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NOTE

From: Presidency
To: Delegations

Subject: Overview of the current legislative proposals under the Finnish 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 2/3 December 2019.

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, after two postponements. The EP position in first reading was approved on 17 April 2019, at its last plenary session.

The Presidency began the political trilogues in October. Two political trilogues and a number of technical trilogues have already taken place. Furthermore, two more political trilogues are foreseen before the end of the year.

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 interinstitutional negotiations with the European Parliament and the Commission between the end of September and the first weeks of October. Within the AHWP on JHA Funds and the JHA Counsellors, the Finnish Presidency has advanced the issues which were left outside the PGA, namely the Annex I concerning the allocation criteria.

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 negotiations with the European Parliament was approved by Coreper on 22 May 2019.

The European Parliament has been requesting an impact assessment from Commission, and has begun its own impact assessment. For this reason, the trilogues on these files could not yet take place and can start only during the next Presidency, probably in March 2020.

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 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 finalise the negotiations have been initiated in November 2019. The first political trilogue is scheduled for 28 November 2019 with a view to reaching a political agreement during the Finnish Presidency.

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. During the Romanian Presidency, the Visa Working Party analysed the European Parliament's amendments with a view to preparing the file for the inter-institutional negotiations with the new European Parliament. The trilogues were commenced during the Finnish Presidency right 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 would be held, resulting in good progress on the file.

Union Civil Protection Mechanism (UCPM)

On 19 November 2019, the Council reached a partial general approach on the new MFF-related legislative proposal, presented by the European Commission in March 2019, which 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. The trilogues will start under the next Presidency after the European Parliament has adopted its position.

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. Due to that development, 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 can be concluded that there are no realistic prospects for reaching an agreement with the European Parliament based on the current Commission proposal.

Regulation on the European Border and Coast Guard

Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 has been published in OJ L 295, of 14.11.2019, p. 1. (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:295:TOC>). The regulation shall enter into force on 4 December 2019.

European network of immigration liaison officers (ILO) Regulation

Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers has been published in OJ L 198, of 25.7.2019, p. 88 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:198:TOC>). The Regulation entered into force on 14 August 2019.

Visa Code Regulation

Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) has been published in OJ L 188, of 12.7.2019, p. 25 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:188:TOC>). The regulation entered into force on 1 August 2019 and it shall apply from 2 February 2020.

Regulation on strengthening the security of ID cards and of residence documents

Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, has been published in OJ L 188, of 12.7.2019, p. 67 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:188:TOC>). The regulation entered into force on 1 August 2019.

Directive on Law enforcement access to financial information

Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA has been published in OJ L 186, of 11.7.2019, p. 122 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:186:TOC>). Member States will have to adopt the transposition measures by 1 August 2021.

JUSTICE

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 and that the Council was expecting additional technical input from the Commission. At the beginning of the Finnish Presidency, it was determined that input from the Commission was especially needed to properly analyse the various financial market related concerns raised during the negotiations, and to clarify the Commission's own views on how those issues should be addressed. The Commission is currently working on the input requested by the Presidency.

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 file is now awaiting a position of the European Parliament before it can move to trilogues. The Finnish Presidency has regularly consulted the counterparts in the European Parliament and has kept Member States informed of the progress of the file. Most recently, the LIBE committee has discussed a rapporteur's draft report on the proposal on 11 November 2019, and the political groups have then had the opportunity to table amendments to said report.

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 file is now awaiting a position of the European Parliament before it can move to the trilogues. The Finnish Presidency has regularly consulted the counterparts in the European Parliament and has kept Member States informed of the progress of the file. Most recently, the LIBE committee has discussed a rapporteur's draft report on the proposal on 11 November 2019, and the political groups have then had the opportunity to table amendments to said report.

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.

Directive on the Protection of persons reporting on breaches of Union law

The Commission gave a proposal for a Directive on the protection of persons reporting on breaches of Union law on 23 April 2018 after calls for action in the EU level. The negotiations of the Council and the European Parliament were successfully closed in March 2019. After the review of the lawyer-linguists, the Directive was adopted by the Council on 8 October.

The Directive has been published in the OJ L 305 of 26 November 2019 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:305:TOC>). The new instrument sets up minimum standards of protection to encourage persons to disclose and report breaches of the Union law without fear of retaliation as well as channels and procedures for reporting. The Member States will have to implement majority of the provisions by 17 December 2021.

Recast of the Brussels IIa Regulation

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction has been published in OJ L 178 of 2 July 2019 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:178:TOC>). The Regulation applies from 1 August 2022.