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To assist with Eurojargon terms, please go to the Europa website plain language guide: http://europa.eu/abc/eurojargon/index_en.htm

Part I BREXIT - NEWS AND VIEWS

Article 50 "Flextension" agreed

On the night of 10 April, the European Council adopted a Decision granting the UK a second extension to the Article 50 notice period, which HMG accepted. https://www.consilium.europa.eu/media/39043/10-euco-art50-decision-en.pdf

By way of rapid overview, the extension has the potential to run to 31 October, but can cease at an earlier date if the UK ratifies the Withdrawal Agreement (for links to which please see *Brussels News 145 or 146*, and for a set of 60 EU slides that give a thorough overview of its contents, go to: https://ec.europa.eu/commission/sites/beta-political/files/the_withdrawal_agreement_explained.pdf). Likewise, were the UK unliterally to revoke the Article 50 notification in the interim (its right to do so having been confirmed by the ECJ in its Wightman judgment (http://curia.europa.eu/juris/liste.jsf?num=C-621/18 and see again *BN 144 & 5*), then the October deadline would cease to have meaning in this connection, though the world's witches would continue to honour the date.

The other eventuality expressly allowed for in the European Council Decision which could affect Brexit date relates to UK participation in the upcoming EP elections. By paragraph 10 and Article 2 "If the United Kingdom is still a Member State on 23-26 May 2019, *and* if it has not ratified the Withdrawal Agreement by 22 May 2019, it will be under an obligation to hold elections to the European Parliament in accordance with Union law. In the event that those elections do not take place in the United Kingdom, the extension should cease on 31 May 2019".

So, absent ratification before 22 May, the UK *must* take part in the EP elections or risk a no-deal Brexit on 31 May. Formal steps were already in train to comply with this anyway, but should they not proceed, an early, bumpy departure is awaiting.

Were the WA to be approved on the UK side before the summer recess (late July) then the EP has confirmed that it will call an immediate extraordinary session, in order to complete the formal EU ratification in compliance with Article 50(2) TEU.

The UK perspective

For the sake of completeness, it is worth noting that whilst the operational Brexit dates *under EU law* are now, following the above agreement, respectively 31 May (if no UK ratification of withdrawal agreement and /or no UK EP elections) or 31 October otherwise, it would in theory be open to the UK Parliament to vote at any time after 22 May (the deadline fixed by the EU Withdrawal Act 2019 recently adopted by Parliament) to exit on a no deal basis. Given the lack of appetite for such a course manifested by Parliament to date, that seems unlikely, but it cannot be excluded as a matter of law.

Moreover, you will be aware that a challenge to the legality of the Article 50 extension is being brought before the English Courts, which, were it successful, would mean that the UK has already left the EU on a no deal basis.

Thus, whilst on the surface it appears that a period of calm and temporary clarity has been agreed, it is unlikely to last long.

Key EU staging posts in coming months: new Commission, new budget

The European Council Decision granting the above Brexit extension contains an express reminder to the UK of its Treaty obligations, in particular that of "sincere cooperation" under Article 4 TEU. This is intended to head off the risk that the UK might try to disrupt EU plans and decision-making while in the departure lounge – à la infamous Rees Mogg tweet of a week or two back.

I have previously directed you to Professor Steven Peers' Brexit blog. In a piece delivered overnight after the European Council, he explores all of these issues in context, and as ever, it is well worth a read: http://eulawanalysis.blogspot.com/2019/04/trick-or-treaty-legal-issues-of-second.html

He concludes that there is, in practice, relatively little opportunity for the UK to disrupt or veto any serious EU decisions.

Certainly, the EP and Council are making strikingly good progress in tying up loose ends before the end of this legislature (i.e. which for the EP is effectively the end of this month, as MEPs will be concentrating on electioneering in May). You will see in the BAU section below that agreement is breaking out even on controversial files such as the Copyright Directive, in order to avoid leaving their fate to chance with a new EP and Commission taking centre stage later this year.

Over and above individual files however, the EU is especially keen to avoid a departing UK / Brexit in any way undermining two major institutional decisions it faces in the coming months: the appointment of the next Commission and its President and the adoption of the Multi-Annual Financial Framework for 2021 – 2027 (see more on that at: https://ec.europa.eu/commission/future-europe/eu-budget-future_en).

