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**NOTE**

From:	Presidency
To:	Delegations
Subject:	Overview of the current legislative proposals under the Croatian 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 13 March 2020.

## Information from the Presidency on Current Legislative Proposals

### HOME AFFAIRS

#### Regulation on preventing the dissemination of Terrorist Content Online

Following a call by the European Council in June 2018, the Commission submitted the proposal on 12 September 2018. Discussions started in the Terrorism Working Party on 25 September 2018 and the Council agreed on a general approach on 6 December 2018. The European Parliament report on the Commission proposal for a Regulation on preventing the dissemination of terrorist content online was voted in the LIBE Committee on 8 April 2019. The EP position in first reading was approved on 17 April 2019, at its last plenary session. Political trilogues started in October 2019. Three political trilogues and a number of technical trilogues have taken place. The fourth trilogue is planned for 18 March 2020. A number of Articles have been provisionally agreed.

#### JHA Funds: Asylum and Migration Fund, Internal Security Fund, Border Management and Visa Instrument Fund

The Commission presented their proposals on the Home Affairs Funds on 12 and 13 June 2018. The examination of the proposals started in July 2018 under the Austrian Presidency. The Romanian Presidency took over the negotiations and on 7 June 2019 the Council adopted a partial general approach on all three proposals on the Home Affairs Funds. The EP position was approved in the plenary on 13 March 2019.

On the basis of the partial general approaches, the Finnish Presidency started the inter-institutional negotiations with the European Parliament at the end of September. In parallel, the Finnish Presidency made further progress within the Council on other issues which were left outside the PGA, namely the Annex I concerning the allocation criteria. These inter-institutional negotiations continued under the Croatian Presidency.

#### ETIAS consequential amendments

On 7 January 2019, the Commission presented a package of two proposals including consequential amendments to the legislative acts governing the EU information systems queried by ETIAS, with the aim to set out the technical changes necessary for the proper functioning of ETIAS.

After preparations in the Council's preparatory bodies, the mandate for inter-institutional negotiations with the European Parliament was approved by Coreper on 22 May 2019.

The European Parliament has been requesting an impact assessment from Commission, which delivered an analytical note to the European Parliament on 15 November 2019. The European Parliament has completed its own impact assessment in December 2019. The trilogues on these files should start as soon as the European Parliament is ready to start negotiations.

## Regulation on the False and Authentic Documents Online (FADO) system

The need for separation of the FADO system out of the draft European Border and Coast Guard Regulation was identified in December 2018. The co-legislators agreed via the revised European Border and Coast Guard Regulation that Frontex shall take over and operate FADO. The goal is to hand over the FADO system to Frontex in a way that all the willing Member States will be able to continue using the system for fighting document related identity fraud.

On 20 February 2019, Coreper endorsed the mandate for inter-institutional negotiations with the European Parliament on the new FADO Regulation. Due to time and procedural constraints, the European Parliament could not immediately start negotiations.

The technical trilogues to finalize the negotiations have been initiated in November 2019. At the political trilogue on 28 November 2019 a political agreement was reached. The Council will confirm its agreement on 13 March and the signing of the Regulation on behalf of the co-legislators is expected soon thereafter.

## Visa Information System (VIS) Regulation

A revision of the VIS Regulation was presented by the Commission on 16 May 2018, updating Regulation 767/2008. The proposed revision among others extends the scope of VIS to include long-term visas and residence permits and improves the interoperability with other EU information systems.

The mandate for inter-institutional negotiations was approved on 19 December 2018 during the Austrian Presidency. In the European Parliament, a draft report was presented to the LIBE Committee on 5 November 2018 and then voted by the plenary in March 2019. The trilogues were commenced after the European Parliament confirmed its position on the file in October 2019. By the end of the Finnish Presidency eight technical meetings and two political trilogues were held, resulting in good progress on the file. Croatian Presidency continued with trilogues, with intention to reach political agreement. So far, eight technical trilogues and one political trilogue were held.

