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NOTE

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 Justice and Home Affairs Council meeting on 9/10 December 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 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 Asylum Working Party 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.

Under the Slovenian Presidency, the examination of a revised version of the text was completed in the Asylum Working Party on 20 October 2021. Discussion continued at the level of JHA Counsellors on 15 and 25 November 2021 with the aim of moving the negotiations forward.

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.

The European Parliament adopted its position at first reading on 11 November 2021. The text will be adopted by the Council on 9 December 2021. The EUAA Regulation is expected to be co-signed in the margins of the European Parliament's plenary session on 15 December 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 Slovenian Presidency completed the second examination of the proposal in the Asylum Working Party on 10 November 2021.

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 the Working Party on Integration, Migration and Expulsion 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).

In November 2021, the Slovenian Presidency presented a revised text of the amended proposal with the aim of moving the negotiations forward. The examination of the compromise text was completed on 1 December 2021.

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. Following a policy debate at the Justice and Home Affairs Council on 8 October 2021, the Slovenian Presidency organised an additional round of discussions at the technical level on 3 December 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 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. The mandate for negotiations with the European Parliament was approved by Coreper on 13 October 2021.

The Slovenian Presidency began interinstitutional negotiations on the two legislative proposals on 27 October 2021 as soon as the Parliament adopted its reports with the aim of concluding negotiations by the end of the year. Since then, two political trilogues and six technical meetings have taken place. The rapporteur in the European Parliament for both files is Javier Zarzalejos (EPP/ES).

JUSTICE

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, while the Parliament adopted its positions on 16 September 2021. Technical meetings between the Council, the Parliament and the Commission were held on 21 September and 13 October. Co-legislators reached an agreement on the text of both files at the political trilogue on 11 November 2021.

After the approval of the agreed compromise texts by COREPER on 17 November, the Chair of COREPER II sent two letters, one for each proposal, to the Chair of the LIBE Committee, confirming that the Council would approve the Parliament's position, should the Parliament adopt its position at first reading in the form set out in the compromise texts contained in the Annexes of those letters.

Both files are scheduled for the European Parliament's plenary on 13 December.

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 amendment 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 was discussed in the JURI and LIBE Committees. The European Parliament adopted the report on 18 October 2021.

The first political trilogue was held on 9 November 2021 and the second on 8 December 2021. At the second trilogue, the European Parliament and the Council representatives agreed on a compromised text that still must be confirmed by Coreper.

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.

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 and the need to ensure clarity and consistency with other instruments of Union law.

The first political trilogue was held on 1 December 2021¹. In the meeting the three institutions presented their main priorities for the trilogues.

¹ The original positions of the three institutions can be found in the 4-column table set out in ST 14544/21.