



2023/0439(COD)

26.3.2025

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council Laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA (COM(2023)0755 – C9-0430/2023 – 2023/0439(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	61
ANNEX: ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT.....	63

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council Laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA
(COM(2023)0755 – C9-0430/2023 – 2023/0439(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0755),
 - having regard to Article 294(2) and Article 83(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9 0430/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 60 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A10-0000/2025),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The facilitation of unauthorised entry, transit and stay in the Union are

Amendment

(1) The facilitation of unauthorised entry, transit and stay in the Union are

criminal activities that put human life in danger and disrespect the dignity of people for the purpose of obtaining high profits, undermining fundamental rights. These criminal activities contribute to irregular migration, undermining the migration management objectives of the Union. The commission of such criminal activities is driven by increasing demand and the high profits obtained by criminal organisations. Preventing and countering those offences remains a priority for the Union.

criminal activities that put human life in danger and disrespect the dignity of people for the purpose of obtaining high profits, undermining fundamental rights. These criminal activities contribute to irregular migration, undermining the migration management objectives of the Union. The commission of such criminal activities is driven by increasing demand and the high profits obtained by criminal organisations **and networks. Bringing those criminal organisations and networks to justice while** preventing and countering those offences remains a priority for the Union.

Or. en

Justification

It should be underlined in the opening recital that the aim of the reform is to help bring to justice criminal organisations and networks involved in smuggling.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(2) Directive 2002/90/EC³ and Council Framework Decision 2002/946/JHA⁴ (the ‘Facilitators’ Package’) constitute the Union legal framework to counter the facilitation of unauthorised entry, transit and stay of third-country nationals. It establishes a common definition of the offences of facilitation of unauthorised entry, transit and residence, and sets up the penal framework for the sanctioning of such offences. To **address evolving trends, and** to further enhance the effectiveness of the Union framework to prevent and counter these offences, it is necessary to update the existing legal framework.

Amendment

(2) Directive 2002/90/EC³ and Council Framework Decision 2002/946/JHA⁴ (the ‘Facilitators’ Package’) constitute the Union legal framework to counter the facilitation of unauthorised entry, transit and stay of third-country nationals. It establishes a common definition of the offences of facilitation of unauthorised entry, transit and residence, and sets up the penal framework for the sanctioning of such offences. To **clarify the scope of such offences, to further enhance the investigation and prosecution of criminal organisations and networks and ensure** the effectiveness of the Union framework to prevent and counter these offences, it is necessary to update the existing legal framework.

³ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17., ELI: <http://data.europa.eu/eli/dir/2002/90/oj>).

⁴ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1., ELI: http://data.europa.eu/eli/dec_framw/2002/946/oj).

³ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17., ELI: <http://data.europa.eu/eli/dir/2002/90/oj>).

⁴ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1., ELI: http://data.europa.eu/eli/dec_framw/2002/946/oj).

Or. en

Justification

Literature on the existing Union framework specifies that the core offence of migrant smuggling needs to be better defined.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) The European Council Conclusions of 9 February 2023 affirmed the need to reinforce Union action to prevent irregular migration and loss of life, notably by intensifying cooperation with countries of origin and transit, and by ensuring stronger cooperation between Member States and with Europol, Frontex and Eurojust. The renewed Action Plan against migrant smuggling (2021-2025) sets out the policy response to migrant smuggling, as an essential part of the comprehensive approach to migration set out in the New Pact on Migration and Asylum. It sets out actions in four priority areas: reinforcing cooperation with partner countries and international

Amendment

deleted

organisations; sanctioning migrant smugglers and preventing the exploitation of migrants; reinforcing cooperation and supporting the work of law enforcement and judicial authorities; and increasing the knowledge base.

Or. en

Justification

Outdated recital. It references Council conclusions from over two years ago and a Commission Action Plan that will expire this year.

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The facilitation of unauthorised entry, transit and stay is a transnational phenomenon, and measures adopted at Union and national levels should recognise its international dimension. Union and national actions should therefore ***take into account*** the international commitments of the Union and its Member States, including in relation to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on maritime Search and Rescue, the United Nations Convention on the Rights of the Child, as well as the work of the United Nations Office against Drugs and Crime.

Amendment

(4) The facilitation of unauthorised entry, transit and stay is a transnational phenomenon, and measures adopted at Union and national levels should recognise its international dimension. Union and national actions should therefore ***respect international law and respect*** the international commitments of the Union and its Member States, including in relation to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (***‘the UN Protocol’***), the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on maritime Search and Rescue, the United Nations Convention on the Rights of the Child, as well as the work of the United Nations Office against Drugs and Crime.

Or. en

Amendment 5

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Member States should apply this Directive in accordance and in full compliance with the 1951 Convention Relating to the Status of Refugees as amended by the Protocol of New York of 1967, with obligations related to access to international protection, in particular the principle of non-refoulement, and with fundamental rights.

Or. en

Justification

Moved up from recital 10. The reference to the Geneva Convention belongs at the outset of the recitals as it often part of the context in which people who are the object of smuggling find themselves.

Amendment 6

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(5) Taking account of the evolution of the activities aimed to facilitate unauthorised entry, transit and stay in the Union, as well as the legal obligations of the Union and the Member States under international law, the definition of the criminal offences should be further approximated in all Member States so that it ***covers the relevant conducts more comprehensively.***

(5) Taking account of the evolution of the activities aimed to facilitate unauthorised entry, transit and stay in the Union, as well as the legal obligations of the Union and the Member States under international law, the definition of the criminal offences should be ***clarified and*** further approximated in all Member States so that it ***describes more clearly conduct that is criminal and conduct that is not criminal.***

Or. en

Justification

Literature on the existing Union framework specifies that the core offence of migrant smuggling needs to be better defined.

Amendment 7

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In accordance with the principles of legality and proportionality of criminal law, and in order to address criminal activities that put human life in danger and disrespect the dignity of people for the purpose of obtaining profits, it is necessary to provide a precise and detailed definition of the criminal **offences** that counter these criminal behaviours. Assistance of unauthorised entry, transit or stay in the Union should constitute a criminal offence **when there is a link with an actual or a promised** financial or material benefit. ***This conduct should also be criminalised provided that this is highly likely to cause serious harm to the third-country nationals who were subject to the criminal offence or to any other person, even though there is no financial or material benefit or no promise of such benefit. It is necessary to establish a criminal offence in order to discourage the modus operandi of persons who publicly instigate, for instance through the internet, third-country nationals to enter, transit or stay in the Union without authorisation. Providing objective information or advice to third-country nationals on the conditions for the legal entry and stay in the Union, and on international protection, should not be understood as public instigation.***

Amendment

(6) In accordance with the principles of legality and proportionality of criminal law, and in order to address criminal activities that put human life in danger and disrespect the dignity of people for the purpose of obtaining profits, it is necessary to provide a precise and detailed definition of the criminal **offences** that counter these criminal behaviours. Assistance of unauthorised entry, transit or stay in the Union should constitute a criminal offence, ***in line with the UN Protocol, when it is carried out in order to obtain, directly or indirectly, a*** financial or ***other*** material benefit.

Or. en

Justification

Article 49 of the Charter and UN Protocol. Alignment with the changes in the operative part.