Those interested in following developments on these should note several up-coming dates:

- The Maastricht Debate 2019, - featuring candidates for the post of Commission President, will take place in the evening of 29 April. It will be live-streamed. For full details, go to: https://www.maastrichtdebate.eu/
- The EP's Conference of Presidents (bringing together the leaders of the political groups) is expected to meet on 28 May, by which time the majorities in the EP should be known. Commentators expect to have a better idea after that meeting, of whether the EP will follow through on its insistence that the next Commission President be drawn from the party holding the majority in the EP - the so-called Sptizenkandidat.
- Whatever the politics, the new Commission will take up office at the beginning of November, so after the 31 October Brexit date (as things stand). Member States do not have a veto on those appointments.
- As regards MAFF, discussions continue, but the formal European Council at which it is up for adoption is set for Spring 2020.

A lot could change in that time.

No-deal contingency planning - update

Given the prevailing uncertainty, which has abated a little in light of the European Council-granted extension, but still pervades all discussion of Brexit outcomes, all sides continue to lay the legislative ground work for a no-deal Brexit and to advise citizens, companies, professionals etc. to do likewise. *Brussels News 146* contained a lot of information on various no deal preparations. Since then, the EU has issued an at-a-glance overview of the preparations it now has in place for no deal:
http://europa.eu/rapid/press-release_IP-19-1813_en.htm
Meanwhile, the UK continues to issue no deal preparation notices on a daily basis, with significant work going on behind the scenes to put all the necessary domestic legislation in place in time, a job made a little easier now by the extension and UK Parliament dismissal of no deal at least until 22 May. For convenience, here is the link that takes you to HMG's Brexit page again: https://www.gov.uk/government/brexit

Rights of audience before the CJEU in no-deal Brexit

The General Court has been writing to (UK) lawyers currently involved in cases before it, advising them of steps they should take in order to preserve the continuity of their clients' representation in the event of a no deal Brexit.
Following the agreement to extend the Article 50 notice period (and the adoption of the EU Withdrawal Act 2019) discussed above, and assuming the UK courts do not find that the UK has already left the EU, the first possible date on which a no deal Brexit could now take place is 22 May if the UK Parliament votes for it, or 31 May, by operation of EU law, if the UK does not comply with the conditions set out in Paragraph 10 & Article 2 of the European Council Decision. Thereafter, until 31 October, so far as I can see, only a UK Parliamentary decision to leave without a deal would bring that about.
With those dates and their respective likelihoods in mind, it is worth repeating the General Court's advice, which I have discussed with its Registry:

- In the event of a no deal Brexit, as of 00h01 the following day the representation of parties to a case represented by UK practitioner(s) who

do not have rights of audience before the courts of another Member State would no longer be in order - i.e. no longer complying with Article 19 of the Court's Statutes and 51 of its Rules of Procedure.

- UK practitioners involved in cases before the Court who already hold alternative EU practising certificates are advised to lodge them with the registry as soon as possible to protect their clients' position.
- If a case is completed ahead of Brexit day, there is no difficulty. However, if any stage in the proceedings, including the delivery of judgment, is likely to post-date Brexit, the above advice stands, as even for such administrative steps, the Court's rules require that the legal representative's rights of audience be in order.
- If the UK practitioner is not possessed of an alternative EU practising certificate, the Court is advising such parties / representatives to ensure that a lawyer whose position is in order be nominated to the case.
- If and for as long as there is an agreed extension to the Article 50 notice period, the UK remains a Member State and the problem does not arise.
- If the Withdrawal Agreement as is, is ratified, we know that the terms of the transition period cover cases before the CJEU. In the event that a different deal was agreed by all sides, we might need to look at this issue again, but that is neither likely nor immediate.

The General Court's Registry could only speak for itself, but counsel involved in cases before the ECJ would be well advised to consider taking the same steps.

