity for individual member states to operate within a vacuum and stresses that it is not only desirable but necessary to adopt an EU wide approach to ensure consistency for passengers travelling.

Much of this proposal is concerned with definitions which need to be tightened up, from what constitutes a "flight," to definitions of baggage allowances, mobility equipment, delays on the tarmac and before a flight has boarded amongst many others. Perhaps the most significant is,

In order to increase legal certainty for air carriers and passengers, a more precise definition of the concept of "extraordinary circumstances" is needed, which takes into account the judgement of the European Court of Justice in the case C-549/07 (Wallentin-Hermann)

The proposal is designed to create certainty for passengers, but also to impose on the carriers and those who act as agents for the carriers more obligation to inform passengers of their rights and responsibilities when travelling, the former of which, it is noted in the proposal, is often honoured more in the breach.

Whilst this proposal is of general interest, in my opinion for EAJ and Ways to Brussels purposes, this is not one which would merit much time or scrutiny. It does not appear to me to affect our jobs as judges in the civil or criminal courts to any great degree, and I would suggest it is noted rather than an amount of time spent analysing.

Nicola Shaw

Annex 4

Summary of proposals no. 142 and no. 143

The two proposals are parallel proposals.
Proposal nr. 688 proposes to establish binding standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, including self-employment.
The aim of proposal no. 689 is to establish binding standards for equality bodies in the field of:
(a) equal treatment between persons irrespective of their racial or ethnic origin,
(b) equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, and
(c) equal treatment between women and men in matters of social security and in the access to and supply of goods and services.
The two proposals aim at creating a strengthened framework for equality bodies in the European Union to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the equality directives: The Employment Equality Directive (2000/78/EC), the Gender Equality Directive in the field of social security (79/7/EEC), the Racial Equality Directive (2000/43/EC), the Gender Equality Directive in the field of goods and services (2004/113/EC), the Gender Equality Directive in the field of employment (2006/54/EC), and the Gender Equality Directive in the field of self-employment (2010/41/EU)).
Both proposals provide for the designation of one or more equality bodies by Member States, to tackle discrimination under the scope of the equality directives

Both proposals set out minimum standards and allow Member States to set higher standards.
The goal of Proposal no. 688 is to set out standards on equality bodies, addressing their mandate, tasks, independence, structure, powers, accessibility and resources, to ensure that they can, alongside other actors:
(a) effectively contribute to the enforcement of Directive 2006/54/EC, including the Work-Life Balance Directive, and Directive 2010/41/EU;
(b) effectively assist victims of discrimination to access justice;
(c) promote equal treatment and prevent discrimination.
This proposal builds on the substance of the existing provisions on equality bodies contained in Directives 2006/54/EC and 2010/41/EU to replace them with a strengthened and more detailed set of rules. The new rules incorporate all the minimum obligations that were provided for by the two directives.
The goal of Proposal no. 689 is is to set out standards on equality bodies, addressing their mandate, tasks, independence, structure, powers, accessibility and resources, to ensure that they can, alongside other actors:

(a) effectively contribute to the enforcement of Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC;

(b) effectively assist victims of discrimination to access justice;

(c) promote equal treatment and prevent discrimination.

The proposal builds on the substance of the existing provisions on equality bodies contained in Directives 2000/43/EC and 2004/113/EC to replace them with a strengthened and more detailed set of rules. The new rules incorporate all the minimum obligations that were provided for by the two Directives.
This proposal strengthens protection in the field of equal treatment and non-discrimination by extending the mandate of equality bodies to cover the grounds and fields of Directives 79/7/EEC and 2000/78/EC.
The proposals contain almost identical provisions of which the following are of interest:
Article 3 establishes a general obligation of independence for equality bodies.

Article 6 specifies how equality bodies are to assist victims upon receiving their complants, and

article 9
grants litigation powers to the equality bodies.

The right to act in court proceedings shall include:

1) the right of the equality body to act as a party in proceedings on the enforcement or judicial review of a decision by the body;
2) the right of the equality body to submit observations to the court as amicus curiae;
3) the right of the equality body to initiate or participate in proceedings on behalf or in support of one or several victims; in this case, the approval of the victims shall be necessary.

Member States shall also ensure that the equality body can initiate court proceedings in its own name, in particular in order to address structural and systematic discrimination.

Article 7 requires Member States to provide for the possibility of an amicable resolution of disputes, led by the equality body itself or another existing dedicated entity, upon agreement of all parties to engage in such a process. It leaves to the Member States to determine the modalities of the process, according to national law. It states that engaging in such a process shall not prevent the parties from exercising their right of access to court.

Article 10 provides that the procedures laid down in Article 6, 7 and 9 must be framed by appropriate procedural safeguards for natural and legal persons involved, as regards the rights of defence, confidentiality of witnesses and whistle-blowers – and as far as possible complainants – and judicial review. Member States are responsible for defining such safeguards in accordance with national rules.

