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NOTE

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| From: | Presidency |
| To: | Delegations |
| Subject: | Overview of the current legislative proposals under the Slovenian Presidency |

Delegations will find attached the state of play of current Justice and Home Affairs legislative items in view to the JHA Council meeting on 7/8 October 2021.

INFORMATION FROM THE PRESIDENCY ON

CURRENT LEGISLATIVE PROPOSALS

HOME AFFAIRS

This report provides information from the Presidency on the status of negotiations on legislative proposals in the field of home affairs.

Legislative proposals in the field of civil protection and financial resources

The Critical Entities Resilience Directive

On 16 December 2020, the Commission presented its proposal for a Directive on the resilience of critical entities (the ‘CER Directive’), with the aim of replacing the current Directive on the identification and designation of European Critical Infrastructure (the ‘ECI Directive’). The file is being negotiated in the Council’s Working Party on Civil Protection in a specific formation dedicated to the CER Directive. In the European Parliament, the committee responsible for the proposal is the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The committees for opinion are the Foreign Affairs (AFET), Transport and Tourism (TRAN), Industry, Research and Energy (ITRE) and Internal Market and Consumer Protection (IMCO) committees, the latter two also being associated committees. The rapporteur for the file is Michal Šimečka (Renew, SK).

The first examination of the proposal was completed under the Portuguese Presidency and negotiations in the working party continue under the Slovenian Presidency, which presented a second partial revised draft text on 15 September 2021.

Legislative proposals in the field of migration

Resettlement Regulation

On 13 July 2016, the European Commission submitted a proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council. The file is being negotiated in the Council's Working Party on Integration, Migration and Expulsion and in the European Parliament's LIBE Committee (rapporteur Malin Björk MEP (GUE/NGL, SE)).

A provisional agreement on the whole text was reached with the European Parliament on 13 June 2018 and presented in Coreper on 19 June 2018. However, this provisional agreement was not approved by Coreper and negotiations have not resumed since May 2019.

Eurodac Regulation

On 23 September 2020, the Commission presented its amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818. The file is being negotiated in the Council's Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Jorge Buxadé Villalba MEP (ECR, ES)).

Based on the discussions in the Asylum Working Party, the German Presidency submitted a revised draft of the proposal and initiated a silence procedure, but there was not enough support to submit the text to Coreper. Further discussions in the Council were not pursued during the Portuguese Presidency. In September 2021, the Slovenian Presidency presented a revised version of the text with the aim of moving the negotiations forward. Discussions in the Asylum Working Party are ongoing.

EU Asylum Agency Regulation (EASO/EUAA Regulation)

On 4 May 2016, the Commission presented its proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010. The file was negotiated in the Council's Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Elena Yoncheva MEP (S&D, BG)). A partial general approach on this proposal was reached in Coreper on 20 December 2016.

The Commission presented an amended proposal on 12 September 2018, but no further amendments were made to the file as a result of the Pact on Migration and Asylum presented on 23 September 2020.

An extended mandate for the negotiations with the co-legislator, based on a compromise text proposal, was given by Coreper on 16 June 2021. A provisional agreement with the co-legislator was reached on 29 June 2021, and confirmed subsequently by Coreper on 30 June 2021.

Following its legal-linguistic revision, which is currently underway, the EUAA Regulation is expected to be signed at the Strasbourg plenary of 22-25 November 2021.

Asylum and Migration Management Regulation

On 23 September 2020, the Commission presented its proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]. The file is being negotiated in the Council's Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Tomas Tobé MEP (EPP, SE)).

The first examination of the proposal was completed in the Asylum Working Party under the Portuguese Presidency. This made it possible to identify the provisions for which there is support, those that could be improved or clarified, and those requiring further discussion. Based on this, suggestions for modifications have been presented by the Portuguese and Slovenian Presidencies. The revised version of the document is currently being examined in the Asylum Working Party.

Asylum Procedures Regulation

On 23 September 2020, the Commission presented its amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. The file is being negotiated in the Council's Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Fabienne Keller MEP (Renew, FR)).

In June 2021, the Portuguese Presidency concluded the second examination of the amended proposal, conducted at technical level in the Asylum Working Party, in part with IMEX experts. Under the Slovenian Presidency, certain parts of the Regulation, specifically those related to border procedure, were discussed at the informal meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

Recast of the Return Directive

On 12 September 2018, the Commission presented its proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast). The file is being negotiated in the Council's Working Party on Integration, Migration and Expulsion and in the European Parliament's LIBE Committee (rapporteur Tineke Strik MEP (Greens/EFA, NL)).