No deal preparations: Sample issues arising in practice areas: IP and PI

The Bar's EU Law Committee, which draws its membership from a wide range of practice areas, is attempting to monitor domestic preparations for a no-deal Brexit across these fields. This is an ongoing process, of varying complexity, depending in part on the area of practice and its exposure to EU law. By way of example of the sorts of issues we ae identifying, below is a snapshot of some observations in the fields of Intellectual Property and Personal Injury law:

IP issues on no deal include:

- EU IP rights will cease to cover the UK as at Brexit. New Statutory instruments are creating new UK rights to replace them. Ongoing litigation will go forward on the basis of the new UK rights instead of the EU rights.
- All representation by UK lawyers and trade mark attorneys before EUIPO (as well as the CJEU) also ceases then – and see rights of audience piece above.
- There is a lack of reciprocity in the SIs, e.g. re address for service.
- The UK will continue to recognise EEA-wide exhaustion of IP rights, but again, there are concerns about a lack of reciprocity.

HMG's own latest notice on the topic can be seen here: IP and Brexit: the facts

Personal Injury tort cases – problems on no deal include:

- Enforcement of continuing claims will be difficult. For example, of an award of periodical payments for future loss against an EU-based insurer.
- Enforcing UK costs orders in EU courts is likely to be difficult.
- Existing international conventions do not fill the gap.

EU commits to reciprocal visa-free short-stay (non-professional) travel

Following agreement with the EP a week earlier, on 9 April the Council adopted a regulation amending Regulation (EU) 2018/1806 by which the UK is added to the list of third countries set out in Annex II to the regulation. The effect of that is that, following Brexit, UK citizens coming to the Schengen area for a short stay (90 days in any 180 days) will be exempt from the requirement to hold a visa. The visa exemption is granted on condition of reciprocity – if the UK were to introduce a visa requirement for nationals of even one single Member State, the reciprocity mechanism provided for in Article 7 of 2018/1806 would apply. Article 7 sets out an incremental sequence of steps that could ultimately lead to the third country's loss of its EU visa exemption.

The regulation should enter into force on the day following that on which EU law ceases to apply to the UK.

Note that Article 6(3) of 2018/1806 allows Member States to provide for exceptions from the exemption as regards persons carrying out a *paid activity* during their stay. Thus, on the UK side, the Bar is examining the Home Office's offer, including as regards fly-in, fly-out service provision, since the types of arrangements that are being put in place on a bi-lateral basis with Bars of other Member States (e.g. Ireland and Belgium – see below) so as to allow practitioners to retain EU practice rights, are being granted on a reciprocal basis. If government regulation limits physical entry into the jurisdiction, that rather undermines the efficacy of any such Bar-to-Bar agreements.

For regulation 2018/1806, see: https://bit.ly/2KZVRgv

For the amending regulation as adopted, see: https://bit.ly/2UKZlYr

Call to other EU national or regional bars – Ireland and Belgium - update

The Bar is in the process of concluding, or has concluded, agreements with national or regional Bars of certain other Member States, notably Ireland and Belgium, allowing members to secure local practice rights and thus rights of audience before the CJEU. As noted above, these are all granted on a reciprocal basis. Please refer to the Bar and Law Society's websites for updates on these arrangements (though with the caveat that the Law Society's arrangements and any problems arising, may differ from those of the Bar):

https://www.barcouncil.org.uk/media-centre/brexit/

https://www.lawsociety.org.uk/support-services/brexit-and-the-legal-sector/

So far as I am aware, in relation to both Ireland and Belgium, it remains possible to apply to be called to the relevant Bar up to Brexit day and for formalities to be completed thereafter, though the advice remains that the earlier that individual practitioners explore their position and take any necessary steps to preserve it, the better.

Also of note, the Belgian law that, until last month, required full members of a Belgian bar to hold Belgian (or by dint of the primacy of EU law, EU) nationality (see *Brussels News 146* for more detail), has graciously been amended to remove that requirement, again on a reciprocal basis.

Legal opinion on need for EP elections if UK still a Member State

Events may have superceded this intervention, but having had a minor role in its development, I draw to your attention the independent legal opinion developed in late March by a high level group of practitioners, on own initiative, on the need for the UK

to hold EP elections were the Article 50 notice period to be extended: https://www.daqc.co.uk/2019/03/28/article-50-extension-and-the-european-elections/
The opinion was circulated in the corridors of power in both London and Brussels, in effect making the legal case for all possibilities to be on the table, thus facilitating full and unencumbered discussion and decisions. It was well received, but as we have seen above and elsewhere, in the event an, arguably more cautious, approach was favoured.

