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NOTE

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

Delegations will find attached the state of play of ongoing legislative files in the area of Justice and Home Affairs in preparation for the meeting of the Justice and Home Affairs Council on 4 and 5 December 2023.

INFORMATION FROM THE PRESIDENCY ON
CURRENT LEGISLATIVE PROPOSALS

JUSTICE AFFAIRS

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

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

The objective of the proposal is to increase cross-border transactions in claims and, thereby, facilitate access to finance by ensuring greater legal certainty for investors when dealing with cross-border transactions of claims.

The proposal is handled in the Working Party on Civil Law Matters.

The Council reached a general approach on 7 June 2021. Interinstitutional negotiations started under the Slovenian Presidency but have been halted since 8 March 2022, when the last technical meeting took place. Letters were subsequently exchanged to find a way forward. On 25 September 2023 the Presidency received a letter from the EP JURI Committee in which the European Parliament provides some explanations of their position and proposes a possible political compromise. The letter and the proposal of the Parliament were discussed during a meeting of the JHA Counsellors on 23 November.

Directive against strategic lawsuits against public participation ("anti-SLAPP Directive")

On 27 April 2022 the Commission submitted the proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

The objective of the proposal is to provide natural and legal persons who engage in public participation targeted procedural safeguards against manifestly unfounded claims or abusive court proceedings (commonly referred to as strategic lawsuits against public participation or 'SLAPPs').

The proposal is handled in the Working Party on Civil Law Matters (SLAPP).

The Council reached a general approach at the JHA Council on 9 June 2023. The competent Committee in the Parliament is JURI. The European Parliament voted on its report on the Commission proposal in the Plenary on 11 July 2023. The first and second trilogues took place on 12 July and 9 October 2023. The aim is to come to an agreement on the file by the end of the Spanish Presidency. A third and possibly final trilogue is planned on 29 November.

Directive on liability for defective products

On 28 September 2022, the Commission presented a proposal for a revised Product Liability Directive.

The objective of the proposal is to adapt the liability regime established through the Product Liability Directive from 1985 to the digital age, circular economy and the impact of global value chains.

The proposal is handled in the Working Party on Civil Law Matters.

A mandate for negotiations was approved in Coreper on 14 June 2023.

The European Parliament adopted its position in Plenary on 18 October. The first trilogue took place on 23 October. The second and possibly final trilogue is planned on 14 December 2023. The objective is to reach an agreement on the Directive under the Spanish Presidency.

AI Liability Directive

On 28 September 2022, the Commission presented a proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive).

The objective of the proposal is a targeted harmonisation of national liability rules for AI, making it easier for victims of AI-related damage to get compensation. The AI Liability directive is intended to provide a legal basis for claiming compensation following a lack of compliance with specific obligations set out in the EU's AI regulation.

The proposal is handled in the Working Party on Civil Law Matters. Discussions on that file will be resumed, after the finalization of the negotiations on the closely linked AI Act.

Regulation on the cross-border recognition of parenthood

The Commission submitted a proposal for a Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood on 7 December 2022.

The objective of the proposal is to facilitate the cross-border recognition of parenthood within the EU.

The proposal is handled in the Working Party on Civil Law Matters. The Working Party continues to meet regularly to examine the proposal.

Directive harmonising certain aspects of insolvency law

The Commission submitted a proposal for a Directive harmonising certain aspects of insolvency law on 7 December 2022.

The objective of the proposal is to harmonise targeted aspects of Member States' insolvency laws to improve the recovery of assets from the liquidated insolvency estate; ensure their fair and predictable distribution; and improve the efficiency of insolvency proceedings overall. This should facilitate cross-border investments within the EU.

The proposal is handled in the Working Party on Civil Law Matters. The Council held a policy debate on this file on 20 October and the work has resumed since then in the Working Party.

Regulation on protection of adults

The Commission submitted on 31 May 2023 a proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults.

The proposal was presented in June in the Working Party on Civil Law Matters under the Swedish Presidency. The first technical examination of the Regulation is ongoing in the Working Party.

Directive on the protection of the environment through criminal law

On 15 December 2021 the Commission submitted its proposal for a Directive on the protection of the environment through criminal law, replacing Directive 2008/99/EC.

The objective of the proposal is to define environmental crime more precisely, add new environmental crime categories under its scope, and introduce various new provisions, including on minimum maximum sanctioning levels for natural and legal persons, on specific training to strengthen the law enforcement chain, on adequate resource allocation, and on cross-border investigation tools.

The proposal is handled in the Working Party on Judicial Cooperation in Criminal Matters (COPEN).