Mette Lyster Knudsen

Annex 5

ARTIFICIAL INTELIGENCE

Proposal for a REGULATION of the European Parliament and of the Council laying down harmonised rules on artifical inteligence (artificial intelligence act) and amending certain Union legislative acts (COM(2021)206 final) has the aim to establish a common regulatory and legal framework for AI.

Its scope would encompass all types of AI in a broad range of sectors (exceptions include AI systems used solely for military, national security, research, and non-professional purpose) As a piece of product regulation, it would not confer rights on individuals, but would regulate the providers of AI systems, and entities using AI in a professional context.

The AI Act was revised following the rise in popularity of generative AI systems such as ChatGPT, whose general-purpose capabilities present different stakes and did not fit the defined framework. More restrictive regulations are planned for powerful generative AI systems with systemic impact.

The proposed EU Artificial Intelligence Act aims to classify and regulate AI applications based on their risk to cause harm. This classification includes four categories of risk ("unacceptable", "high", "limited" and "minimal"), plus one additional category for general-purpose AI. Applications deemed to represent unacceptable risks are banned. High-risk ones must comply to security, transparency and quality obligations and undergo conformity assessments. Limited-risk AI applications only have transparency obligations, and those representing minimal risks are not regulated. For general-purpose AI, transparency requirements are imposed, with additional and thorough evaluations when representing particularly high risks.

The Act further proposes the introduction of a European Artificial Intelligence Board to promote national cooperation and ensure compliance with the regulation.

The AI Act is expected to have a large impact on the economy. Like the European Union's General Data Protection Regulation, it can apply extraterritorially to providers from outside the EU, if they have products within the EU.

The finalized draft of the AI Act, as per the European Parliament Legislative Resolution of 13 March 2024, includes the establishment of various new institutions in Article 64 and the following articles. These institutions are tasked with implementing and enforcing the AI Act. The approach is characterized by a multidimensional combination of centralized and decentralized, as well as public and private enforcement aspects, due to the interaction of various institutions and actors at both EU and national levels.

The following new institutions will be established: *AI Office, European Artificial Intelligence Board, Advisory Forum and Scientific Panel of Independent Experts.*

While the establishment of new institutions is planned at the EU level, Member States will have to designate "national competent authorities". These authorities will be responsible for ensuring the application and implementation of the AI Act, and for conducting "market surveillance". They will verify that AI systems comply with the regulations, notably by checking the proper performance of conformity assessments and by appointing third-parties to carry out external conformity *assessments.*

The European Parliament adopted the Artificial Intelligence Act on 13 March 2024.

Proposal for a DIRECTIVE of the Europaean Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive – COM(2022)496 final)

This proposal is part of a package of measures to support the deployment of artificial intelligence in Europe by promoting excellence and trust, and is the third document following the European Parliament Resolution 2022 on Artificial Intelligence in the Digital Age and the Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence or in short, the Artificial Intelligence Act. The aim of the proposal is to promote the deployment of trusted

artificial intelligence in order to take full advantage of its benefits for the internal market. To this end, it ensures that victims who have been harmed by the use of artificial intelligence receive the same protection as victims who have been harmed by the use of products in general. It also reduces legal uncertainty for companies developing or using AI regarding their potential exposure to liability and prevents the emergence of fragmented adaptations of national AI civil liability rules. The legal basis of this proposal is Article 114 of the Treaty on the Functioning of the European Union, which stipulates the adoption of measures to ensure the establishment and functioning of the internal market. The purpose of this proposal is to eliminate, in particular, legal uncertainty and legal fragmentation, which hinder the development of the internal market and thus also significantly hinder cross-border trade in products and services enabled by artificial intelligence.

The subject of regulation and the scope of application of this directive are non-contractual civil law compensation claims for damage caused by an artificial intelligence system, when such claims are brought within the framework of arrangements based on culpable liability. However, the Directive does not affect Union or national rules that determine which party bears the burden of proof, what degree of certainty is required regarding the standard of proof or how guilt is defined. This Directive shall not apply in relation to criminal liability, but may apply in relation to State liability. However, it will only be used for claims filed after its entry into force and not retroactively. The main purposes of the regulation of this directive are the disclosure of evidence and the presumption of causation in the event of guilt.