Part II EU BUSINESS AS USUAL

The Bar continues to engage on EU law developments that may have an impact on its clients or practice. This matters while we are still members of the EU, while transiting out, and likely thereafter, unless of course, there is a No-deal Brexit, in which case, we are in uncharted territory. For the time-being however, this appears to be off the table - though see discussion above.

Either way, informed expectation is that the parties would be around the table, agreeing areas where future cooperation was essential, within a fairly short period of the dust settling.

As noted previously, the Commission, Council and EP have been working overtime to try to clear the decks of legislative files ahead of the EP Parliamentary elections this May, which will also herald the change of Commission. Their efforts continue to bear fruit, as you will see from reports below.
I intend to produce another issue of *Brussels News* before the end of May in which I will try to sweep up other relevant files that have been finalised, not covered below.

Monitoring the implementation of EU measures into UK law
Regular readers will know that a lot of new EU secondary legislation has been adopted over the past couple of years. Much of it, in particular new directives, may yet need to be implemented into UK law. In the event of no deal, implementation stops. But in all other scenarios: the extension of the Article 50 TEU notice period / a deal with transition / a second referendum leading to remain / revocation of the Article 50 notice period – implementation of EU instruments that have recently come into force, or will come into force in that timeframe, will be required.
Given the sheer volume of work with which government departments and Parliamentary committees are currently dealing, the Bar is trying to monitor the progress and content of domestic instruments that purport to transpose key EU measures into UK law in this period. Please do contact the EU Law Committee (via my email at the end of this newsletter) if you have concerns in your practice area.

Future of Europe, May 2019
By way of reminder, a landmark European Council meeting is set to take place in Sibiu, Romania on 9 May 2019 at which Heads of State will renew Commitment to EU values

etc. See: https://ec.europa.eu/commission/future-europe_en and e.g. *Brussels News 143*. The Summit will endorse several different policy strands, fleshed out over the past couple of years. To give you a flavour of the reach and content, in mid-March the Commission published a brochure on future EU **Industrial Policy**. It contains a policy overview and presages fresh commitments in areas such as:

- Digital Single Market, including AI and robotics;
- Framework for screening of **foreign direct investment**
- **Trade Defence Instruments**
- **Public procurement** (including commitment to conclude negotiations on international instrument)
  - Planned overview of the implementation of the current framework to identify shortcomings before the end of 2019.
  - Commission will publish by mid-2019 guidance on the legal framework on participation of *foreign bidders and goods in the EU market*.
- Competition policy - looking at EU in a broader international context
  - Commission concerned about potential effects of unfair subsidies or support by third countries to companies operating on the EU internal market. Existing EU instruments deal with some of the issues, but there are gaps. To fully address these effects, the Commission *will identify before the end of 2019 how to fill existing gaps in EU law*.

See: https://bit.ly/2O4MA4v

Dates for your diary

BEG Annual Conference: Gdansk, Poland, Weekend, 26 & 27 May 2019
The EU and the UK: solidarity - past, present and future?
BEG's annual conference is always a sell-out and this year's is likely to be no exception. For full details of the conference programme and accompanying persons' programme go to: http://bareuropeangroup.org/conference/conference.html or contact Wendy Taylor at: bareuropeangroup@gmail.com

European Circuit, Annual Conference, Rome, 12 & 13 September 2019
This two-day conference will cover comparative law and procedure; examine English-speaking commercial courts in civil law countries post-Brexit and the future influence of common law within the EU after the British withdrawal. For more details, go to the Circuit website at: http://www.europeancircuit.com/events2019/

PUBLIC CONSULTATIONS

Evaluation of Environmental Crime directive 2008
The Commission recently published a roadmap (see: https://bit.ly/2DkGKHW) describing its evaluation of Directive 2008/99/EC on the protection of the environment through criminal law ("Environmental Crime Directive") https://bit.ly/2UH44uq Member States had until 2010 to implement it into national law. All have done so.

Eight years on, the Commission wants to examine the efficacy of its operation, particularly in light of the troubling rise in environmental crime and links to organised crime. To that end, it will launch an online public consultation in the next quarter. The Bar is likely to respond.