The Council reached a general approach on the proposal on 9 December 2022. Following the adoption by the JURI Committee of its opinion, interinstitutional negotiations started in May 2023.

A provisional agreement was reached at the trilogue of 16 November 2023.

Coreper will soon be invited to confirm agreement on the final compromise text.

Directive on combating violence against women and domestic violence

The Commission submitted its proposal for a Directive on combating violence against women and domestic violence on 9 March 2022.

The objective of the proposal is to set minimum standards in EU law for criminalising certain forms of gender-based violence, improve access to justice, protection and support for victims, ensure coordination between relevant services, and prevent these types of crime.

The proposal is handled in the Working Party on Judicial Cooperation in Criminal Matters (COPEN).

The Council reached a general approach on the proposal on 9 June 2023. Following the adoption by the LIBE and FEMM Committees of their joint opinion, interinstitutional negotiations started in July 2023, under the Spanish Presidency. A fourth and possibly final trilogue is planned on 13 December 2023. The objective is to reach a political agreement at the earliest opportunity, possibly by the end of the year.

Revision of the Directive on asset recovery and confiscation

On 25 May 2022 the Commission submitted a proposal for a Directive on asset recovery and confiscation.

The objective of the proposal is to extend the possibilities for confiscation beyond the most traditional cases, including the so called non-conviction based confiscation, and to reinforce the action of national asset recovery offices.

The proposal is handled in the Working Party on Judicial Cooperation in Criminal Matters (COPEN).

The Council reached a general approach on 9 June 2023. The first two trilogues took place on 13 June and 3 October. The objective is to reach an agreement under the Spanish Presidency. A third and possibly final trilogue is planned on 12 December.

Directive on the violation of Union restrictive measures

The proposal was tabled on 2 December 2022, shortly after the adoption of a specific Council Decision from 28 November 2022 which had enlarged the legal basis in Article 83(1) TFEU.

The objective of the proposal is to ensure that the Member States will have the same minimum crime definitions and minimum penalties in force as regards violation of Union restrictive measures. This will be an important political signal, increase the effectiveness of restrictive measures and facilitate cross-border cooperation.

The proposal is handled in the Working Party on Judicial Cooperation in Criminal Matters (COPEN).

The Council reached a general approach on 9 June 2023. On 6 July, the LIBE Committee adopted the report and authorised the opening of interinstitutional negotiations, a decision confirmed by the Plenary on 12 July. The first trilogue took place on the same day, under the Spanish Presidency. The second trilogue took place on 26 September. The objective is to reach an agreement under the Spanish Presidency. A third and possibly final trilogue is planned on 30 November.

Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

The Commission submitted on 19 December 2022 a proposal to amend Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

The objective of the proposal is to amend the existing 2011 Directive in a targeted manner. In particular, it aims at criminalising the knowing use of services provided by a victim of trafficking, strengthening the obligations regime of national referral mechanisms and the rules on data collection and statistics.

The proposal is handled in the Working Party on Judicial Cooperation in Criminal Matters (COPEN).

The Council reached a general approach on 9 June 2023. The FEMM and LIBE Committees, both competent for this file, approved their joint opinion on 5 October. The Parliament's position was adopted in the Plenary of 18 October. The first trilogue took place on 8 November 2023. A second trilogue is planned on 12 December. The objective of the Spanish Presidency is to reach an agreement with the Parliament.

Directive on combating corruption

The Commission submitted its proposal for a Directive on combating corruption on 3 May 2023.

The objective of the proposal is to update and harmonise EU rules on the definitions of and penalties for corruption offences, in the public and the private sector and includes also preventive measures.

The proposal was presented in the Working Party on Judicial Cooperation in Criminal Matters (COPEN) in June 2023, under the Swedish Presidency. Its examination in the Working Party continues under the Spanish Presidency. The CATS Committee discussed the proposal on 17 November.

Digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters (Regulation and Directive)

In December 2021, the European Commission submitted a proposal for a horizontal regulation on the digitalisation of judicial cooperation and access to justice. In addition, the Commission presented a proposal for a Directive on the digitalisation of justice.

On 9 December 2022 the Council reached general approaches on the proposals. Interinstitutional negotiations started in March 2023 and The co-legislators reached a provisional political agreement on 28 June 2023. The provisional agreement was submitted to COREPER on 19 July. Review by the lawyer-linguists is finalised. The Parliament adopted the instruments on 23 November. The adoption by the Council is foreseen on 8 December and the signature on 13 December.

Regulation on enforcement procedures of the General Data Protection Regulation

The Commission submitted on 4 July 2023 a proposal for a Regulation laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679.