## Union Civil Protection Mechanism (UCPM)

On 19 November 2019, the Council adopted a partial general approach on the MFF-related legislative proposal to amend the Union Civil Protection Mechanism Decision, presented by the Commission in March 2019. The proposal establishes the financial envelope of the Union Civil Protection Mechanism for 2021-2027. The agreed compromise focuses on ensuring flexibility and predictability in management of EU funding for actions under the Union Civil Protection Mechanism.

In the European Parliament, the Committee voted the report on 5 March 2020 and the plenary is expected to adopt its position at the end of March.

## Schengen Borders Code

On 27 September 2017, the Commission tabled a Communication on preserving and strengthening Schengen, which was accompanied by a proposal for amending the Schengen Borders Code (SBC) as regards the rules applicable to the temporary reintroduction of border controls at internal borders.

The mandate for inter-institutional negotiations was adopted by Coreper on 19 June 2018, while the European Parliament adopted its report on 29 November 2018. Coreper on 6 February 2019 confirmed that there was no room for accepting any of the EP's requests. The EP adopted its first reading position on 4 April 2019.

The proposal was discussed anew among delegations in October 2019 with a view principally to examining solutions that could be acceptable by the Council in order to restart negotiations with the European Parliament. Based on these consultations, it was concluded that there were no realistic prospects for reaching an agreement with the European Parliament based on the current Commission proposal.

## Reform of the Common European Asylum System and Resettlement

On 4 May and 13 July 2016, the Commission submitted seven legislative proposals aimed at reforming the Common European Asylum System (CEAS). State of play of the individual proposals is detailed below.

Due to the institutional change of 2019, the work on the legislative proposals was temporarily suspended and a broader reflection process on the future of EU migration and asylum policy was launched. This process was concluded by a Ministerial debate at the JHA Council on 2 December 2019. The Commission is expected to adopt a New Pact on Migration and Asylum, including accompanying legislative proposals on some of the CEAS files, in the coming weeks.

## Reception Conditions Directive

On 29 November 2017, COREPER approved, with broad support, a negotiating mandate to start negotiations with the European Parliament. Negotiations were concluded at the trilogue meeting on 14 June 2018, when a provisional agreement was reached between the EP Rapporteur and the then, Bulgarian Presidency. The text of the provisional agreement was presented to COREPER meeting on 20 June 2018 but did not achieve the necessary support from delegations.

Bilateral consultations and further JHA Counsellors meetings were held during the Austrian and Romanian Presidencies. These resulted in compromise amendments to the provisional agreement which were agreed by Coreper with a view to continue negotiations at technical level with the European Parliament. This agreement was subject to the package approach.

However, following preliminary discussions held with the European Parliament, it appeared that the European Parliament stood by the provisional agreement reached in June 2018 and did not wish to reopen negotiations.

## Qualification Regulation

A partial mandate for negotiations with the EP on the Qualification Regulation was approved in Coreper on 19 July 2017 and extended twice, on 29 November 2017 and on 28 February 2018. The negotiations with the European Parliament on the Qualification Regulation started in September 2017. A provisional agreement with the European Parliament was reached at a trilogue on 14 June 2018 by the Bulgarian Presidency. The text of the provisional agreement was presented to COREPER on 19 June 2018 but it did not achieve the necessary support from delegations.

During the Austrian and Romanian Presidencies, bilateral consultations as well as further meetings, including a trilogue with the EP, were held in view of finding a possible compromise. On 23 January 2019, COREPER confirmed support to the proposed amendments to the provisional agreement, subject to the package approach. However, in informal contacts with the European Parliament it became clear that the European Parliament stood by the provisional agreement reached in June 2018 and did not wish to reopen negotiations.

## Asylum Procedures Regulation

During consecutive Presidencies, the Asylum Working Party and JHA Counsellors examined the proposal with a view of achieving a Council position. While most parts of the text were stable and could be supported by the necessary majority of Member States, there are three outstanding issues which proved difficult to agree upon: the definition of the 'final decision', section on the 'Safe Country Concepts', and the border procedure.

