

Information from the Presidency on current legislative proposals

HOME AFFAIRS

Regulation on preventing the dissemination of terrorist content online (TCO)

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 on in the LIBE Committee on 8 April 2019. The EP position at first reading was approved on 17 April 2019, at its last plenary session.

Political trilogues started in October 2019. Three political trilogues and several technical trilogues have taken place. Since the beginning of 2020, there have been four technical meetings, on 23 January, 3 and 18 February and 3 March, and five JHA Counsellors meetings, on 17 and 31 January, 13 and 27 February and 5 March. Several articles have been provisionally agreed. The Presidency is in contact with the EP with a view to persuading it to continue work on this file under the current circumstances.

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 position of the European Parliament was approved in the plenary on 13 March 2019.

On the basis of the partial general approaches, Finland's Presidency started the interinstitutional negotiations with the EP at the end of September. In parallel, Finland's Presidency made further progress within the Council on issues which were left out of the PGA, namely Annex I concerning the allocation criteria. The Croatian Presidency is following up on these outstanding issues and trying to prepare the ground for a Council position on them.

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 of setting out the technical changes necessary for the proper functioning of ETIAS.

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

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

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 most important elements of the proposed revision are the extension of the scope of VIS to include long-term visas and residence permits, and the improvement of its interoperability with other EU information systems.

The mandate for interinstitutional 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 on by the plenary in March 2019.

The trilogues started after the EP confirmed its position on the file in October 2019. By the end of Finland's Presidency, eight technical meetings and two political trilogues had been held, resulting in good progress on the file.

The Croatian Presidency continued with trilogues, with the intention of reaching political agreement. Before the massive cancellations of physical meetings due to the COVID-19 pandemic, eight technical meetings and one political trilogue were held. After the introduction of restrictive measures, the first reading of the draft Regulation was completed in the form of an exchange of emails. The three institutions decided to continue the work via video conference, but a meeting scheduled on 24 April was cancelled due to internal discussions in the LIBE Committee. A decision by LIBE on the resumption of the negotiations is currently pending.

Given that in the Commission's proposal some technical provisions to take into account the interoperability with other EU information systems were missing, it was decided that the consequential amendments would be agreed at technical level and incorporated as part of the ongoing interinstitutional negotiations. After written consultation with the Member States, Croatian Presidency intends to include the VIS consequential amendments on the agenda of Coreper II, as a non-discussion item, with a view to having the original mandate approved.

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 the management of EU funding for actions under the Union Civil Protection Mechanism.

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

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 interinstitutional negotiations was adopted by Coreper on 19 June 2018, while the European Parliament adopted its report on 29 November 2018. On 6 February 2019, Coreper confirmed that there was no scope 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, primarily with a view to examining solutions that could be acceptable to the Council in order to restart negotiations with the EP. Based on these consultations, it was concluded that there were no realistic prospects for reaching an agreement with the EP 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). The 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 Bulgarian Presidency. The text of the provisional agreement was presented to Coreper at the 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 on by Coreper with a view to continuing negotiations at technical level with the European Parliament. This agreement was subject to the package approach.

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

During the Austrian and Romanian Presidencies, bilateral consultations and further meetings, including a trilogue with the EP, were held with a view to finding a possible compromise. On 23 January 2019, Coreper confirmed its support for the proposed amendments to the provisional agreement, subject to the package approach. However, in informal contacts with the EP, it became clear that the EP 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 the JHA Counsellors examined the proposal with a view to reaching 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', the section on the 'Safe Country Concepts', and the border procedure.

Eurodac Regulation

Interinstitutional 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 in early 2019 with a view to finding a solution to 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 have been held in the Friends of the Presidency (SCIFA) format. On several occasions, in an attempt to find an agreement on a mandate to start negotiations with the European Parliament, Coreper and the JHA Council have addressed the issue of the right balance between solidarity and responsibility, which has proven the most difficult to resolve.

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, confirmed the Romanian Presidency's assessment 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 interinstitutional 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 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 EP, 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 the 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 interinstitutional 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 did not achieve the necessary support from delegations.

Bilateral consultations and JHA Counsellors meetings were held during the Austrian and Romanian Presidencies with a view to a possible continuation of negotiations with the European Parliament. On 15 February 2019, Coreper discussed the provisions that were left out of 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 interinstitutional 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 was scheduled to be announced in the plenary session on 15 April 2019, but was postponed due to the cancellation of the vote on the LIBE report. At present, it is not known when the draft mandate to enter into interinstitutional negotiations will be put to the plenary.

JUSTICE

Regulation on the service of documents and 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 the condition that the transition period would be sufficiently long and that the reference implementation software that Member States may use 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 of the annexes. The annexes were subject to examination at technical level (Working Party and JHA Counsellors 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 held a first trilogue on 29 January 2020, which was carried out in a constructive atmosphere. The Council and the EP also had several technical meetings to solve issues where the two institutions have had diverging views on the texts of the two proposals. Due to the COVID-19 crisis, the meetings with the EP were cancelled. Efforts are being made to resume negotiations. The Presidency aims to reach a political agreement on both proposals with the EP before the end of 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. Under the Romanian Presidency, the Council then continued 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 discussed the rapporteur's draft report on the proposal on 11 November 2019. Subsequently, the political groups tabled amendments to the report, which were published in December 2019.

The Council is still awaiting the adoption of the EP's final position 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 discussed the rapporteur's draft report on the proposal on 11 November 2019, rejecting the proposed Directive in its entirety and merging some of its provisions into the proposed Regulation. Subsequently, the political groups tabled amendments to the report, which were published in December 2019.

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

EU Justice, Rights and Values Fund: Justice Programme and 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. The European Parliament and the Council reached a provisional agreement on the Justice Programme on 5 March 2019, and on the Rights and Values Programme on 6 March 2019. The common understanding was confirmed by Coreper on 13 March 2019, and by the EP during its April 2019 plenary. The budgetary aspects are subject to the overall agreement on the EU's next long-term budget.