Gender Equality - online consultation, deadline 31 May 2019

The EU's Strategic engagement for gender equality 2016-2019 sets the following priorities:

- Increasing female labour market participation and equal economic independence;
- Reducing the gender pay, earnings and pension gaps;
- Promoting equality between women and men in decision-making;
- Combating gender-based violence and protecting and supporting victims;
- Promoting gender equality and women's rights across the world.

The Commission is conducting an online consultation seeking opinions on the current situation of gender equality in the EU and priorities for the next five years.
https://ec.europa.eu/info/law/better-regulation/initiatives/genderequalitybrp_en
The Bar is examining the consultation and is likely to respond.

Competition: Evaluation of the Vertical Block Exemption Regulation

Brussels News 146 contained notice of this important consultation, with a deadline for responses of 27 May 2019. The Bar will input its views, either independently, or through a joint vehicle with other competition practitioners.
https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981_en

Intellectual Property – evaluation of design protection in the EU

The Bar's Intellectual Property Bar Association (IPBA) prepared a response to this recent consultation on the Evaluation of Directive 98/71/EC on the legal protection of designs ('Design Directive') and of Regulation (EC) No 6/2002 of 12 December 2001 on the Community designs ('Community Design Regulation') (See: https://bit.ly/2rNLzDp). It was submitted as a Bar response ahead of the mid-April deadline. The response will be carried both on the Commission and the Bar Council's consultation webpage.

Cross-border road traffic offences – planned consultation

The Commission recently announced plans to amend the 2015 directive on cross-border road traffic offences (Directive (EU) 2015/413). It will conduct a public consultation on the subject in early 2020, and plans to adopt a proposal for a revised directive the following year. See further at:
https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1732201_en

CIVIL JUSTICE

Family law - revision of Brussels IIa – nearly there

I reported in some detail in *Brussels News 145* on the JHA Council agreement, reached in early December 2018, on the text of the 2016 proposal to revise the Brussels IIa Regulation (on jurisdiction, the recognition and enforcement of decisions in

matrimonial matters and the matters of parental responsibility, and on international child abduction) (Procedure reference CNS 2016/0190)
The Council General Approach (https://bit.ly/2NzyebY) was indeed endorsed by the EP in plenary on 14 March (https://bit.ly/2Piy21U).
As at the time of writing, the various elements are still in the works in Council, but I will return to this when the final text is formally adopted and made public. It's looking more likely that the UK will still be bound, as a Member State, at that moment…

Directive on insolvency, restructuring and second chance informally agreed

In *Brussels News 145 & 146* I reported on the December 2018 informal agreement between the Council and the EP on a final compromise text on the 2016 proposal for a directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures (procedure reference COD(2016)0359) For the compromise text, go to: https://bit.ly/2ED9ZXu
At the end of March, the EP in plenary comfortably adopted its resolution endorsing the agreed text. Key elements include:

- ***Early warning and access to information*** **-** Debtors should have access to one or more clear and transparent early warning tools which can detect circumstances that could give rise to a likelihood of insolvency and signal the need to act without delay.
- ***Preventive restructuring frameworks*** **-** Where there is a likelihood of insolvency, debtors will have access to a preventive restructuring framework.
- Member States may also provide that preventive restructuring frameworks are available at the request of creditors and employees' representatives, subject to the agreement of the debtor. They may limit that requirement to obtain the debtor's agreement to cases where debtors are SMEs.
- ***Facilitating negotiations on preventive restructuring plans*** **-** The amended text provides that the appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall be decided on a case-by-case basis, except in certain prescribed circumstances where Member States may require the mandatory appointment of such a practitioner in every case.
- Practitioners so appointed will, in effect, need to be members of regulated professions.
- ***Stay of individual enforcement actions*** **-** Debtors may benefit from a stay of individual enforcement actions to support the negotiations of a restructuring plan in a preventive restructuring framework. Judicial or administrative authorities can refuse to grant a stay of individual enforcement actions where such a stay is not necessary. Member States may exclude certain claims or categories of claims from the scope of the stay of individual enforcement actions in well-defined circumstances.
- ***Restructuring plans*** – the directive lays down detailed minimum content requirements.
- ***Duties of directors*** **-** Where there is a likelihood of insolvency, directors must have due regard, as a minimum, to the following: (i) the interests of creditors, equity holders and other stakeholders; (ii) the need to take steps to avoid

insolvency; and (iii) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business.