Amendment 8

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) It is appropriate to provide for criminal liability where ***there is a link to a financial or material benefit, or where migrants are highly likely to be subjected to serious harm. These elements will usually not be fulfilled when it comes to assistance among family members or the provision of humanitarian assistance or the support of basic human needs. Third-country nationals should not become criminally liable for having been the subject to such criminal offences. Moreover, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations.***

Amendment

(7) It is appropriate to provide for criminal liability, ***in line with the UN Protocol, only where the smuggling is carried out in order to obtain, directly or indirectly, a financial or material benefit. In accordance with the principle of legal certainty in criminal law, the elements of a criminal offence should be formulated precisely so as to enable individuals to predict which actions will make them criminally liable. As a consequence, it is necessary to exclude specifically actions that should not render individuals criminally liable.***

Or. en

Justification

Aligned with changes proposed to the Articles and with the requirements of the principle of lex certa.

Amendment 9

Proposal for a directive

Recital 7 a (new)

(7a) *Where an individual or organisation offers assistance to migrants through actions which are selfless and from which no financial or other material benefit is derived, or which are based on the principles of humanity, neutrality, impartiality and independence, then those actions should not be criminalised. Such actions may include the carrying out of search and rescue operations in accordance with international law, assistance to family members, assistance to third-country nationals in situations of danger or distress, the provision of legal assistance, medical assistance, healthcare, housing, shelter, clothing, food and water to third-country nationals or supporting third-country nationals in asserting their rights.*

Or. en

Justification

If humanitarian assistance is to be exempted from criminal liability it is important to provide detail of the conduct that is not criminal.

Amendment 10

**Proposal for a directive
Recital 8**

Text proposed by the Commission

Amendment

(8) The impact of facilitation of unauthorised entry, transit and stay extends beyond the Member State of unauthorised entry. Minimum rules concerning the definition of the criminal offences ***should encompass conducts*** taking place in the territory of ***any*** Member State, to allow Member States other than those of unauthorised entry to act on such offences, provided that the Member States concerned

(8) The impact of facilitation of unauthorised entry, transit and stay extends beyond the Member State of unauthorised entry. Minimum rules concerning the definition of the criminal offences ***may include conduct*** taking place in the territory of ***a*** Member State, to allow Member States other than those of unauthorised entry to act on such offences, provided that the Member States concerned

establish jurisdiction over these offences.

establish jurisdiction over these offences.

Or. en

Justification

To better reflect the text of the Articles.

Amendment 11

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) There is a need to distinguish between the criminal offence of facilitation of unauthorised entry, transit and stay in the Union and ***the aggravated criminal offences that create higher*** harm to individuals and to society. The levels of penalties should reflect the higher social concern regarding more serious and harmful ***conducts***, therefore ***aggravated offences*** should be sanctioned by more severe criminal penalties.

Amendment

(9) There is a need to distinguish between the ***basic*** criminal offence of facilitation of unauthorised entry, transit and stay in the Union and ***situations in which the offence causes greater*** harm to individuals and to society. The levels of penalties ***for those situations causing greater harm*** should reflect the higher social concern regarding more serious and harmful ***conduct, and*** therefore should be sanctioned by more severe criminal penalties.

Or. en

Justification

Wording aligned with amendments to Article 4 and 6 in particular.

Amendment 12

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) Member States should apply this Directive in accordance and in full compliance with the 1951 Convention Relating to the Status of Refugees as amended by the Protocol of New York of

Amendment

deleted

1967, obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights.

Or. en

Justification

Moved above in Recital 4a

Amendment 13

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons.

Accessory measures are often effective and, therefore, should be also available in criminal proceedings. Considering the possible risk to public policy and public security that they may pose, third-country nationals who committed the offences defined in this Directive should be subject to return in accordance with Directive 2008/115/EC of the European Parliament and of the Council⁵ or in accordance with national law where Member States have made use of Article 2(2), point (b), of that Directive, either after having served the prison sentence in a Member State or in view of serving the prison sentence, or part of it, in a third country, without prejudice to more favourable provisions applicable by virtue of Union or national law; furthermore, without prejudice to more favourable provisions applicable by virtue of Union or national law, those third-country nationals should be prohibited to re-enter the territory of the Member States for an appropriate period

Amendment

(11) Penalties for the criminal offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons.

of time to be determined on a case-by-case basis, and that can reach 10 years in the most serious cases. This should not affect the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.

⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98, ELI: <http://data.europa.eu/eli/dir/2008/115/oj>).

⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98, ELI: <http://data.europa.eu/eli/dir/2008/115/oj>).

Or. en

Justification

To align with changes proposed to Article 6, paragraph 5.

Amendment 14

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) Where national law provides for it, legal persons should be held criminally liable for the facilitation of unauthorised entry, transit and stay in the Union. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanction types and levels, as laid down in this Directive in order to achieve its objectives. They should be accompanied by accessory measures. The financial situation of legal persons should be considered to ensure the dissuasiveness of the sanction imposed with criminal and non-criminal fines taking into account

Amendment

(13) Where national law provides for it, legal persons should **be able to** be held criminally liable for the facilitation of unauthorised entry, transit and stay in the Union. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanction types and levels, as laid down in this Directive in order to achieve its objectives. They should be accompanied by accessory measures. The financial situation of legal persons should be considered to ensure the dissuasiveness of the sanction imposed with criminal and non-criminal fines taking into account

worldwide turnover of the legal persons.

worldwide turnover of the legal persons.

Or. en

Justification

Not all legal persons are criminally liable for facilitation of unauthorized entry just because national law allows for them to be held criminally liable.

Amendment 15

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) Effectiveness of sanctions imposed in practice should be fostered through providing for aggravating circumstances that reflect the severity of the criminal offence. Graver circumstances should include situations conducive to other unlawful activities, such as exploitation, ***including sexual exploitation, instrumentalisation,*** dispossession of identity documents, ***and involvement in illegal employment.***

Amendment

(14) Effectiveness of sanctions imposed in practice should be fostered through providing for aggravating circumstances that reflect the severity of the criminal offence. Graver circumstances should include situations conducive to other unlawful activities, such as exploitation, dispossession of identity documents ***or previous convictions for similar offences.***

Or. en

Justification

Aligned with amendment proposed to Article 9.

Amendment 16

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) ***To counter the facilitation of unauthorised entry, transit and stay in the Union, it is of outmost importance to ensure the effective seizure of the proceedings of the crime, as well as of the***

Amendment

deleted

instrumentalities that are used to commit the criminal offences, including for instance boats, engines and other boat components and vehicles. For this purpose, full use should be made of existing instruments on the freezing and confiscation of proceeds and instrumentalities of crime, such as Directive 2014/42/EU of the European Parliament and of the Council⁶.

⁶ *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39 ELI: <http://data.europa.eu/eli/dir/2014/42/oj>).*

Or. en

Justification

In line with amendments to Article 6, paragraph 5.