The purpose of this directive is to provide persons seeking compensation for damage caused by high-risk artificial intelligence systems with effective means of identifying potentially responsible persons and providing adequate evidence for the claim. At the same time, the purpose of these means is to exclude misidentified potential defendants, save time and costs for the parties involved, and reduce the number of cases in the courts. The directive provides that a court may order the disclosure of relevant evidence of specific high-risk artificial intelligence systems suspected of causing harm. The claimant may only request disclosure of evidence from non-defendant providers or users if all reasonable attempts to collect evidence from the defendant have been unsuccessful. Based on this directive, the court can also order the securing of such evidence. A court may order disclosure of evidence only to the extent necessary to substantiate the claims, as the information could be key evidence to the injured party's claim in the case of damages involving artificial intelligence systems. The Regulation specifically highlights the principle of proportionality in the disclosure of evidence, thereby establishing a balance between the rights of the plaintiff and, on the other hand, the protection of the legitimate interests of all concerned parties, such as business secrets or confidential information. The directive also introduces a presumption of non-fulfillment of the duty of care.

Furthermore, in relation to damage caused by artificial intelligence systems, the Directive provides an effective basis for claiming damages in relation to fault, which amounts to a breach of the duty of care under Union or national law. The fault of the defendant must be proved by the plaintiff in accordance with the applicable rules of the Union or national regulations. Nevertheless, it is appropriate to introduce a presumption of causation only when the given fault can be considered likely to have affected the relevant outputs of the artificial intelligence system or the fact that they were not generated, which can be assessed on the basis of the general circumstances of the case. The claimant must still prove that the artificial intelligence system caused the damage. Even with regard to this presumption, the defendant has the right to challenge the presumption of causation.

As different national legal systems provide for different regimes of strict liability, the Directive includes a regime of limited strict liability for certain AI-enabled technologies and a lower burden of proof under the rules on fault liability, but only for those AI systems that could affect the general public and threatened important legal rights such as the right to life, health and property.

Janja Roblek

Annex 6

Proposal for a DIRECTIVE of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (COM(2022)209 final)

Protection and care to ensure the benefits of children and their well-being are defined as rights in the United Nations Convention on the Rights of the Child and Article 20/2 of the Charter of Fundamental Rights of the European Union. Protecting children both offline and online is one of the Union's priorities, as at least one in five children is a victim of sexual violence in childhood. On July 24, 2020, the European Commission already adopted the EU strategy for a more effective fight against sexual abuse of children and is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU). This Regulation lays down uniform rules for dealing with the misuse of relevant information society services for child sexual abuse online in the internal market. It determines in particular:
- the obligations of providers of relevant information society services to minimize the risk of abuse of their services for the sexual abuse of children online,
- the obligation of providers of hosting services and interpersonal communication services to detect and report child sexual abuse online,
- obligations of hosting service providers to remove or disable access to online child sexual abuse videos from their services,
- obligations of Internet access service providers to disable access to child sexual abuse images and
- rules on the implementation and enforcement of this Regulation, including in relation to the appointment and operation of the competent authorities of the Member States, the newly established EU Center for Combating Sexual Abuse of Children established by Article 40 of this Regulation, and cooperation and transparency.

This regulation applies to providers of relevant information society services offering such services in the Union, regardless of their main seat and does not affect the rules of Directive 2011/93 EU, Directive 2000/31/EC, Directive 2010/13EU and EU Regulations 2016 /679, 2016/680 and Regulation 2018/1725 and Directive 2002/58, EC. It repeals EU Regulation 2021/1232. The regulation defines the tasks, measures for risk reduction, risk reporting and also the obligations of software application stores, provides for the issuance of orders on the detection of risks, which can be judicial authorities or other relevant authorities appointed by each member state, defines the rules of issued orders after detection and protective measures. It foresees or determines the obligation of notification, namely to the European Union Center for the Prevention of Sexual Abuse, newly established by this Regulation, and the content of the notification. It also stipulates the obligation to remove, and if it is not voluntary, it also provides for the issuance of an order to notify the competent judicial authority of the member state or another independent authority. The order must be executed within 24 hours of receipt. Service providers have the right to appeal against such a removal order before the courts of a Member State. It further foresees the obligation to block access to certain online content again by issuing orders, as long as the provider does not block it independently. In addition, Member States or authorities must report to the newly established EU Center on access blocking orders issued. The regulation also defines the right of victims to be informed, to help and support for removal and to preserve information. It is also important that the providers of relevant information society services must establish a single point of contact that enables direct electronic communication with the coordination authorities and other competent authorities of the EU member states and with the EU Center for the application of this Regulation.

Within two months of the entry into force of the regulation, member states must appoint one or more authorities responsible for the application and enforcement of this regulation and define their tasks and powers, both investigative and executive. The coordination authorities of the member states shall report to the EU Center for the enforcement of this order immediately and through the system established by this Regulation all the necessary information for action, emphasizes the importance of joint investigation and cooperation and the exchange of information between the coordination authorities of the member states and the EU Center. It also specifies in detail the principles of the newly established Center for the Prevention of Sexual Abuse of Children and the Fight Against It,

both the organizational and financial elements of this newly established body.

Janja Roblek