- ***Workers -*** A new article on workers' rights has been introduced stipulating that Member States should ensure that existing rights of workers under national and Union law are not affected by the process of preventive restructuring (e.g. the right to collective bargaining and the right to information and consultation).

If the outcome of the current Brexit impasse results in some permutation involving the UK continuing to apply or mirror EU law going forward, even if only over the next couple of years, then this will be one of the files on which close attention will need to be paid to how HMG implements / applies / adapts it into national law.

Collective redress - update

I reported in *Brussels News 142 – 146* on the controversy surrounding this April 2018 proposal for a Directive on representative actions for the protection of the collective interests of consumers (Procedure reference COD(2018)0089). An issue of particular interest to the legal profession is the exclusion of lawyers from being or joining "qualified entities" to whom the sole right to launch and conduct collective actions under the proposed directive is reserved.

As previously noted, the Council of the Bars and Law Societies of Europe (CCBE) has been lobbying to try to correct this and other unsatisfactory limitations in the proposal. As expected, the EP in Plenary adopted its Legal Affairs committee ("JURI") report on 26 March. The EP resolution contains some welcome changes sought by the CCBE, including the introduction of the loser pays principle, but there is no loosening of the definition of qualified entities so as to embrace lawyers or law firms. Indeed, certain fee arrangements, notably contingency fees are now expressly to be outlawed or discouraged by the Member States when implementing the directive.

Thus, the preferred outcome remains that the next phase of discussion be postponed to the next mandate – i.e. after the EP elections and under the new Commission.

See further at: https://bit.ly/2v7besx

Protection of Whistleblowers (on breaches of EU law) – nearly there

In April 2018 the Commission tabled a package of measures, including a proposal for a directive (Procedure Reference COD(2018)0106), aimed at complementing the piecemeal protection for Whistleblowers (on breaches of EU law) already provided for in sector-specific EU instruments.

Brussels News 145 & 146 contained coverage of progress on the file in both the EP and Council up to the end of February this year. You'll recall that the file has the potential to place in-house lawyers in a conflict position, an issue that the legal profession has therefore been raising with the co-legislators.

Following agreement with the Council at the end of March, on 16 April the EP in plenary adopted the text, which will now revert to the Council for formal adoption.

The new rules will require the creation of safe channels for reporting both within an organisation (private or public) and to public authorities. It will also give a high level of protection to whistleblowers against retaliation, and require national authorities to

adequately inform citizens and train public officials on how to deal with whistleblowing.
Key elements contained in the compromise text, much of which was dictated by the Council, prescribe:

- internal and external reporting systems;
- definition of categories of person to be protected;
- wide scope of application of the directive (A list of all EU legislative instruments covered is included in annex of the directive, though Member States may go beyond this list when implementing) the new rules.
- Support and protection measures for whistleblowers;
- Feedback obligations for authorities and companies
- and rules applying to public disclosures.

For the adopted EP text, go to: https://bit.ly/2KLqkyD
Once Council has adopted the text and it is published in the Official Journal, Member States will have 2 years to transpose it into national law.
Perhaps another one for the Bar to monitor.

CRIMINAL JUSTICE & SECURITY

Combating fraud & counterfeiting non-cash payment - adoption

Brussels News 145 & 146 contained progress reports following provisional political agreement between the Council and the EP on the Commission's 2017 proposal for a directive to establish minimum rules concerning the definition of criminal offences and sanctions in the area of fraud and counterfeiting of non-cash means of payment (Procedure reference: COD(2017)0226).
The agreement has now been formalised, with first the EP in plenary in mid-March, and then the Council on 9 April, adopting the directive. There are a couple of outstanding formalities, including publication in the Official Journal, where after Member States will have two years to transpose it into national law. For the final text, go to: https://bit.ly/2Gugb5k