Amendment 17

**Proposal for a directive
Recital 18**

Text proposed by the Commission

(18) Considering the cross-border nature of the criminal offences referred to in this Directive, ***the mobility of perpetrators of illegal conducts*** and the possibility of cross-border investigations, it is ***necessary*** to lay down rules on the establishment of jurisdiction by Member States in order to counter such conduct effectively. The unauthorised transit or stay taking place in whole or in part in the territory of a Member State should allow a Member State different from the Member State of first unauthorised entry to establish jurisdiction. The gravity and the cross-

Amendment

(18) Considering the cross-border nature of the criminal offences referred to in this Directive, and the possibility of cross-border investigations, it is ***appropriate*** to lay down rules on the establishment of jurisdiction by Member States in order to counter such conduct effectively. The unauthorised transit or stay taking place in whole or in part in the territory of a Member State should allow a Member State different from the Member State of first unauthorised entry to establish jurisdiction. The gravity and the cross-border nature of the offences referred to in

border nature of the offences referred to in this Directive **require that** jurisdiction **be established** not only on natural persons who are nationals of the Member State concerned, but also on third-country nationals habitually residing in its territory. Jurisdiction over legal persons should be established when these are established in the Member State concerned **or in respect of any business carried out in whole or in part in its territory**. For the same reasons, it is necessary that a Member State establishes jurisdiction over criminal offences committed on board of ships and aircrafts registered in the Member State or flying its flag. **Member States, including those other than that of first unauthorised entry, should establish jurisdiction in relation to criminal offences referred to in this Directive when this results in the entry, transit or stay of the third-country nationals subject to the offence in the concerned Member State.**

this Directive **mean that Member States should be permitted to acquire** jurisdiction not only on natural persons who are nationals of the Member State concerned, but also on third-country nationals habitually residing in its territory. Jurisdiction over legal persons should be established when these are established in the Member State concerned For the same reasons, it is necessary that a Member State establishes jurisdiction over criminal offences committed on board of ships and aircrafts registered in the Member State or flying its flag.

Or. en

Justification

Certain possible extensions of jurisdiction should be permitted to Member States, without these becoming mandatory grounds for jurisdiction. Last sentence deleted, given that it would suggest that the mere transit of third country national through a Member State automatically provide it with jurisdiction to prosecute criminal offences where the essence of the offence will have occurred in other Member States.

Amendment 18

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Where **assistance is provided for** a third-country national **to reach** the territory of a Member State, the concerned Member States may also be able to establish their jurisdiction with regard to attempts, even if the third-country national does not enter

Amendment

(19) Where a third-country national **is facilitated in reaching** the territory of a Member State, the concerned Member States may also be able to establish their jurisdiction with regard to attempts, even if the third-country national does not enter

their territory. ***Member States should at least establish their jurisdiction*** with regard to the attempt of an offence that caused the death of a third-country national..

their territory, ***in particular*** with regard to the attempt of an offence that caused the death of a third-country national.

Or. en

Justification

In line with the title of the Directive.

Amendment 19

**Proposal for a directive
Recital 21 a (new)**

Text proposed by the Commission

Amendment

(21a) In the implementation and application of this Directive, Member States should ensure that the procedural rights of suspects or accused persons in criminal proceedings, as well the rights of victims of crime, are respected. In that regard, obligations under this Directive do not affect Member States' obligations under Union law on procedural rights in criminal proceedings and on the rights of victims of crime, in particular under Directives 2010/64/EU, 2012/13/EU, 2012/29/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/800 and (EU) 2016/1919.

Or. en

Amendment 20

**Proposal for a directive
Recital 24**

Text proposed by the Commission

Amendment

(24) To ensure successful enforcement, Member States should make available

(24) To ensure successful enforcement, Member States should make available

effective investigative tools for the criminal offences referred to in this Directive, such as ***those included in their national law for combating organised crime or other serious crimes, including*** for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.

effective investigative tools for the criminal offences referred to in this Directive. ***In line with the general principles of Union law, the use of such tools should be necessary and proportionate. The use of investigative tools***, such as for instance the interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts and other financial investigation tools ***should be applied where organised crime is involved in the alleged offence***. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the criminal offences under investigation should justify the use of these investigative tools. The right to the protection of personal data should be respected.

Or. en

Amendment 21

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Online content constituting or facilitating criminal offences referred to in this Directive, notably providing assistance to or publicly instigating unauthorised entry, transit and stay in the EU through the internet, will be subject to measures pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council⁹ as regards illegal content.

Amendment

deleted

⁹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market

for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>).

Or. en

Justification

Deleted in line with the deletion of the criminal offence of instigation in Article 3, paragraph 2.

Amendment 22

**Proposal for a directive
Recital 26**

Text proposed by the Commission

(26) To effectively **tackle** the facilitation of unauthorised entry, transit and stay in the Union, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable data on the scale of and trends in the criminal offences referred to in this Directive, the efforts to combat them and their results. Member States should collect and report to the Commission relevant statistical data on such offences. The Commission should regularly assess and publish the results based on data transmitted by the Member States. Member States should also regularly collect and disseminate statistical data and information on the application of this Directive to allow for the monitoring of its implementation. Statistical data and information should be comparable between the Member States and collected on the basis of common minimum standards.

Amendment

(26) To **prosecute more** effectively the facilitation of unauthorised entry, transit and stay in the Union, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable data on the scale of and trends in the criminal offences referred to in this Directive, the efforts to combat them and their results. Member States should collect and report to the Commission relevant statistical data on such offences. The Commission should regularly assess and publish the results based on data transmitted by the Member States. Member States should also regularly collect and disseminate statistical data and information on the application of this Directive to allow for the monitoring of its implementation. Statistical data and information should be comparable between the Member States and collected on the basis of common minimum standards.

Or. en

Justification

The aim must be to prosecute and dismantle criminal organisations and networks profiteering from smuggling migrants.

Amendment 23

Proposal for a directive Recital 28

Text proposed by the Commission

(28) This Directive *respects* the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the respect and protection of human dignity, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, the rights of the child, the freedom of association, the right to an effective remedy and to a fair trial, the principles of legality and proportionality of criminal offences and penalties, and the prohibition of ne bis in idem.

Amendment

(28) ***In the implementation and application of*** this Directive, ***Member States should respect*** the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the respect and protection of human dignity, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, the rights of the child, the freedom of association, the right to an effective remedy and to a fair trial, the principles of legality and proportionality of criminal offences and penalties, and the prohibition of ne bis in idem.

Or. en

Justification

The recital needs to remind Member States of their obligations under the Charter and not state, as a matter of fact, that the Directive does not violate the Charter.

Amendment 24

Proposal for a directive Recital 36

Text proposed by the Commission

(36) As regards Cyprus, ***Bulgaria and Romania***, this Directive constitutes an act

Amendment

(36) As regards Cyprus, this Directive constitutes an act building upon, or

building upon, or otherwise related to, the Schengen acquis within, *respectively*, the meaning of Article 3(1) of the 2003 Act of Accession *and Article 4(1) of the 2005 Act of Accession*,

otherwise related to, the Schengen acquis within, the meaning of Article 3(1) of the 2003 Act of Accession,

Or. en

Amendment 25

Proposal for a directive Article 1 – title

Text proposed by the Commission

Amendment

Subject matter

Subject matter *and scope*

Or. en

Justification

See, as an example, Art 1 of Directive (EU) 2018/1673 on combating money laundering by criminal law

Amendment 26

Proposal for a directive Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

It shall apply without prejudice to the protection afforded to refugees and asylum seekers in accordance with international law on refugees or other international instruments relating to human rights, in particular Member States' compliance with their international obligations pursuant to Articles 31 and 33 of the 1951 Convention relating to the status of refugees, as amended by the Protocol of New York of 1967.

