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Dear Ms Lynch,

*Dear Mr Asselineau, Ms Costa Ramos, Mr Barletta, Mr Krutina,
Dear Members of the European Criminal Bar Association,*

Thank you for your letter of 8 March 2024 and the attached European Criminal Bar Association's (ECBA) Opinion of 1 March 2024 on the proposal for a Regulation on the transfer of proceedings in criminal matters, adopted by the Commission on 5 April 2023.

First of all, please allow me to inform you that on 6 March 2024 the European Parliament and the Council reached a provisional political agreement on the Regulation. The provisional agreement has been endorsed in Coreper on 20 March 2024, as well as by the LIBE Committee on 9 April 2024. The Regulation will be voted in the Parliament's plenary in the week of 22-25 April 2024, and its formal adoption is planned for Autumn 2024.

The proposed Regulation sets out a legal framework for transfer of criminal proceedings in the EU which aims to contribute to the efficient and proper administration of criminal justice in the Member States and to ensure that the best-placed Member State investigates or prosecutes a criminal offence. In particular, it aims to prevent unnecessary parallel criminal proceedings in different Member States concerning the same facts and the same person, which could result in an infringement of the ne bis in idem principle. Such rules are also essential in order to efficiently fight cross-border crime and to reduce the phenomenon of impunity when the surrender of a person for criminal prosecution under a European Arrest Warrant is refused.

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The provisional agreement of the co-legislators maintains the main elements of the Commission's proposal and does not depart from its overall logic. In particular, useful amendments have been introduced, improving the clarity and operational value of the proposal, and in some instances even increasing the level of ambition of the proposal, especially with a view to strengthening the rights of suspects/accused persons and victims, via the inclusion of additional stages of information and of their right to access documents related to the transfer procedure.

In your letter and the attached ECBA Opinion, you present specific considerations with regard to the provisions on the right to an effective remedy and on the right of the suspect or accused persons to request a transfer of proceedings, which you consider should be taken into account in the negotiations of the proposal.

The Commission has carefully considered the issues raised by the ECBA in its Opinion and would like to make the following observations, having regard to the text of the Regulation provisionally agreed by the co-legislators:

- (1) As concerns the **right to an effective legal remedy** against a decision accepting the transfer, the provisional agreement envisages that suspects/accused persons and victims shall have the right to an effective legal remedy before a court or tribunal against a decision to accept the transfer of criminal proceedings in accordance with Article 47 of the Charter of Fundamental Rights. The co-legislators agreed to provide that the decision to accept the transfer of criminal proceedings shall be examined in accordance with national law on the basis of the criteria provided for in Article 13(1) and (2) and that, in so far as discretion was exercised, the review shall be limited to assessing whether the requested authority has manifestly exceeded the limits of its discretion. A time-limit has been provided for seeking such a remedy, which should be no longer than 15 days from the date of receipt of the reasoned decision to accept the transfer, while a decision on the remedy should be taken where possible within 60 days. Moreover, the remedy shall have suspensive effect when the request for transfer of criminal proceedings is issued after the criminal investigation has been completed, and the suspect and accused person has been charged or indicted, in line with the Commission's proposal. Nonetheless, the provisional agreement specifies that the suspensive effect shall not affect the possibility for the requested State to maintain provisional measures necessary to prevent the suspect or accused person from absconding, or to preserve evidence, instrumentalities of a criminal offence or proceeds of crime. The co-legislators agreed to include an obligation of information by the requested authority to the requesting authority about the final outcome of the remedy sought and to provide that, in case the outcome of the legal remedy is that the decision accepting the transfer is overturned, the criminal proceedings will revert to the requesting authority. The provisional agreement also clarifies that such a remedy is without prejudice to any further legal remedies that are available in accordance with national law.*

*In line with the considerations presented in your Opinion, which the Commission also shares, I am happy to inform you that the co-legislators moreover agreed to provide **the right for suspects/accused persons and victims to access in the requested State all documents related to the transfer of criminal proceedings** that formed the basis for the*

decision to accept a transfer under the Regulation and that are necessary to effectively exercise their right to a legal remedy. The exercise of this right can be limited only where it would undermine or otherwise prejudice the confidentiality of the investigation or harm the safety of persons.

*(2) As concerns the **right of suspects/accused persons to request transfer of proceedings**, Article 5(3) of the proposed Regulation gives a possibility for victims, as well as for suspects and accused persons, to request the competent authorities to initiate the transfer procedure by bringing to their attention possible links to other Member States, which otherwise might not be known to them (similarly to the possibility for the suspects and accused persons to request the issuing of a European Investigation Order under Article 1(3) of Directive 2014/41/EU). The co-legislators maintained the text of the Commission's proposal, with the addition that such proposals must be considered and recorded in accordance with national law in the Member State concerned. These amendments are in line with the aim of the proposal, which aims to ensure a balanced approach in promoting the efficient administration of justice while duly safeguarding the rights of the individuals concerned by the transfer procedure.*

I hope that the clarifications provided in this reply address the concerns you raised.

Yours sincerely,

(e-signed)

Věra Jourová