ECRIS - Exchange of criminal records of third country nationals adopted

I reported in *Brussels News 145 & 146* on the recent EP and Council agreement on *a* final text of the 2017 proposal for a regulation reforming the European Criminal Records Information System (ECRIS) so as to incorporate a centralised database with information on convictions of third country nationals and stateless persons (so-called ECRIS-TCN) (Procedure reference COD(2017)0144), thereby complementing the existing system for EU nationals. The EP having formally adopted the text in March, the General Affairs Council did likewise on 9 April. It will enter into force on the 20th day following its publication in the Official Journal, which likely means sometime this spring. See: https://bit.ly/2Kp7UU3 Again, it now seems likely that the UK will be bound by it.
The accompanying directive aimed at facilitating the exchange of criminal records of third country nationals convicted of offences which are relevant to a person's suitability to work with children was also adopted. See: https://bit.ly/2Kp7UU3

Online Terrorist content - update

I reported in some detail in *Brussels News 145* on the Council's remarkably rapid agreement on a general approach on the Commission's September 2018 proposal for a Regulation (Procedure reference COD(2018)0331) intended to prevent the use of the internet for the dissemination of terrorist content, and complementing related existing measures and initiatives. See the subject file at: https://bit.ly/2EmP0a5

Speed remains the order of the day, the Civil Liberties, JHA (LIBE) Committee of the EP having adopted its own amendments on 9 April, with the resulting resolution due to be adopted in plenary on 19 April. Assuming all goes to plan, I will take a look at where we have got to next time. For the LIBE report, go to: https://bit.ly/2X7DAP8

Legal Aid in cross-border criminal and EAW proceedings

Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings was published in the Official Journal on 4 November 2016. Contemporaneous issues of this newsletter covered its passage through the EU's legislative procedure, as it did the other measures that make up the current package of criminal procedural safeguards in EU law. I mention this now because the deadline for Member States to transpose it into national law expires on 25 May 2019. The UK has not opted in to this measure, but nonetheless it's good for practitioners involved in relevant cross-border cases to be aware of this important improvement to the enforceable rights of suspects and defendants.

INTERNAL MARKET & CONSUMERS

Copyright in the Digital Single Market - controversial directive adopted

As reported in *Brussels News 143 and 145* the EU has been working for some time on amending its copyright legal framework for the first time in twenty or so years, ostensibly to make it fit-for-purpose in today's digital environment (Procedure Reference CDO(2016)0280).

Following rocky but eventual provisional inter-institutional agreement on a final text in February, the EP in Plenary managed to adopt its resolution (though hardly by a landslide), based on the agreed text, in late March.

That was followed, on 15 April, by Council adoption (19 Member States representing 70% of the EU population) of the agreed final text. See: Text of the directive

The rapidity with which this work has been finalised is a testament to the determination of the co-legislators to complete it this term, as discussed above in other contexts. That was far from a given, in light of the controversy surrounding the text, (examined in *Brussels News 146*), specifically regarding Article 11, which requires websites to pay publishers a fee if they display excerpts of copyrighted content — or even provide a link to it (the so-called "link tax"); and also Article 13, the "upload filter," which makes digital platforms legally liable for any copyright infringements on their platform. As explored last time, there are serious concerns that smaller market players will not be able to afford the compliance costs, and conversely, that larger

platforms may take an overly cautious approach, limiting opportunities to post and share content.
In the end, the EU heeded the calls of creators and artists who sought ways to prevent mighty platforms such as Google and Facebook from leveraging their works for their own ends while paying them next to nothing.
Creativity wins the day, but at what cost?

EP and Council adopt Sale of Goods and Digital Content Proposals

I have been reporting on progress on the Commission's related proposals, dating from 2015, for directives on the supply of **Digital Content and Digital Services, and Online and Distance sale of goods** (Procedure references: COD(2015)0287 and 0288 respectively**)** for several years now. They are key elements of the Commission's Digital Single Market Strategy.
You thus already know that the Council agreed a General Approach on the digital content proposal way back in the summer of 2017. It took rather longer, but the same stage was reached on the related Sale of Goods proposal earlier this year, following its extension in 2017 to cover offline sales of goods as well as online.
In *Brussels News 146*, I reported that the EP and Council had reached a provisional agreement on both proposals in January, paving the way for rapid formal adoption. And so it has proved: following EP adoption of both texts in late March, on 15 April the Council followed suit.

