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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 Justice and Home Affairs legislative items in view to the JHA Council meeting on 7/8 June 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.

Proposals in the field of civil protection and financial resources

EU Civil Protection Mechanism

On 2 June 2020, the European Commission submitted a proposal for a *Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism*. The file has been negotiated in the Council's Prociv Working Party and in the European Parliament's ENVI Committee. The rapporteur is Nikos Androulakis MEP (S&D).

After a partial mandate on the financial aspects of the proposal was approved on 7 October 2020, COREPER adopted a full mandate to start trilogue negotiations on 30 November 2020. The mandate included changes related to the direct procurement by the EU of rescEU capacities and to the establishment and scope of disaster resilience goals. Negotiations started under the German Presidency with a first political trilogue on 10 December 2020, followed by a first technical trilogue on 17 December 2020. Continuing under the Portuguese Presidency, eight further technical trilogues took place between 7 January and 9 February 2021. At the second and final political trilogue on 8 February 2021, provisional agreement was reached on a compromise text, which was confirmed by COREPER on 17 February 2021 and by vote in the ENVI Committee on 25 February 2021.

The formal adoption by the Parliament took place on 26 April 2021 and by the Council on 10 May 2021. The regulation was signed by Council and Parliament on 20 May and was published in the Official Journal of the EU on 26 May 2021, thus entering into force.

EU funds (AMIF, BMVI, ISF)

On 13 June 2018, as part of the next Multiannual Financial Framework (MFF) package, the Commission issued three sectoral proposals in the area of home affairs:

- the Asylum, Migration and Integration Fund (AMIF);
- the Instrument for Financial Support for Border Management and Visa Policy (BMVI), as part of the Integrated Border Management Fund; and
- the Internal Security Fund (ISF).

The negotiations on these Regulations began under the Austrian Presidency. Given the interlinkages between the three proposals, the Presidency decided to take the legislative files forward at the same pace.

The European Parliament adopted its first-reading position on the three proposals at the plenary session on 13 March 2019. The rapporteurs appointed by the European Parliament were Miriam Dalli and Tanja Fajon for AMIF and BMVI respectively (both S&D, Ms Dalli being later replaced by Ms Fajon) and Monika Hohlmeier for ISF (EPP).

The Council adopted partial general approaches on 7 June 2019 and (full) general approaches on 12 October 2020, following the conclusion of the political negotiations on the 2021-2027 MFF.

Trilogues with the European Parliament started in September 2019, under the Finnish Presidency. Work continued at technical level in the first half of 2020, although fewer meetings were held due to the COVID-19 pandemic. In December 2020, under the German Presidency, the co-legislators secured provisional agreements at the respective final trilogues. The provisional agreements were presented at the meeting of COREPER on 16 December 2020, and received the necessary support from delegations.

Work was continued under the Portuguese Presidency, which held around 10 technical trilogues (on the specific files and on horizontal provisions), with a view to reaching agreements with the European Parliament. On 1 March 2021, the final compromise texts obtained a favourable vote at the LIBE Committee meeting. On 10 March 2021, COREPER confirmed the political agreements.

After the legal-linguistic revisions, the adoption of the Council's positions at first reading and of the Council's statements of reasons is scheduled for 14 June 2021. The approval in plenary (in early-second reading) of the Council's positions is scheduled for July 2021, to be followed by the signing and publication in the OJ of the three Regulations.

Legislative proposals in the field of migration

Revision of the Blue Card Directive

The European Commission presented its proposal to reform the *Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly-skilled employment* on 7 June 2016, after identifying a number of weaknesses in the initial scheme adopted in 2009. The Council adopted its general approach on 24 July 2017 and negotiations were launched with the European Parliament. They were subsequently interrupted for an extended period of time, however, due to divergent positions.

The presentation of the New Pact on Migration and Asylum, on 23 September 2020, allowed the trilogues (political and technical) to resume during the German Presidency, and discussions were held on some key political issues: maintenance of national schemes, unemployment, labour market tests and long-term mobility.