The objective of the proposal is to clarify and complement existing procedural rules under the GDPR applicable to the cooperation between data protection authorities, in order to streamline and speed up enforcement proceedings in cross border cases. The proposal notably foresees targeted harmonisation of rules in relation to the submission and handling of complaints, the role of the complainant in the procedure, the procedural steps and tools for Data Protection Authorities to reach consensus at an early stage, as well as the facilitation of dispute resolution proceedings within the European Data Protection Board (EDPB).

The proposal is handled in the Working Party on Data Protection which has initiated the first reading of the text article-by-article, with the objective of completing this initial step under Spanish Presidency.

HOME AFFAIRS

Legislative proposals in the area of security

Revision of Directive on financial information (access of competent authorities to centralised bank account registries)

The Commission submitted the proposal in July 2021. The European Parliament appointed Mr Emil Radev (EPP, BG) as rapporteur. The decision of the Committee on Civil Liberty, Justice, and Home Affairs (LIBE) to enter into interinstitutional negotiations was confirmed by the Plenary on 13 February 2023. In the Council, the negotiations began in the Law Enforcement Working Party (LEWP) in January 2023 and continued during spring 2023. Coreper agreed on a common approach on 29 March. Trilogues with the European Parliament began on 3 May. A provisional agreement was reached on 6 June 2023 between the Council and the European Parliament. The formal agreement was conditional upon, and will occur when the provisional commitment to the package of legislative proposals to strengthen EU anti-money-laundering rules and rules on combating the financing of terrorism (AML/CFT) is reached (intended for December 2023).

Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (CSA)

In May 2022, the Commission adopted the above proposal, accompanied by an impact assessment, which is intended to oblige online service providers to prevent the dissemination, detect, report and remove child sexual abuse material and to prevent, detect and report the solicitation of children, and to set up a new decentralised EU agency, the EU Centre to prevent and combat child sexual abuse. The text was examined in the Law Enforcement Working Party. A progress report was presented at the JHA Council meeting in December 2022, and Coreper provided guidance on selected issues in May and October 2023. The Council Legal Service issued a written opinion on 26 April 2023.

The Spanish Presidency has been working since the beginning of its term to reach an agreement within the Council and, as a result, many changes have been made to the text. While the compromise text of the Spanish Presidency has been supported by many delegations, some Member States maintained their concerns about the scope and proportionality of detection orders and encryption.

For this reason, until the end of the Spanish Presidency, the work on new proposals to limit the scope of the detection orders and to introduce safeguards for encryption has continued, with the aim of obtaining a qualified majority of Member States supporting the proposal. However, despite all efforts, this has not been possible so far.

In the European Parliament, LIBE is the leading committee, and the rapporteur is Javier Zarzalejos (EPP, ES). In April 2023, the European Parliament Research Service presented a complementary impact assessment covering a wide range of issues linked to fundamental rights and proportionality. The rapporteur's draft report was presented in LIBE in April 2023. The vote in LIBE took place on 14 November, and the EP position was deemed adopted on 22 November 2023 by a large majority. The EP position suggests detection being targeted, specified and limited to individual users, or a specific group of users, in respect of whom there are reasonable grounds of suspicion for a link with child sexual abuse material. In addition, end-to-end-encrypted communication services are excluded from the scope.

On 30 November 2023, the Commission presented the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/1232 of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse. This interim regulation lays down temporary and strictly limited rules derogating from certain obligations laid down in Directive 2002/58/EC ("the ePrivacy Directive"), with the sole objective of enabling providers to voluntarily detect, report and remove child sexual abuse material. The new proposal, if adopted, would extend the period of application of the Interim Regulation by two years until 3 August 2026, allowing the co-legislators more time to reach an agreement on the long-term CSA Regulation.

Legislative proposals in the area of asylum, migration, borders and visa

Schengen Borders Code Regulation

On 14 December 2021 the Commission presented a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

On 10 June 2022 the Home Affairs Council adopted a general approach on this proposal.

The European Parliament has appointed Ms Sylvie Guillaume (S&D, FR) as rapporteur, and LIBE is the responsible committee. She presented the draft report at the LIBE meeting on 17 November 2022. The LIBE Committee finally voted on the report on 20 September 2023. On 5 October the mandate was approved in Plenary, allowing the interinstitutional negotiations to start. A first political trilogue took place on 7 November 2023.