## Eurodac Regulation

Inter-institutional negotiations on the recast of the Eurodac Regulation started in September 2017, based on a mandate approved by the Council on 9 December 2016, extended by COREPER on 15 June 2017, and the vote in the LIBE committee on 30 May 2017. On 14 February 2018, COREPER further extended the Council's negotiating mandate to also cover issues related to resettlement. At a trilogue on 19 June 2018, the Bulgarian Presidency and the rapporteur agreed on most of the issues.

Further technical meetings with the EP and JHA Counsellors meetings were held in the second half of 2018 and at the beginning of 2019 in order to find a solution on the outstanding issues. Despite the fact that most delegations were in favour of the compromise suggestions, COREPER did not agree on a mandate for the Presidency to proceed to a trilogue with the EP due to the "package approach".

## Dublin Regulation

Examination of the proposal by the Asylum WP started in May 2016. Since January 2018, meetings were held in the Friends of Presidency (SCIFA) format. At a number of occasions, Coreper and the JHA Council, in an attempt to find an agreement on a mandate to start negotiations with the European Parliament, addressed the issue of the right balance between solidarity and responsibility which has proven the most difficult.

In June 2018, the European Council concluded that a consensus needs to be found on the Dublin Regulation to reform it based on a balance of responsibility and solidarity, taking into account the persons disembarked following Search and Rescue operations.

During the Austrian Presidency, several proposals for the overall balance between solidarity and responsibility as called for by the European Council were explored. However, the discussions, including the bilateral consultations, grounded the assessment of the Romanian Presidency that there was no realistic prospect of making any major progress on the Dublin reform ahead of the European Parliament elections.

## EUAA Regulation

Following the agreement on a partial general approach in the Council on 20 December 2016, the inter-institutional negotiations with the European Parliament started in January 2017. As a result of a series of technical meetings and trilogues, a provisional agreement on the enacting terms of the text was reached during the trilogue of 28 June 2017.

On 6 December 2017, following further work at a technical level in order to align the recitals with the main body of the proposal and to complete the pledging for the asylum reserve pool, COREPER took note of the provisional agreement reached with the European Parliament, excluding the text placed in square brackets referring to other proposals of the CEAS.

On 12 September 2018, the Commission presented an amended proposal for the EUAA Regulation, building on the provisional agreement reached by the co-legislators in 2017.

Following its examination by the Asylum WP and JHA Counsellors, at the COREPER meeting on 23 January 2019, delegations did not support the suggestion to grant the Presidency a mandate for negotiations with the EP both for reasons of substance and for reasons related to the "package approach".

## Resettlement Regulation

The mandate for negotiations with the European Parliament on the Resettlement Regulation was adopted on 15 November 2017. The inter-institutional negotiations started in December 2017 and at a trilogue on 13 June 2018, the Presidency and the rapporteur reached a broad political agreement on the main elements of the Regulation. The text of the provisional agreement was presented to COREPER on 20 June 2018 but it did not achieve the necessary support from delegations.

Bilateral consultations and JHA Counsellors meetings were held during the Austrian and Romanian Presidencies in view of a possible continuation of negotiations with the European Parliament. On 15 February 2019, COREPER discussed the provisions that were left out from the provisional agreement as well as new compromise proposals. However, while the majority of Member States could support the content of the Presidency's text, COREPER did not give a mandate to the Presidency to proceed to a trilogue with the EP due to the "package approach".

## Revised Return Directive

On 12 September 2018 the Commission tabled a proposal for a revised Return Directive. On 7 June 2019 the Council adopted a partial general approach on this draft legislation and was ready to start inter-institutional negotiations. The partial general approach excluded the border procedure. Given the links between the asylum border procedure defined in the Asylum Procedure Regulation (APR) and the border procedure for returns, many delegations could not

commit themselves on the latter before knowing the final shape of the asylum border procedure.

On the European Parliament side, the mandate for negotiations had to be announced in the plenary session on 15 April 2019, but was postponed due to the cancellation of the vote on LIBE report. According to the current planning, the new Parliament should announce the mandate to enter into inter-institutional negotiations at July 2020 plenary session.