The Portuguese Presidency has continued the negotiations with Member States, at the level of JHA Counsellors (Integration, Migration and Expulsion), and with the European Parliament's LIBE Committee (rapporteur Javier Moreno Sánchez MEP (S&D)). After six technical trilogues and two political trilogues under the Portuguese Presidency, on 17 May 2021 the Council Presidency and the European Parliament reached a provisional agreement, which was confirmed by COREPER on 21 May 2021. Once the Directive has been adopted, Member States will have two years to transpose the rules into national law.

Amending the VIS Regulation

On 16 May 2018, the European Commission submitted a proposal for a *Regulation amending the Visa Information System (VIS) Regulation*. The file is being negotiated in the Council's Visa Working Party and in the European Parliament's LIBE Committee (rapporteur Paulo Rangel MEP (EPP)).

Discussions in the Council began in June 2018 under the Bulgarian Presidency and COREPER adopted the mandate for negotiations in December 2018, under the Austrian Presidency. At the end of 2019, the Finnish Presidency started the trilogue negotiations, which continued under the Croatian and the German Presidencies, and allowed the Council and the European Parliament to reach a provisional agreement on 8 December 2020. The compromise was confirmed by the letter that the Chair of the LIBE Committee addressed to the Chair of COREPER on 1 February 2021. On 3 February 2021, the Committee of Permanent Representatives confirmed the political agreement on the compromise text of the Regulations. The Council adopted its position at first reading on the text of the Regulations on 27 May 2021, together with its statements of reasons. The European Parliament will adopt the two Regulations in its (early) second reading at the second June plenary. The legal acts will then be signed and published in the OJ shortly thereafter.

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 Working Party on Integration, Migration and Expulsion and in the European Parliament's LIBE Committee (rapporteur Malin Björk MEP (GUE/NGL)).

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)).

Based on the discussions in the Working Party, the German Presidency submitted a redraft of the proposal. Discussions in the Council are at a very advanced stage, but the Portuguese Presidency did not consider that the aim could be met and decided not to pursue further discussions in the Council at this stage.

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 is being negotiated in the Council's **Asylum Working Party** and in the European Parliament's LIBE Committee (rapporteur Elena Yoncheva MEP (S&D)).

On 12 September 2018, the Commission presented a proposal for amending the 2016 proposal and no amendments were made to the file as a result of the Pact on Migration and Asylum presented on 23 September 2020.

Under the German Presidency, interinstitutional negotiations were resumed on the basis of the 2016 proposal, and a provisional agreement was reached in 2017 between the European Parliament and the Council. These negotiations with the European Parliament have reached a very advanced stage at technical level.

The Portuguese Presidency is working with Member States in order to move this matter forward.

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)).

Under the Portuguese Presidency, the first examination of the proposal was completed in the **Asylum Working Party** on 15 April 2021. This has made it possible to identify the provisions for which there is support, those that could be improved or clarified, and those requiring further discussion.

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)).

The Portuguese Presidency proceeded with discussions at technical and political level and, on 21 April 2021, the Presidency presented a revised draft text at the Working Party on Asylum and started the second examination of the proposal. Work on the second examination is at a very advanced stage.

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)).

Under the Romanian Presidency, a partial general approach was reached by the Council on 7 June 2019. The rapporteur's draft report on the Commission proposal has been available since 21 February 2020, while the amendments suggested by the 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 Working Party on Asylum and in the European Parliament's LIBE Committee (rapporteur Tanja Fajon MEP (S&D)).

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 Working Party on Asylum and in the European Parliament's LIBE Committee (rapporteur Juan Fernando López Aguilar MEP (S&D)).

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 at 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)).

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. As a result, Member States' positions were known and links with other legal acts were identified. The Portuguese Presidency considered that the work at technical level had reached its limits at the end of May.

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)).