A partial general approach was reached by the Council on 7 June 2019 under the Romanian Presidency. The rapporteur's draft report on the Commission proposal has been available since 21 February 2020, while the amendments suggested by members of the LIBE Committee have been available since 28 September 2020. Discussions on the report and the proposed amendments took place in the LIBE Committee on 21 September and 15 October 2020. Due to the COVID-19 pandemic, the original timetable has been delayed and the voting schedule remains uncertain.

Qualification Regulation

On 13 July 2016, the Commission presented its proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. The proposed Regulation replaces the Qualification Directive. The file is being negotiated in the Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Tanja Fajon MEP (S&D, SI)).

A partial mandate for negotiations with the European Parliament was approved in Coreper on 19 July 2017 and was extended several times in 2017 and 2018. Eight political trilogues and 38 technical meetings with the European Parliament took place under the Estonian and Bulgarian Presidencies. A provisional agreement on the whole text was reached with the European Parliament on 14 June 2018 and the text was presented in Coreper on 19 June 2018. However, this provisional agreement was not approved by Coreper and negotiations have not resumed since.

Crisis Situations Regulation

On 23 September 2020, the Commission presented its proposal for a Regulation addressing situations of crisis and force majeure in the area of migration and asylum. The file will be negotiated in the Asylum Working Party and in the European Parliament's LIBE Committee (rapporteur Juan Fernando López Aguilar MEP (S&D, ES)).

Reception Conditions Directive

On 13 July 2016, the Commission presented its proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast). The proposal was discussed in the Asylum Working Party and at JHA counsellors meetings, and Coreper granted a mandate to start negotiations with the European Parliament on 29 November 2017. The file was negotiated with the European Parliament's LIBE Committee (rapporteur Sophie in 't Veld (Renew, NL)). Provisional agreement with the European Parliament was reached on 14 June 2018 and the text was presented in Coreper on 19 June 2018. However, this provisional agreement was not approved by Coreper and negotiations have not resumed since.

Legislative proposals in the field of security

Screening Regulation

On 23 September 2020, the Commission presented its proposal for a Regulation of the European Parliament and of the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. The file is being negotiated in the Council's Working Party on Frontiers and in the European Parliament's LIBE Committee (rapporteur Birgit Sippel MEP (S&D, DE)).

Under the Portuguese Presidency, the second examination of the proposal was completed in the Working Party on Frontiers and two more examinations were completed in JHA counsellors meetings. The Portuguese Presidency considered that, given the Member States' positions, including with regard to links with other legal acts, the work at technical level had reached its limits. On 25 June 2021, the Portuguese Presidency issued the last compromise text on the proposal during its term, passing the file on to the Slovenian Presidency. Based on an exchange of views at the informal meeting of home affairs ministers in July 2021, the Slovenian Presidency decided to explore the possibility of moving forward with a swift examination of the proposal by initiating further discussion at the SCIFA meeting on 27 September 2021.

Screening consequential amendments

On 2 March 2021, the Commission presented its proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/816 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and Regulation (EU) 2019/818 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 for the purpose of introducing a screening of third-country nationals at the external borders. The file is being negotiated in the Council's Working Party on Frontiers and in the European Parliament's LIBE Committee (rapporteur Birgit Sippel MEP (S&D, DE)).

The first examination of the proposal was completed in the Working Party on Frontiers under the Portuguese Presidency. The Slovenian Presidency concluded the second examination of the text.

Europol and SIS Regulations

On 9 December 2020, the Commission presented a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation. The proposal was examined in 14 meetings of the Law Enforcement Working Party under the Portuguese Presidency and a mandate for negotiations with the European Parliament was approved by Coreper on 30 June 2021.

Also on 9 December 2020, the Commission presented a related proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol. This proposal was examined in one meeting of the Working Party on JHA Information Exchange (IXIM) under the Portuguese Presidency, further examination being postponed due to the fact that technical implications dealt with in this Regulation depend on the wording in the abovementioned proposal to amend the Europol Regulation. Consequently, the Slovenian Presidency revised the text of the SIS proposal to align it with the Coreper mandate for the Europol Regulation. The compromise proposal is currently being examined in the IXIM Working Party with the intention of obtaining a mandate for negotiations with the European Parliament.