Or. en

Justification

Reintroducing Art 6 of Council Framework-Decision 2002/946/JHA

Amendment 27

Proposal for a directive

Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

2a. ‘humanitarian assistance’ means short-term or long-term actions taken to save lives, alleviate suffering and maintain human dignity during and after man-made crises and disasters, including actions to reduce vulnerabilities and promote and protect human rights, governed by the humanitarian principles of: humanity, impartiality, neutrality and independence;

Or. en

Justification

Based on Council of Europe definition laid down in its thematic study on humanitarian assistance.

Amendment 28

Proposal for a directive

Article 3 – title

Text proposed by the Commission

Amendment

Criminal offences

Assisting entry, transit or stay

Or. en

Amendment 29

Proposal for a directive

Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) the person who carries out the conduct ***requests, receives or accepts***, directly or indirectly, a financial or material benefit, ***or a promise thereof, or carries out the conduct in order to obtain such a benefit; or***

a) the person who carries out the conduct ***does so in order to obtain***, directly or indirectly, a financial or material benefit.

Or. en

Justification

Aligned to be closer to the definition established in Article 6 of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air ('the UN Protocol').

Amendment 30

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

b) ***there is a high likelihood of causing serious harm to a person.***

deleted

Or. en

Justification

It is hard to see how the concept of “high likelihood of causing serious harm” complies with the principle of legal certainty in criminal law (lex certa).

Amendment 31

Proposal for a directive

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. ***Member States shall ensure that publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or***

deleted

the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.

Or. en

Justification

It is hard to see how the broad and novel concept of “public instigation” complies with the principle of legal certainty in criminal law (lex certa).

Amendment 32

**Proposal for a directive
Article 3 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. The provision of ‘humanitarian assistance’ shall not constitute a criminal offence.

Or. en

Justification

In order to comply with the principle of legal certainty in criminal law, when establishing a criminal offence, it is necessary to allow an individual to ascertain whether their actions lead to criminal liability or not.

Amendment 33

**Proposal for a directive
Article 3 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. Third country nationals shall not become liable under this Article for the sole fact of having been the object of the conduct set out in paragraph 1.

Or. en

Justification

In line with Article 5 of the UN Protocol. The criminal offence is migrant smuggling. The fact of being a migrant should not be criminalised.

Amendment 34

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Aggravated criminal offences

Member States shall ensure that the conduct referred to in Article 3 constitutes an aggravated criminal offence where:

- (a) the criminal offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA²⁰ ;*
- (b) the criminal offence deliberately or by gross negligence caused serious harm to, or endangered the life of, the third-country nationals who were subject to the criminal offence;*
- (c) the criminal offence was committed by use of serious violence;*
- (d) the third-country nationals who were subject to the criminal offence were particularly vulnerable, including unaccompanied minors;*
- (e) the criminal offence caused the death of third-country nationals who were subject to the criminal offence.*

²⁰ *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42, ELI: http://data.europa.eu/eli/dec_framw/2008/841/oj).*

Justification

There is no precedent for aggravated criminal offences in EU criminal law. The distinct additional elements mentioned are better addressed through Article 6 on penalties for natural persons and through Article 9 on aggravating circumstances.

Amendment 35

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

Incitement, aiding and abetting, and attempt

Inciting, aiding and abetting, and attempt

Or. en

Amendment 36

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that inciting, aiding and abetting ***and attempting to commit any*** of the criminal ***offences*** referred to in Article 3(1) ***and Article 4*** are punishable as criminal offences.

Member States shall ensure that inciting, ***and*** aiding and abetting, ***the commission*** of the criminal ***offence*** referred to in Article 3(1) are punishable as criminal ***offences***.

Or. en

Justification

Technical amendment to remove reference to Article 4. Otherwise the language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 37

Proposal for a directive Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that an attempt to commit a criminal offence referred to in Article 3(1) is punishable as a criminal offence.

Or. en

Justification

Technical amendment to remove reference to Article 4. Otherwise, the language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 38

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that ***the criminal offences*** referred to in Articles 3, 4 and 5 ***are*** punishable by effective, proportionate and dissuasive criminal penalties.

1. Member States shall take the necessary measures to ensure that, ***where a natural person commits an offence*** referred to in Articles 3 and 5, ***the criminal offence is*** punishable by effective, proportionate and dissuasive criminal penalties.

Or. en

Justification

Technical amendment to remove reference to Article 4. Otherwise the language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 39

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the criminal **offences** referred to in Article 3 **are** punishable by a maximum term of imprisonment of at least **three years**.

Amendment

2. Member States shall take the necessary measures to ensure that the criminal **offence** referred to in Article 3(1) **is** punishable by a maximum term of imprisonment of at least **two years**.

Or. en

Justification

The general principle of proportionality in criminal law requires the minimum level of the maximum penalty to be proportionate to the seriousness of the offence committed, taking into account the harm, wrongdoing and culpability of the offender.

Amendment 40

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that the criminal **offences** referred to in Article 4, **points (a) to (d) are** punishable by a maximum term of imprisonment of at least **ten** years.

Amendment

3. Member States shall take the necessary measures to ensure that the criminal **offence** referred to in Article 3(1) **is** punishable by a maximum term of imprisonment of at least **five** years **where:**

(a) the criminal offence deliberately or by gross negligence caused serious harm to or endangered the life of the third-country nationals who were the object of the criminal offence; or

(b) the criminal offence was committed by the use of serious violence against the third country nationals who were the object of the criminal offence; or

(c) the third-country nationals who were the object of the criminal offence were vulnerable persons, such as

unaccompanied minors.

Or. en

Justification

The following three cases were proposed by the Commission as aggravated offences. They are better addressed through the level of penalties imposed.

Amendment 41

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

4. Member States shall take the necessary measures to ensure that the criminal **offences** referred to in Article 4 **point (e), including attempts to commit the criminal offence referred to in that provision, are** punishable by a maximum term of imprisonment of at least **fifteen** years.

Amendment

4. Member States shall take the necessary measures to ensure that the criminal **offence** referred to in Article 3(1), **is** punishable by a maximum term of imprisonment of at least **ten** years **where:**

(a) the criminal offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA; or

(b) the criminal offence caused the death of third-country nationals who were the object of that offence.