Under the Portuguese Presidency, the first examination of the Proposal was completed in the Working Party on Frontiers.

ETIAS consequential amendments

On 7 January 2019, the Commission submitted a proposal for a *Regulation of the European Parliament and of the Council establishing the conditions for accessing the other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) 2019/816 [ECRIS-TCN]* and a proposal for a *Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861*. The file was negotiated in the Council's Working Party on Frontiers and in the European Parliament's LIBE Committee (rapporteur Jeroen Lenaers MEP (EPP)).

The Council mandate was adopted under the Romanian Presidency on 22 May 2019. The trilogues could not start until January 2021 because the European Parliament did not wish to discuss this file before an impact assessment had been provided by the Commission. The European Parliament commissioned an external, substitute impact assessment, which has been available since December 2019. After a long period of inactivity on the European Parliament side, the proposal was taken forward again, one and a half years on. The rapporteur's report was adopted in the LIBE Committee on 7 December 2020. Under the Portuguese Presidency a first political trilogue took place on 13 January 2021, a second on 11 February 2021 and a third on 25 February 2021. A fourth political trilogue took place on 18 March 2021, at which political agreement was reached following the completion of technical-level work.

Following COREPER meeting of 31 March 2021, which endorsed the final compromise text with a view to agreement, the Presidency sent a letter to the Chair of the European Parliament LIBE Committee. The European Parliament and the Council are expected to adopt their positions at first reading in June 2021, allowing the signing of the three Regulations to take place in July 2021.

TCO Regulation

On 12 September 2018 the Commission submitted a proposal for a *Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online*. On 6 December 2018, the Council agreed on a general approach.

The European Parliament reached its first reading position in April 2019. Three political trilogues were held under the Finnish Presidency and three trilogues under the German Presidency. From March 2020 to September 2020 there was a break in negotiations.

Under the German Presidency, political agreement was reached on 10 December 2020. This political agreement was analysed in COREPER on 16 December 2020. On 11 January 2021, the compromise text agreed at early second reading was approved by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Under the Portuguese Presidency, the legislative process was formally concluded, with publication in the Official Journal of the EU on 17 May 2021. The regulation enters into force on 6 June 2021 and is applicable from 7 June 2022. It provides a clear legal framework that sets out the responsibilities of Member States and hosting service providers with a view to addressing the misuse of hosting services for the dissemination of terrorist content online, whilst maintaining safeguards to ensure the protection of fundamental rights, including the freedom of expression and information and the freedom to run a business.

JUSTICE

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. A general approach on the Directive was reached on 8 March 2019.

On 7 December 2020, the LIBE Committee adopted its position on the Commission's legislative initiative, confirmed by the European Parliament' plenary on 14 December 2020.

Three political trilogues were held. The first and the third trilogue took place on the Council's premises on 10 February and 20 May 2021. The second political trilogue was hosted by the European Parliament on 18 March.

In the first trilogue, both parties presented their positions and agreed on the working method. A broad mandate was conferred for preparatory discussions at technical level. The discussions have advanced well, but there are still issues of substance to be resolved.

The COPEN WP is regularly informed and consulted on the status of the negotiations with the European Parliament and has already had several meetings dedicated to the e-evidence legislative package in 2021.

2. 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 European Commission adopted two proposals for Directives amending two European Union instruments in the field of criminal law – Council Framework Decision 2002/465/JHA, on Joint Investigation Teams, and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014, regarding the European Investigation Order in criminal matters – with the aim of ensuring their alignment with the EU’s rules on the protection of personal data, 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 (the Data Protection Law Enforcement Directive).

Both proposals have been examined at expert level in the COPEN WP since 23 February 2021 and an agreement has been reached. After this preparatory work, COREPER agreed to start negotiations with the European Parliament on the two draft Directives based on the texts set out in documents 8043/21 and 8048/21.

These negotiations will start as soon as the European Parliament has a position on the proposals tabled by the Commission.