



Council of the
European Union

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NOTE

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

Delegations will find attached the state of play of current legislative items (justice) in view of the informal videoconference of the Ministers of Justice on 11 March 2021.

Current legislative proposals – Information from the Presidency

1. 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 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. The general approach on the Directive was reached on 8 March 2019.

The LIBE Committee, on 7 December 2020, adopted its position on the Commission's legislative initiative, confirmed by the European Parliament in plenary session on 14 December 2020. The Parliament has rejected the Directive as a whole and merged its key provisions into the proposed Regulation.

The first political trilogue took place on the Council's premises on 10 February 2021. The second political trilogue is going to be hosted by the European Parliament and is scheduled for 18 March. In the first trilogue, both parties presented their positions and agreed on the working method and the list of topics to be covered. A broad mandate was conferred for preparatory discussions at the technical level.

The Working Party COPEN is regularly informed and consulted on the course of the negotiations with the European Parliament and had already three meetings dedicated to the e-evidence legislative package in 2021.

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

On 12 March 2018, the Commission submitted a proposal for a Regulation on the law applicable to the third-party effects of assignments of claims. The Council took note of progress reports on 6 and 7 December 2018 and on 6 and 7 June 2019, concluding that due to the complexity and far-reaching implications of the proposal, further in-depth analysis of the proposal was required to agree on the necessary amendments. The European Parliament adopted its first reading position on 13 February 2019.

After the Commission had provided additional technical input regarding various financial market-related concerns, a discussion at the informal videoconference of Ministers for Justice under the Croatian Presidency on 4 June 2020 provided valuable political guidance. The work continued at technical level under the German Presidency and important progress was made concerning the scope of the instrument and the definition of third-party effects regarding the position of the debtor.

Since early January 2021, the Portuguese Presidency has had multiple contacts in order to identify viable compromises on some core aspects of the Regulation, which were also identified as outstanding problems to be solved by the previous presidencies, *v.g.* claims secured by assets subject to registration, and the financial scope of the proposal. The Working Party was presented with two important drafting proposals to solve those issues. Discussions at experts' level are ongoing.

3. Regulation amending the founding Regulation of the European Union Agency for Fundamental Rights

On 5 June 2020, the Commission transmitted to the Council a proposal for a Council Regulation amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (8613/20). The proposal aimed essentially at amending the scope of the Agency's activities after the entry into force of the Lisbon Treaty and to align certain provisions of the Agency's founding Regulation with the Common Approach on decentralised agencies, the main change being the elimination of the Multiannual Framework.

Following the examination of the proposal by the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) during the second semester of 2020, the former Presidency prepared a revised draft compromise which seemed to be acceptable to almost all delegations. However, one delegation could not accept the inclusion of the area of Police Cooperation and Judicial Cooperation in Criminal Matters within the scope of the Agency's activities. That delegation also had a reservation against the replacement of the Multiannual Framework by the Multiannual Programme if the decision on the latter is not to be taken by unanimity.

The position of this delegation has not changed. As such, since the proposal's legal basis (Article 352 TFEU) requires unanimity, the draft compromise on the Council Regulation cannot be confirmed for the time being.

4. Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system)

On 2 December 2020, the European Commission adopted a proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system) and amending Regulation (EU) 2018/1726 Regulation (EU) 2018/1726. This proposal aims to entrust the further development of e-CODEX to eu-LISA as of 2023.

Since 15 February 2021, the proposal is being negotiated at experts' level in the *ad hoc* Working Party on the proposal for an e-CODEX Regulation and the discussions are well underway.

Discussions are still ongoing. With the aim to reaching a general approach in the JHA Council in June 2021, the Presidency has established a roadmap for the negotiation, which was fully supported by delegations and the European Commission.

5. EU Justice, Rights and Values Fund: Regulation establishing the Justice Programme and Regulation establishing the Citizens, Equality, Rights and Values Programme

Negotiations with the European Parliament on the two programmes were concluded respectively on 17 December 2020 for the Rights and Values Programme and on 18 December 2020 for the Justice Programme. After receiving the formal letter from the European Parliament, in the framework of an early second reading agreement, Coreper confirmed the political agreement on both programmes on 17 February 2021. The Council first reading is scheduled for April 2021.