Or. en

Amendment 42

**Proposal for a directive
Article 6 – paragraph 5 – introductory part**

Text proposed by the Commission

5. **In addition to criminal penalties imposed in accordance with paragraphs 1 to 4,** Member States shall take the

Amendment

5. Member States shall take the necessary measures to ensure that natural persons **who have committed** criminal

necessary measures to ensure that natural persons ***that have been convicted of committing one of the*** criminal offences referred to in Articles 3, 4 and 5 may be subject to criminal or non-criminal ***sanctions*** or measures ***imposed by a competent authority, including:***

offences referred to in Articles 3 and 5 may ***also*** be subject to criminal or non-criminal ***penalties*** or measures, ***which may include:***

Or. en

Amendment 43

Proposal for a directive

Article 6 – paragraph 5 – point a

Text proposed by the Commission

(a) withdrawal of permits or authorisations to pursue activities ***which have*** resulted in ***committing*** the criminal offence, ***or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed;***

Amendment

(a) withdrawal of permits or authorisations to pursue activities ***that*** resulted in the ***relevant*** criminal offence;

Or. en

Justification

The language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 44

Proposal for a directive

Article 6 – paragraph 5 – point b

Text proposed by the Commission

(b) ***return after the enforcement of the penalty in a Member State, or to serve the penalty imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be***

Amendment

deleted

applicable by virtue of Union or national law;

Or. en

Justification

Misplaced in a criminal law directive. Provisions on return are governed and will be governed by the Return Directive (and upcoming Return Regulation).

Amendment 45

**Proposal for a directive
Article 6 – paragraph 5 – point c**

Text proposed by the Commission

Amendment

(c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;

deleted

Or. en

Justification

Misplaced in a criminal law directive. Provisions on entry bans are governed and will be governed by the Return Directive (and upcoming Return Regulation).

Amendment 46

**Proposal for a directive
Article 6 – paragraph 5 – point d**

Text proposed by the Commission

Amendment

*(d) exclusions from access to public funding, including tender procedures, grants **and** concessions;*

*(d) exclusions from access to public funding, including tender procedures, grants, concessions **and licences**;*

Or. en

Justification

The language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 47

**Proposal for a directive
Article 6 – paragraph 5 – point e**

Text proposed by the Commission

Amendment

(e) fines;

(e) fines ***that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned and, where relevant, that are determined taking due account of the gravity and duration of the damage caused;***

Or. en

Justification

The language has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 48

**Proposal for a directive
Article 6 – paragraph 5 – point f**

Text proposed by the Commission

Amendment

(f) ***freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council²¹.***

deleted

²¹ ***Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of***

instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39 ELI: <http://data.europa.eu/eli/dir/2014/42/oj>).

Or. en

Justification

This provision need not be included, as it is covered in the Directive on freezing and confiscation of assets.

Amendment 49

**Proposal for a directive
Article 7 – paragraph 1 – introductory part**

Text proposed by the Commission

1. Member States shall **take the necessary measures to** ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for **their** benefit **by any** person, **acting either** individually or as part of an organ of the legal person, **who has a leading position within the legal person, based on:**

Amendment

1. Member States shall ensure that legal persons can be held liable for the criminal offences referred to in Articles 3 and 5, **where the criminal offences have been** committed for **the** benefit **of those legal persons by a natural person who has a leading position within the legal person and who acts** individually or as part of an organ of the legal person, **on the basis of any of the following:**

Or. en

Justification

The language of Article 7 has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 50

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. Member States shall **also take the necessary measures to** ensure that **a** legal

Amendment

2. Member States shall ensure that legal **persons** can be held liable **for**

person can be held liable where the lack of supervision or control by a person *referred to in paragraph 1* has made possible the commission of *the* criminal *offences* referred to in Articles 3, 4 and 5 for the benefit of that legal person *by a person under its authority*.

criminal offences referred to in Articles 3 and 5 where the lack of supervision or control by a *leading* person has made possible, *by a natural person under their authority*, the commission of *a* criminal *offence* referred to in Articles 3 and 5 for the benefit of that legal person.

Or. en

Amendment 51

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

3. Liability of *a* legal *person* under paragraphs 1 and 2 shall not *exclude* criminal proceedings against natural persons who *are perpetrators of, inciters of, or* accessories in the criminal offences referred to in Articles 3, 4 and 5.

Amendment

3. *The* liability of legal *persons* under paragraphs 1 and 2 *of this Article* shall not *preclude* criminal proceedings against natural persons who *commit, incite or are* accessories in the criminal offences referred to in Articles 3 and 5.

Or. en

Amendment 52

Proposal for a directive Article 8 – title

Text proposed by the Commission

Sanctions for legal persons

Amendment

Penalties for legal persons

Or. en

Justification

The language of Article 8 has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 53

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 **is subject to** effective, proportionate and dissuasive **sanctions**.

Amendment

1. Member States shall take the necessary measures to ensure that, **where** a legal person **is** held liable pursuant to Article 7, **the criminal offence is punishable by** effective, proportionate and dissuasive **criminal or non-criminal penalties or measures**.

Or. en

Amendment 54

Proposal for a directive Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that **sanctions** or measures **for legal persons liable pursuant to Article 7 for the criminal offences referred to in Articles 3, 4 and 5** may include:

Amendment

2. Member States shall take the necessary measures to ensure that **effective, proportionate and dissuasive criminal or non-criminal penalties** or measures **shall include criminal or non-criminal fines and** may include **other criminal or non-criminal penalties or measures, such as:**

Or. en

Amendment 55

Proposal for a directive Article 8 – paragraph 2 – point a

Text proposed by the Commission

(a) **criminal or non-criminal fines;**

Amendment

deleted

Or. en

Amendment 56

Proposal for a directive Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) exclusion from entitlement to public benefits, *aid or subsidies*;

Amendment

(b) exclusion from entitlement to public benefits *or aid*;

Or. en

Amendment 57

Proposal for a directive Article 8 – paragraph 2 – point c

Text proposed by the Commission

(c) *temporary or permanent* exclusion from access to public funding, including tender procedures, grants and concessions;

Amendment

(c) exclusion from access to public funding, including tender procedures, grants and concessions;

Or. en

Amendment 58

Proposal for a directive Article 8 – paragraph 2 – point d

Text proposed by the Commission

(d) *temporary or permanent* disqualification from the practice of commercial activities;

Amendment

(d) disqualification from the practice of commercial activities;

Or. en

Amendment 59

Proposal for a directive Article 8 – paragraph 2 – point g

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Text proposed by the Commission

Amendment

(g) **temporary or permanent** closure of establishments **which have been** used for committing the criminal offence;

(g) closure of establishments used for committing the criminal offence;

Or. en

Amendment 60

Proposal for a directive Article 8 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) withdrawal of permits and authorisations to pursue activities which have resulted in **committing** the criminal offence;

(h) withdrawal of permits and authorisations to pursue activities which have resulted in the criminal offence;

Or. en

Amendment 61

Proposal for a directive Article 8 – paragraph 2 – point i

Text proposed by the Commission

Amendment

(i) **freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council²².**

deleted

²² **Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39 ELI: <http://data.europa.eu/eli/dir/2014/42/oj>).**

Justification

This provision need not be included, as it is covering in the Directive on freezing and confiscation of assets.