## JUSTICE

### Regulation on the Service of documents and the Regulation on the Taking of evidence

On 31 May 2018, the Commission submitted two revision proposals for the Service of documents Regulation and the Taking of evidence Regulation. In June 2019 the Council discussed the digitalisation of judicial cooperation in the context of the two proposals. The Council could accept a mandatory decentralised IT system on condition that the transition period would be sufficiently long and that the reference implementation software that Member States may apply as their back-end system instead of a national IT system would be financed by the EU. The European Parliament adopted its first reading position on 13 February 2019. In December 2019, the Council endorsed general approaches on both proposals, with the exception for the Annexes. The Annexes were subject to examination at technical level (working party and JHA counselors meetings). The changes made to the Annexes made it necessary to change the texts of the general approaches as well as the texts of the existing Regulations. The Annexes and the corollary changes to the texts of the body of the Regulations were endorsed by the Council in February 2020.

The Council and the EP have had a number of technical meetings to solve issues where the two institutions have had diverging views on the texts of the two proposals. The first two trilogues were carried out in a constructive atmosphere. The Presidency aims at reaching an agreement on both proposals with the EP in the near future.

### Regulation on the assignments of claims

On 12 March 2018, the Commission submitted the proposal for a regulation on the law applicable to the third-party effects of assignments of claims. On 6-7 December 2018, the Council took note of a progress report, concluding that due to the complexity and far-reaching implications of the proposal, more work is still required to agree on the necessary amendments. The European Parliament adopted its first reading position on 13 February 2019. The work continued in the working party level, and the Council took note of another progress report on 6-7 June 2019, concluding that delegations should continue to analyse in-depth the content of the proposal and to examine the Presidency text. The Council also noted that it was expecting additional technical input from the Commission on the financial aspects of the proposal and, in particular, its connection with EU financial services legislation and other international and national legislation potentially relevant to the aspects of the proposal concerning capital markets, such as the transactions on securities.

At the start of the year the Commission provided a non-paper on financial questions (5293/20) which was discussed in the Working Party on Civil Law Matters (Assignments of Claims) on 10 February 2020 with the assistance of delegates from the Working Party on Financial



Services. Following these discussions, the Presidency provided a revised text of the proposal (5880/20) which was discussed during the Working Party meeting on 24 February 2020. The Presidency stresses its intention to work towards reaching a general approach on the proposal.

## Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (e-Evidence Regulation)

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

On 7 December 2018, the Council reached a general approach on the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters. The Council then continued under the Romanian Presidency the discussions at technical level on the certificates set out in the annexes to the legislative proposal. A supplement to the general approach thus reached was adopted on 6-7 June 2019. The Presidency has regularly consulted the counterparts in the European Parliament and has kept Member States informed of the progress of the file. The LIBE committee has discussed the rapporteur's draft report on the proposal on 11 November 2019. Subsequently, the political groups tabled amendments to said report that were published in December 2020.

The Council is still awaiting the adoption of the final position of the European Parliament in order to move to trilogues and finalise the legislative process.

## Directive on legal representatives for gathering evidence in criminal proceedings

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

On 8 March 2019, the Council reached a general approach on the proposal for the directive. The Presidency has regularly consulted the counterparts in the European Parliament and has kept Member States informed of the progress of the file. The LIBE committee has discussed the rapporteur's draft report on the proposal on 11 November 2019. Subsequently, the political groups tabled amendments to said report that were published in December 2020.

The Council is still awaiting the adoption of the final position of the European Parliament in order to move to trilogues and finalise the legislative process.



## EU Justice, Rights and Values Fund: Justice Programme, and the Rights and Values Programme

On 19 December 2018, the Council agreed its partial general approach on the Programmes, excluding provisions with budgetary implications or of horizontal nature. On 5 March 2019, the European Parliament and the Council reached a provisional agreement on the Justice programme, on 6 March on the Rights and Values Programme. The common understanding was confirmed by Coreper on 13 March 2019, and by the European Parliament during its April 2019 plenary. The budgetary aspects are subject to the overall agreement on the EU's next long-term budget.

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