Regulation on situations of instrumentalisation in the field of migration and asylum

On 14 December 2021 the Commission presented its proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum. The proposal was discussed in the Council's Asylum Working Party as well as at JHA Counsellors level during 2022. Coreper did not approve a partial general approach on 7 December 2022. Further discussions on the proposal took place at the informal Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 20 April 2023.

In the European Parliament, rapporteur Mr Patryk Jaki (ECR, PL) presented his draft report to the LIBE Committee on 11 September 2023.

Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland

The Commission presented its proposal for a Council Decision on interim emergency measures for Latvia, Lithuania and Poland on 1 December 2021. The Council's Asylum Working Group began examining the proposal in January 2022. The text was discussed in Coreper in February 2022, but the Member States did not reach an agreement. Negotiations have not resumed since.

In the European Parliament, Ms Cornelia Ernst (GUE/NGL, DE) was appointed rapporteur for the file, and LIBE is the responsible committee.

Resettlement Regulation

On 13 July 2016 the Commission submitted a proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and of the Council. The text was discussed in the Council's Asylum Working Party and in the European Parliament's LIBE Committee, where the rapporteur is Ms Malin Björk (GUE/NGL, SE). A provisional agreement was reached with the European Parliament on 13 June 2018. However,

Coreper did not approve this provisional agreement. Based on the 2018 provisional agreement, the negotiation mandate was amended in Coreper on 7 and 20 December 2022. A provisional agreement with the European Parliament was reached, based on the amended mandate. The final adoption of this file is dependent on progress with other asylum files.

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 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 is intended to replace the Qualification Directive.

The text was discussed in the Council's Asylum Working Party and in the European Parliament's LIBE Committee, where the rapporteur is Matjaž Nemec (S&D, SI). A partial mandate for negotiations with the European Parliament was reached in Coreper on 19 July 2017 and was extended several times in 2017 and 2018.

A provisional agreement was reached with the European Parliament on 14 June 2018. However, Coreper did not approve this provisional agreement. Based on the 2018 provisional agreement, the negotiation mandate was amended in Coreper on 7 and 20 December 2022. A provisional agreement with the European Parliament was reached, based on the amended mandate. The final adoption of this file is dependent on progress with other asylum files.

Reception Conditions Directive

On 13 July 2016 the Commission presented its proposal for a Directive laying down standards for the reception of applicants for international protection (recast). The text was discussed in the Council's Asylum Working Party. The Council's negotiating mandate was adopted by Coreper on 29 November 2017. Ms Sophia in 't Veld (Renew Europe, NL) is the rapporteur of the European Parliament for this proposal, and LIBE is the responsible committee. A provisional agreement was reached with the European Parliament on 14 June 2018. However, Coreper did not approve this provisional agreement. On the basis of the 2018 provisional agreement, the negotiating mandate was amended in Coreper on 7 and 20 December 2022. A provisional agreement with the European

Parliament was reached, based on the amended mandate. The final adoption of this file is dependent on progress with other asylum files.

Return Directive

The proposal for a recast of the Return Directive, submitted by the Commission in September 2018, was discussed in the Council's Working Party on Integration, Migration and Expulsion. A partial general approach was adopted by the Council on 7 June 2019, excluding the article on border return procedures (which was moved by the Commission to the Asylum Procedure Regulation proposed in September 2020). Ms Tineke Strik (Greens/EFA, NL) is the rapporteur for the file, and LIBE is the responsible committee. The European Parliament has not yet adopted its negotiating mandate. As a result, discussions with the European Parliament have not yet begun.

Long-Term Residents Directive

On 27 April 2022 the Commission presented the Directive concerning the status of third-country nationals who are long-term residents (known as the LTR Directive). The current Long-Term Residents Directive dates back to 2003 (Council Directive 2003/109/EC of 25 November 2003).

After several discussions in the Council's Working Party on Integration, Migration and Expulsion – Admission (IMEX Admission) and the JHA Counsellors (IMEX – Admission), **Coreper** adopted a negotiating mandate **on 23 November**. The first political trilogue took place on 30 November 2023.

In the European Parliament, the LIBE Committee voted on the report by rapporteur Mr Damian Boeselager (Greens/EFA, DE) on 28 March 2023, which was confirmed by the Plenary on 19 April 2023.

Single Permit Directive

On 27 April 2022 the Commission presented the Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (known as the SPD Directive). The current Single Permit Directive dates back to 2011 (Directive 2011/98/EU).

After several discussions in the IMEX Admission Working Party, the Council reached a general approach on 8 June 2023 under the Swedish Presidency, holding a first trilogue on 13 June. Three more trilogues were held on 18 September, 12 October and 21 November under the Spanish Presidency. A fifth trilogue will take place in December, with the objective of reaching a provisional agreement with the European Parliament before the end of the year.