Amendment 62**Proposal for a directive****Article 8 – paragraph 3 – introductory part***Text proposed by the Commission*

3. The amount of criminal or non-criminal fines shall be proportionate to the ***seriousness*** of the conduct and to the individual, financial and other circumstances of the legal person ***concerned***. Member States shall ***take the necessary measures to*** ensure that the maximum level of such fines is not less than:

Amendment

3. The amount of criminal or non-criminal fines shall be proportionate to the ***gravity*** of the conduct and to the individual, financial and other circumstances of the legal person. Member States shall ensure that the maximum level of such fines is not less than:

Or. en

Amendment 63**Proposal for a directive****Article 8 – paragraph 3 – point a***Text proposed by the Commission*

(a) 3% of the total worldwide turnover of the legal person, either in the business year preceding ***the one*** in which the ***criminal*** offence was committed, or in the business year preceding the ***fining*** decision, for criminal offences referred to in Article 3;

Amendment

(a) 3% of the total worldwide turnover of the legal person, either in the business year preceding ***that*** in which the offence was committed, or in the business year preceding the decision ***to impose the fine***, for criminal offences referred to in Article 3;

Or. en

Amendment 64

Proposal for a directive Article 8 – paragraph 3 – point b

Text proposed by the Commission

(b) 5% of the total worldwide turnover of the legal person, either in the business year preceding **the one** in which the criminal offence was committed, or in the business year preceding the **fining** decision, for criminal offences **referred to in Article 4, points (a) to (d)**;

Amendment

(b) 5% of the total worldwide turnover of the legal person, either in the business year preceding **that** in which the criminal offence was committed, or in the business year preceding the decision **to impose the fine**, for criminal offences **covered by Article 6(3) and (4)**;

Or. en

Justification

Alignment with the deletion of Article 4 and additional specificities of offences referred to in Article 6.

Amendment 65

Proposal for a directive Article 8 – paragraph 3 – point c

Text proposed by the Commission

(c) **6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e).**

Amendment

deleted

Or. en

Amendment 66

Proposal for a directive Article 8 – paragraph 4

Text proposed by the Commission

4. ***When providing for criminal or non-criminal fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.***

Amendment

4. Member States may ***establish*** rules ***for*** cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding ***that*** in which the criminal offence was committed, or in the business year preceding ***that of*** the decision ***to impose that fine.***

Or. en

Amendment 67

Proposal for a directive Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure ***that the following circumstances may be regarded as aggravating circumstances***, in relation to the criminal offences referred to Articles 3, 4 and 5:

Amendment

To the extent that the following circumstances do not form part of the constituent elements of the criminal offence referred to in Article 3(1), Member States shall take the necessary measures to ensure, in relation to the criminal offences referred to ***in*** Articles 3 and 5, ***that the following circumstances may, in accordance with national law, be regarded as aggravating circumstances:***

Or. en

Amendment 68

Proposal for a directive Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the criminal offence entailed or resulted in the involvement of third-

Amendment

deleted

*country nationals who were subject to the criminal offence in illegal employment as referred to in Directive 2009/52/EC of the European Parliament and of the Council*²³ ;

²³ *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24, ELI: <http://data.europa.eu/eli/dir/2009/52/oj>).*

Or. en

Justification

The link between the criminal offence and illegal employment is too tenuous to justify this circumstance as an aggravated offence. The Employers' Sanctions Directive already criminalises the employment of irregularly staying third country nationals.

Amendment 69

**Proposal for a directive
Article 9 – paragraph 1 – point c**

Text proposed by the Commission

(c) the offender has previously been definitively convicted of criminal offences of the same nature under *Articles 3, 4 or 5*;

Amendment

(c) the offender has previously been definitively convicted of criminal offences of the same nature under *Article 3 or Article 5*;

Or. en

Amendment 70

**Proposal for a directive
Article 9 – paragraph 1 – point d**

Text proposed by the Commission

(d) the criminal offence entailed or

Amendment

(d) the criminal offence entailed or

resulted in the exploitation *or instrumentalisation* of a third-country national who was *subject to* the criminal offence;

resulted in the exploitation of a third-country national who was *the object of* the criminal offence;

Or. en

Amendment 71

Proposal for a directive Article 9 – paragraph 1 – point e

Text proposed by the Commission

(e) dispossessing the third-country nationals who are *subject to* the criminal offence of their identity or travel documents;

Amendment

(e) dispossessing the third-country nationals who are *the object of* the criminal offence of their identity or travel documents;

Or. en

Amendment 72

Proposal for a directive Article 9 – paragraph 1 – point f

Text proposed by the Commission

(f) the criminal offence was *carried out while carrying a firearm*.

Amendment

(f) the criminal offence was *committed involving cruel, inhuman or degrading treatment of a third-country national who was the object of the criminal offence*.

Or. en

Justification

The aggravating circumstance of carrying a gun is not explicable - would it not be aggravating circumstance to carry a large knife? It is better to reflect the need to avoid cruel, inhuman or degrading treatment.

Amendment 73

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure that, in relation to the criminal offences referred to in Articles 3, 4 and 5, ***it may*** be regarded as a mitigating circumstance ***that the offender provides the competent authorities with information which they would not otherwise been able to obtain, helping them to:***

Amendment

Member States shall take the necessary measures to ensure that, in relation to the criminal offences referred to in Articles 3 and 5, ***the following may, in accordance with national law,*** be regarded as a mitigating circumstance:

Or. en

Justification

The language of Article 10 has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 74

Proposal for a directive

Article 10 – paragraph 1 – point a

Text proposed by the Commission

(a) identify or bring to justice other offenders; ***or***

Amendment

(a) ***that the offender provides the competent authorities with information helping them to*** identify or bring to justice other offenders;

Or. en

Amendment 75

Proposal for a directive

Article 10 – paragraph 1 – point b

Text proposed by the Commission

(b) find evidence.

Amendment

(b) ***that the offender provides the competent authorities with information helping them to*** find evidence.

Or. en

Amendment 76

Proposal for a directive Article 11 – title

Text proposed by the Commission

Limitation periods ***for criminal offences***

Amendment

Limitation periods

Or. en

Amendment 77

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and ***judicial decision*** of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

Amendment

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and ***adjudication*** of criminal offences referred to in Articles 3 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

Or. en

Amendment 78

Proposal for a directive

Article 11 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and **judicial decision**:

Amendment

2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and **adjudication**:

Or. en

Amendment 79

Proposal for a directive

Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) of criminal offences referred to in Article 3, for a period of at least **seven** years from the **time when** the criminal offence **was committed**,

Amendment

(a) of criminal offences **punishable by a maximum term of imprisonment of at least two years** referred to in Article 3, for a period of at least **three** years from the **commission of** the criminal offence;

Or. en

Amendment 80

Proposal for a directive

Article 11 – paragraph 2 – point b

Text proposed by the Commission

(b) of criminal offences **referred to in Article 4, points (a) to (d)** for a period of at least **ten** years from the **time when** the criminal offence **was committed**;

Amendment

(b) of criminal offences **punishable by a maximum term of imprisonment of at least five years**, for a period of at least **five** years from the **commission of** the criminal offence;

Or. en

Amendment 81

Proposal for a directive

Article 11 – paragraph 2 – point c

Text proposed by the Commission

(c) of criminal offences *referred to in Article 4, point (e), including attempts to commit the offence referred to in Article 4, point (e)*, for a period of at least **fifteen** years from the time *when* the criminal offence *was committed*.

Amendment

(c) of criminal offences *punishable by a maximum term of imprisonment of at least ten years*, for a period of at least **ten** years from the time *of commission of* the criminal offence.