- The **digital content directive** introduces a high level of protection for consumers whether they pay, or exchange data, for a digital content. The new rules foresee in particular that, if it is not possible to fix defects within a reasonable amount of time, the consumer is entitled to a price reduction or full reimbursement. Moreover, the directive provides for a minimum guarantee period of two years. For the final text, go to: Text of the directive
- The **sale of goods directive** will apply to all goods, including to products with embedded digital content (e.g. smart fridges). The new rules introduce a two year minimum guarantee period, during the first year of which, the burden of proof is reversed in favour of the consumer. For the final text, go to: Text of the directive

Both directives are based on the principle of maximum harmonisation, which means Member States cannot deviate from the requirements. However, on some aspects Member States will be permitted to exceed the requirements in order, in particular, to maintain the level of consumer protection already applied at national level.
The texts will now be formally signed and publish in the Official journal. Member States will have two years to transpose the new rules into their national law.

Employment - minimum rights for new categories of worker

In *Brussels News 146* I reported on the key elements of the agreement reached in early February, between the EP and the Council, on the text of a proposal for a directive establishing minimum rights for workers in previously unprotected forms of "employment", such as on-demand, voucher-based or platform jobs (Uber, Deliveroo

and the like) provided they work a minimum 3 hours per week and 12 hours per four weeks on average.
As expected, the informally agreed text was this week formally adopted by the EP in plenary. See: https://bit.ly/2VSBKSm
The Council is expected to do likewise shortly.

MISCELLANEOUS

Rule of Law – update
I have reported in some detail over the past year or so on the EU's struggles to find balance in its first ever use of the mechanisms provided for in Article 7 TEU in order to curb threats to the rule of law in certain Member States, notably Poland and Hungary. I refer you to recent editions for background.
There are two new developments to which I draw now your attention.

ECJ AG opinion in Case C-619/18 Commission v Poland
Advocate General Tanchev has recently opined in this case, discussed in *Brussels News 144 & 145* to the effect that the Court should rule that the provisions of Polish legislation relating to the lowering of the retirement age for Supreme Court judges are contrary to EU law The contested measures violate the principles of "irremovability" of judges and of judicial independence. We now await full judgment.
See further: https://bit.ly/2Gg0eiK

Recommendation to sharpen the EU's sword
The College of Commissioners is expected to adopt a recommendation any day now which will seek "some refinements" to the EU's framework safeguarding the rule of law, including possible "strengthened consequences" if "a Member State refuses to remedy the situation" when it falls short of the rule-of-law standards enshrined in the EU treaties and secondary legislation. The Commission is expected to follow this with some conclusions and proposals of its own.
Assuming this comes to pass, I will report more fully next time.

New Filtering mechanism for appeals to ECJ
The General Affairs Council, meeting on 9 April, adopted a regulation amending Protocol No 3 of the Statute of the Court of Justice of the EU so as to introduce a new filtering mechanism for appeals to the ECJ. This is intended to allow the Court to prioritise cases that raise an issue that is significant with respect to the unity, consistency or development of EU law, and filter out the many that currently clog the system, later being found to be patently unfounded or manifestly inadmissible.
The new filtering mechanism will be applied to appeals from decisions by certain EU agencies and offices, namely the **European Union Intellectual Property Office, the Community Plant Variety Office, the European Chemicals Agency, and the European Union Aviation Safety Agency**. Appeals brought in cases which have already been considered twice, first by an independent board of appeal, then by the General Court, will not be allowed to proceed unless they satisfy the above test.

The Council also approved an accompanying set of amendments to the Rules of Procedure of the Court of Justice setting out the details of the new system.
See press release and relevant links at: https://bit.ly/2UJzsHI

Towards a sustainable Europe by 2030

On 9 April the General Affairs Council adopted a set of Conclusions endorsing the Commission's ambitious January 2019 reflection paper setting out, in broad terms, the EU's plans to comply with the United Nations' "2030 Agenda on Sustainable Development", dating from 2015 and which comprises a set of 17 Sustainable Development Goals (SDGs). The Council is calling on the Commission to draw up a "comprehensive and overarching implementation strategy outlining timelines, objectives and concrete measures" to reflect the 2030 Agenda and to incorporate the SDGs into all relevant internal and external EU policies. Below are links to both documents, respectively:

- Council conclusions "Towards an ever more sustainable Union by 2030"
- Commission reflection paper "Towards a sustainable Europe by 2030"

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