In the European Parliament, the LIBE Committee voted on the report by rapporteur Javier Moreno (S&D, ES) on 23 March 2023, which was confirmed by the Plenary on 19 April 2023.

Regulation on the digitalisation of the visa procedure

In April 2022 the Commission presented a proposal for a Regulation amending a number of acts as regards the digitalisation of the visa procedure. The interinstitutional negotiations were conducted under the Swedish Presidency and a provisional agreement was reached on 11 June 2023. The two Regulations were to be adopted by the EP at the October second session, and by the Council on 13 November. The signing took place on 22 November, followed by publication in the Official Journal.

Regulation amending the Visa Regulation as regards the visa suspension mechanism

On 18 October 2023 the Commission presented a proposal aimed at amending Regulation (EU) 2018/1806 as regards the visa suspension mechanism. Shortly thereafter, its examination started in the Visa Working Party and the Presidency will present a Presidency compromise text in December. In the European Parliament, the proposal was presented to the LIBE Committee on 13 November. On 30 November the meeting of the Coordinators will allocate the proposal to a Group and only thereafter the Rapporteur and the shadow-rapporteurs will be appointed.

Regulation amending the Visa Regulation as regards holders of Serbian passports issued by the Serbian Coordination Directorate (Koordinaciona uprava)

On 16 November 2023 the Commission presented a proposal aimed at amending Regulation (EU) 2018/1806 to grant visa exemption to holders of Serbian passports issued by the Serbian Coordination Directorate (i.e. Serbs residing in Kosovo) and therefore ensure that all citizens of the Western Balkan region benefit from visa-free travel to the Schengen area. The proposal was presented to the Visa Working Party on the day of its adoption.

Regulations on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls and for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

On 13 December 2022 the Commission published two proposals for Regulations on API. A presentation of the proposals took place in the Working Party on Frontiers on 19 December and in the Working Party on JHA Information Exchange (IXIM) on 20 December 2022. Both proposals have subsequently been examined on numerous occasions in the IXIM. A negotiating mandate for both proposals was adopted by Coreper on 21 June 2023.

LIBE is the responsible committee in the European Parliament, and the rapporteur is Mr Jan-Cristoph Oetjen (Renew Europe, DE), who presented the draft report on 5 July 2023. For the API law enforcement proposal, the rapporteur is Ms Assita Kanko (ECR, BE), who presented the draft report on 4 July 2023. The European Parliament is expected to adopt its negotiating position in December 2023, soon after which trilogues are expected to get underway.

Regulation amending Council Decision 2009/917/JHA, as regards its alignment with Union rules on the protection of personal data

The proposal was submitted by Commission in May 2023 and discussed in several meetings of the Law Enforcement Working Party – Customs. Coreper adopted the negotiating mandate on 29 October 2023.

In the European Parliament, LIBE is the leading committee, and the rapporteur is Ms Cornelia Ernst (GUE/NGL, DE). The draft report was presented to LIBE on 25 October 2023. The revised draft report was agreed by LIBE on 13 November and announcement during the EP plenary on 20 November. The first trilogue is scheduled for 7 December with the aim of reaching a provisional agreement with the during the Spanish Presidency.

Although this dossier is being discussed in the Working Party on Telecommunications and Information Society, it is of interest to JHA because of its impact on investigations and judicial proceedings.

Other files

Regulation laying down harmonised rules in the field of artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts

In April 2021 the European Commission presented the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules in the field of artificial intelligence (Artificial Intelligence Act) and amending certain Union legislation.

In the Council, the proposal was discussed in the TELECOM working group. The Council reached its general approach on 6 December 2021.

The European Parliament appointed Brando Benifei (S&D, Italy) and Dragoş Tudorache (Renew, Romania) as joint rapporteurs for the Internal Market and Consumer Protection (IMCO) and Civil Liberties, Justice and Home Affairs (LIBE) committees and confirmed their position in plenary on 14 June 2023.

The first political trilogue took place on 14 June 2023, with three more political trilogues having been held so far on 18 July, 2 and 3 October, 24 October and the fifth one scheduled for 6 December.

So far, compromises have been reached on most elements of the chapter on innovation support measures and on the mechanism for classifying AI systems as high risk.

The Presidency asked delegations to position themselves for discussion on the issues still to be agreed.

The next trilogue will address outstanding issues such as testing high-risk AI systems in real world conditions outside AI regulatory sandboxes, fundamental rights impact assessment, prohibition, law enforcement exceptions, national security exception, derogation from conformity assessment.