Or. en

Amendment 82

Proposal for a directive

Article 11 – paragraph 3 – point a

Text proposed by the Commission

(a) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 3, for at least **seven** years from the date of the final conviction;

Amendment

(a) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 3(1), for at least **three** years from the date of the final conviction;

Or. en

Amendment 83

Proposal for a directive

Article 11 – paragraph 3 – point b

Text proposed by the Commission

(b) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence *referred to in Article 4, points (a) to (d)*, for at least **ten** years from the date of the final conviction;

Amendment

(b) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence *covered in Article 6(3)*, for at least **five** years from the date of the final conviction;

Justification

In the absence of Article 4 in the text, this language reflects the language used in Article 6(3).

Amendment 84**Proposal for a directive****Article 11 – paragraph 3 – point c***Text proposed by the Commission*

(c) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 4, **point (e), including attempts to commit the criminal offence referred to in Article 4, point (e)**, for at least **fifteen** years from the date of the final conviction.

Amendment

(c) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article **6(4)**, for at least **ten** years from the date of the final conviction.

Amendment 85**Proposal for a directive****Article 11 – paragraph 4 – introductory part***Text proposed by the Commission*

4. By way of derogation from **paragraphs 2 and 3**, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts. **This** period shall not be shorter than:

(a) five years for the criminal offences referred to in Article 3;

(b) eight years for the criminal offences referred to in Article 4, points (a) to (d);

(c) ten years for the criminal offences

Amendment

4. By way of derogation from **paragraph 2, point (c), and paragraph 3, point (c)**, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts. **That** period shall not be shorter than **five years**.

referred to in Article 4, point (e), including attempts to commit the criminal offence referred to in Article 4, point (e).

Or. en

Amendment 86

Proposal for a directive Article 12 – paragraph 1 – introductory part

Text proposed by the Commission

1. Each Member State shall establish its jurisdiction over **a** criminal **offence** referred to in Articles 3, **4** and 5 where **the criminal offence**:

Amendment

1. Each Member State shall establish its jurisdiction over **the** criminal **offences** referred to in Articles 3 and 5 where:

Or. en

Amendment 87

Proposal for a directive Article 12 – paragraph 1 – point a

Text proposed by the Commission

(a) is committed in whole or in part **in** its territory;

Amendment

(a) **the criminal offence** is committed in whole or in part **within** its territory;

Or. en

Amendment 88

Proposal for a directive Article 12 – paragraph 1 – point b

Text proposed by the Commission

(b) is **committed by** one of its nationals **or a third-country nationals who is a habitual resident in its territory**;

Amendment

(b) **the offender** is one of its nationals;

Justification

The reference to habitual residents and to legal persons are moved to the optional jurisdiction provision in paragraph 2.

Amendment 89**Proposal for a directive****Article 12 – paragraph 1 – point c**

Text proposed by the Commission

Amendment

- | | |
|---|-----------------------|
| <p>(c) is committed for the benefit of a legal person</p> <p>(i) established in its territory;</p> <p>(ii) in respect of any business done in whole or in part in its territory;</p> | <p>deleted</p> |
|---|-----------------------|

Or. en

Amendment 90**Proposal for a directive****Article 12 – paragraph 1 – point d**

Text proposed by the Commission

Amendment

- | | |
|---|---|
| <p>(d) is committed on board of a ship or an aircraft registered in it or flying its flag;</p> | <p>(d) <i>the criminal offence</i> is committed on board of a ship or an aircraft registered in it or flying its flag;</p> |
|---|---|

Or. en

Amendment 91**Proposal for a directive****Article 12 – paragraph 1 – point e**

Text proposed by the Commission

Amendment

- | | |
|---|-----------------------|
| <p>(e) results in the entry, transit or stay</p> | <p>deleted</p> |
|---|-----------------------|

in the territory of that Member State of third-country nationals who were subject to the criminal offence.

Or. en

Amendment 92

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall establish jurisdiction over attempts to commit a criminal offence referred to in Article 4 point (e), where the conduct would have constituted a criminal offence over which jurisdiction would have been established pursuant to paragraph 1. *deleted*

Or. en

Justification

Given the deletion of Article 4, this provision no longer makes sense here.

Amendment 93

Proposal for a directive Article 12 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. For the prosecution of the criminal offences referred to in Articles 3, 4 and 5 committed outside the territory of a Member State, *each* Member State shall *take the necessary measures to ensure that* its jurisdiction *is not subject to either of the following conditions:*

3. For the prosecution of the criminal offences referred to in Articles 3 and 5 committed outside the territory of a Member State, *a* Member State shall *inform the Commission where it intends to extend* its jurisdiction *where:*

Or. en

Justification

The provisions here are moved down from paragraph 1 and left optional for the Member States.

Amendment 94

Proposal for a directive Article 12 – paragraph 3 – point a

Text proposed by the Commission

(a) *the acts are a criminal offence at the place where they were carried out;*

Amendment

(a) *the offender is a habitual resident in its territory;*

Or. en

Amendment 95

Proposal for a directive Article 12 – paragraph 3 – point b

Text proposed by the Commission

(b) *the prosecution can be initiated only following a transmission of information from the State of the place where the criminal offence was committed.*

Amendment

(b) *the criminal offence is committed for the benefit of a legal person:*

(i) *established in its territory;*

(ii) *in respect of any business done in whole or in part on its territory;*

Or. en

Amendment 96

Proposal for a directive Article 12 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) *the criminal offence results in the entry or transit in the territory of Member*

State of third-country nationals who were the object of the criminal offence.

Or. en

Amendment 97

Proposal for a directive Article 12 – paragraph 4

Text proposed by the Commission

4. Where a criminal offence referred to in Articles 3, **4** and 5 falls within the jurisdiction of more than one Member State, **these** Member States shall cooperate to determine which Member State is to conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

Amendment

4. Where a criminal offence referred to in Articles **3 and 5** falls within the jurisdiction of more than one Member State, **those** Member States shall cooperate to determine which Member State is to conduct **the** criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

Or. en

Amendment 98

Proposal for a directive Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Ne bis in idem

In the transposition and application of this Directive, Member States shall ensure that the possibility of multiple jurisdictions for cross-border criminal offences falling within its scope does not lead to any infringement of the principle of ne bis in idem.

Or. en

Justification

Given the expansion of jurisdiction and the increased risk of multiple jurisdictions existing, it is important to establish the application of the principle of ne bis in idem.

Amendment 99

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall take appropriate action, such as information and awareness-raising campaigns, and research and education programmes, aimed at raising public awareness and reducing the commission of the criminal offences referred to in Articles 3, 4 and 5.

Amendment

1. Member States shall take appropriate action, such as information and awareness-raising campaigns, and research and education programmes, ***in particular in relevant third countries***, aimed at raising public awareness and reducing the commission of the criminal offences referred to in Articles 3 and 5.

Or. en

Justification

For meaningful benefit, such information and awareness-raising campaigns need to be carried out in third countries.

Amendment 100

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

Member States shall ensure that national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to Articles 3, 4 and 5 have a sufficient number of qualified staff and sufficient financial, technical and technological resources ***necessary*** for the effective performance of their functions related to the implementation of this Directive.

Amendment

Member States shall ensure that national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to Articles 3 and 5 have a sufficient number of qualified staff and sufficient financial, technical and technological resources for the effective performance of their functions related to the implementation of this Directive.