In the European Parliament both files are being dealt with in the LIBE Committee and the rapporteur for both both proposals is Javier Zarzalejos (EPP/ES).

Legislative proposals in the field of Schengen matters

Regulation on the Schengen evaluation and monitoring mechanism

On 3 June 2021, the Commission presented a proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013. The Slovenian Presidency concluded the first examination of the proposal in the Working Party for Schengen Matters.

In line with the relevant provision of the Treaty, the Council decided on 30 August to consult the European Parliament on the proposal and has requested the European Parliament to submit its opinion as soon as possible.

JUSTICE

Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and Directive laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings

On 17 April 2018, the European Commission presented two legislative proposals to enhance the cross-border gathering of electronic evidence: a proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters, and a proposal for a Directive on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings, together referred to as the e-evidence legislative package.

On 7 December 2018, the Council reached a general approach on the proposal for a Regulation, supplemented on 6 June 2019 by the revised text of the annexes. A general approach on the Directive was reached on 8 March 2019.

On 7 December 2020, the LIBE Committee adopted its position on the Commission's legislative initiative, which was confirmed by the European Parliament' plenary on 14 December 2020.

Four political trilogues have been held so far (10 February 2021, 18 March 2021, 20 May 2021, 9 July 2021). At the most recent trilogue, discussions focused on notifications.

The negotiations are advancing well but there are still issues of substance to be resolved.

The COPEN WP is regularly informed and consulted on the status of the negotiations with the European Parliament and has already had several meetings dedicated to the e-evidence legislative package in 2021.

Alignment of EU instruments in the field of criminal law with EU rules on the protection of personal data:

- a) Proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2002/465/JHA, as regards its alignment with EU rules on the protection of personal data;**
- b) Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/41/EU, as regards its alignment with EU rules on the protection of personal data.**

On 20 January 2021 the Commission presented two proposals for Directives amending two Union instruments in the field of criminal law - Framework Decision 2002/465/JHA on JITs and Directive 2014/41/EU on the EIO - with the aim of ensuring their alignment with the EU rules on data protection, namely with the principles and provisions laid down in Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

After examining the matter at expert level in the COPEN Working Party COREPER agreed to start negotiations with the European Parliament on these files on 21 April 2021.

The European Parliament adopted its position on 16 September 2021. Trilogues on both files will start in October.

Regulation on e-CODEX

The European Commission presented its proposal for a Regulation on the e-CODEX system on 3 December 2020. It was thoroughly examined at expert level in the Ad Hoc WG.

A general approach was reached in the Council on 7 June 2021. An addition to this general approach was approved on 22 July 2021, with an agreement to develop and manage the operation of e-CODEX in Tallinn, Estonia.

The report of the European Parliament on the proposal is being discussed in the Committees JURI and LIBE. The adoption of the report by the Plenary is foreseen for the end of October.

Timing is of particular importance as there needs to be sufficient time between the adoption of the Regulation and the actual transfer to eu-LISA, in order to allow eu-LISA to secure funding and staffing.

Trilogues will start as soon as the European Parliament adopts its position.

Regulation on the law applicable to the third-party effects of assignments of claims

The European Commission adopted the proposal for a Regulation on the law applicable to the third-party effects of assignments of claims on 12 March 2018.

The Austrian and Romanian Presidencies started the examination of the proposal. The file was then blocked and negotiations resumed under the Croatian, German and Portuguese Presidencies.

A general approach was reached in Council on 7 June 2021, which provided the mandate for negotiations with the European Parliament.

The European Parliament Plenary adopted its report on this file on 12 September 2019 with 24 amendments.

The Parliament and the Council agree on the principles underlying many questions, such as the need to clarify the position of the debtor, the need to exclude novation from the scope of the proposal and the need to ensure clarity and consistency with other instruments of Union law.

The Slovenian Presidency will strive to start the trilogues as soon as possible. Preparations on both sides are ongoing.

Regulation replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings

The European Commission presented its Proposal for a Regulation of the European Parliament and of the Council replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings on 11 May 2021.

A first exchange of views on the Commission proposal took place on 16 June under the Portuguese Presidency in the Working Party in Civil Law Matters (General Questions). Under the Slovenian Presidency, the text was revised and consulted with the delegations by 30 September 2021. At the beginning of October the Presidency informally shared the Council's revised text with the European Parliament at technical level in order to avoid the need for trilogues.

The vote in JURI Committee is expected for 14 October. The aim of the Presidency is to finalise the negotiations by the end of the year.