Amendment 101**Proposal for a directive
Article 15 – paragraph 1***Text proposed by the Commission*

1. Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3, 4 and 5.

Amendment

1. Member States shall take the necessary measures to ensure adequate resources for and the provision of specialised training at regular intervals for the members of the law enforcement, **legal professionals**, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of criminal offences referred to in Articles 3 and 5.

Or. en

Justification

It is important that specialized training is available to lawyers also in line with the recommendation from the CCBE.

Amendment 102**Proposal for a directive
Article 15 – paragraph 2***Text proposed by the Commission*

2. Without prejudice to judicial independence, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and competent authorities' staff involved in criminal proceedings and investigations with **respect** to the objectives of this Directive.

Amendment

2. Without prejudice to judicial independence **and differences in the organisation of the judiciary across the Union**, Member States shall take the necessary measures to ensure that specialised regular training is provided to judges, prosecutors, law enforcement and judicial staff and **to** competent authorities' staff involved in criminal proceedings and investigations with **regard** to the objectives of this Directive **and appropriate to the functions of such judges, prosecutors, law enforcement and judicial staff and**

competent authorities' staff.

Or. en

Justification

The language of Article 15 has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 103

**Proposal for a directive
Article 16 – paragraph 1**

Text proposed by the Commission

Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3, 4 and 5. *Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.*

Amendment

Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting criminal offences referred to in Articles 3 and 5.

Or. en

Justification

The special investigative tools used for tackling organised crime should be available, in accordance with national law, where there are indications that organised crime is involved in the criminal offences.

Amendment 104

**Proposal for a directive
Article 17 – title**

Text proposed by the Commission

Data collection and statistics

Amendment

Statistical data

Or. en

Justification

The language of Article 10 has been aligned with the draft model provisions on substantive criminal law, endorsed by the LIBE Coordinators in February 2025.

Amendment 105

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

1. Member States shall *collect* statistical data *disaggregated by the type of criminal offence* referred to in Articles 3, 4 and 5.

Amendment

1. Member States shall *ensure that a system is in place for the collection, development, production and dissemination of anonymised* statistical data *on* criminal *offences* referred to in Articles 3 and 5.

Or. en

Amendment 106

Proposal for a directive Article 17 – paragraph 2 – introductory part

Text proposed by the Commission

2. *The* statistical data referred to in paragraph 1 shall include, *at least*, the following:

Amendment

2. *Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit to the Commission* statistical data referred to in paragraph 1 *which* shall include, *as a minimum*, the following:

Or. en

Amendment 107

Proposal for a directive Article 17 – paragraph 2 – point a

Text proposed by the Commission

(a) the number of third-country nationals who were **subject to** the criminal offence, disaggregated by citizenship, sex and age (child/adult);

Amendment

(a) the number of third-country nationals who were **the object of** the criminal offence, disaggregated by citizenship, sex and age (child/adult);

Or. en

Amendment 108

**Proposal for a directive
Article 17 – paragraph 3**

Text proposed by the Commission

3. Member States shall, on an annual basis and by 1 July each year, publish, in a machine-readable and **disaggregated** format, the statistical data referred to in paragraph 2 for the previous year and transmit it to the Commission.

Amendment

3. Member States shall, on an annual basis and by 1 July each year, publish, in a machine-readable and **anonymised** format, the statistical data referred to in paragraph 2 for the previous year and transmit it to the Commission.

Or. en

Amendment 109

**Proposal for a directive
Article 17 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. The Commission shall, at least every three years, publish a report based on the statistical data transmitted by the Member States. That report shall be published for the first time ... [five years from the date of entry into force of this Directive].

Or. en

Justification

Standard reporting obligation on the Commission. For the first report the Commission should be given enough time for transposition by the Member States and for the collection and transmission of enough data to make the report meaningful.

Amendment 110

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [one year *after* the entry into force of this Directive] *at the latest*. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [one year *from* the entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

EXPLANATORY STATEMENT

The Rapporteur will present hereafter the main reasons for the amendments presented in the draft report on the proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA 2023/0439(COD) adopted by the Commission in November 2023.

Introduction

Since the re-confirmation of the appointment of the Rapporteur on 10 September 2024, several exchanges of views took place, including a meeting with the shadow Rapporteurs, as well as meetings with external stakeholders. In addition, the presentation of the European Parliamentary Research Service (EPRS) targeted substitute impact assessment took place in the LIBE Committee on 19 March 2025.

The Rapporteur shares the overall objective of the Commission to modernise and reinforce the legal framework on migration smuggling, in particular aligning the criminal law instrument with the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air. The Rapporteur strongly believes that modernisation of the criminal law should reflect the shared intention to investigate and prosecute “high-level” targets in organised crime and in criminal smuggling networks. With this intention in mind, the Rapporteur proposes amendments to the Commission’s proposal for a Directive, in order to improve clarity and legal certainty.

The Rapporteur regrets that the Commission did not produce an impact assessment for the proposal and would like to express her gratitude to the European Parliamentary Research Service Ex-Ante Impact Assessment Unit and the respective contractors for the work on the targeted substitute impact assessment.

Main elements of the draft report

The 2017 REFIT evaluation of the current Facilitators Package, and the 2024 study supporting the implementation of the Facilitators Package highlighted the challenges posed by the current broad definition of the criminal offence, specifically the risk of criminalisation of humanitarian assistance, a risk that we have seen borne out in practice in a number of Member States. While the Rapporteur explicitly welcomes the introduction of the financial or material gain to the definition of the criminal offence, the continued absence of an exemption for humanitarian assistance is regrettable. The Rapporteur therefore introduces a definition of humanitarian assistances and further stipulates that the provision thereof should not constitute a criminal offence.

Furthermore, the Rapporteur considers the introduction of a high likelihood of causing serious harm to a person and the novel concept of public instigation as part of the definition of the criminal offences as incompatible with the principle of legal certainty in criminal law and consequently proposes to delete them. The Rapporteur welcomes the fact that the Council of the European Union in its General Approach chose an equal approach.

To underline the Commission’s intention to dismantle organised crime networks engaged in

migrant smuggling, the Rapporteur proposes a number of amendments. This includes the possibility for a maximum penalty of offences committed within framework of a criminal organisation and allowing for the use of special investigative tools, in accordance with national law, where organised crime is involved in the criminal offences.

ANNEX: ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she received input from the following entities or persons in the preparation of the draft report:

Entity and/or person ⁽²⁾
Amnesty International Limited
Border Violence Monitoring Network
Caritas Deutschland
Caritas Europa
Commissie Meijers
Council of Bars and Law Societies of Europe
Danish Refugee Council Brussels
Deutscher Anwaltverein
EMERGENCY
Equinox Initiative for Racial Justice
Evangelische Kirche in Deutschland
Legal Centre Lesvos
Médecins Sans Frontières International
Parliamentary Assembly of the Council of Europe Rapporteur on Migration Smuggling
Platform for International Cooperation on Undocumented Migrants
Red Cross EU
Sea-Watch e.V.
SOLIDAR
SOS Humanity e.V.
Stichting LOS
United Nations High Commissioner for Human Rights
United Nations High Commissioner for Refugees
United Nations Special Rapporteur on the situation of human rights defenders

The list above is drawn up under the exclusive responsibility of the rapporteur.