



Department of Justice

Report on relevant EU developments in the period

1 January 2021 – 30 June 2021

Submitted under Section 2(5) of the European Union (Scrutiny) Act 2002

INTRODUCTION

Section 2(5) of the European Union (Scrutiny) Act 2002 provides that each Minister of the Government shall provide to the Oireachtas, on a six-monthly basis, a report on relevant “measures, proposed measures and other developments” in the European Union.

This report is divided into the following three parts:

- **Part 1** provides an overview of key legislative and policy developments between 1 January 2021 and 30 June 2021 in areas relevant to the work of this Department.
- **Part 2** provides updates on the legislative proposals for which this Department submitted information notes to the Oireachtas between 1 January 2021 and 30 June 2021 in accordance with section 2(1) of the 2002 Act.
- **Part 3** outlines the main priorities of the Slovenian EU Presidency that are relevant to the work of the Department of Justice.

Part 1:
Summary of significant EU policy and legislative developments
1 January 2021 – 30 June 2021

Portugal held the Presidency of the Council of the European Union from 1 January – 30 June 2021. This marked the fourth occasion that Portugal held the EU Presidency.

The Portuguese Presidency experienced difficult operational circumstances against the backdrop of the COVID-19 pandemic. The vast majority of Council meetings, Council Working Parties and preparatory body/Committee meetings were held by video-conference during its Presidency, with the exception of COREPER I and II. In-person JHA Councils resumed in June towards the end of its Presidency.

Successes in the **Justice and Home Affairs** area included agreements reached at political level with the European Parliament on the Regulation amending the Visa Information System, on the European Union Asylum Agency Regulation, and on the Regulations on Multiannual Financial Framework (MFF) sectoral funds in the JHA area (2021-2027).

EU-UK relations

The EU-UK Trade and Cooperation Agreement (TCA) came into effect from 31 December 2020. In relation to **law enforcement and judicial cooperation in criminal matters**, the EU and the UK have agreed to establish a new framework which will allow for strong cooperation between national police and judicial authorities, including with respect to mutual legal assistance and extradition.

The Agreement commits the EU, its Member States and the United Kingdom to continue to respect democracy and the rule of law, and protect and give domestic effect to fundamental rights such as those set out in the European Convention on Human Rights (ECHR).

The TCA includes a **data adequacy bridging mechanism** – for both the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), for up to 6 months, subject to certain conditions, pending the adoption of data protection adequacy decisions, such that for a specified period transmission of personal data from the EU to the UK is not regarded as a transfer to a third country.

The **UK Data Adequacy Decisions**, for GDPR and LED, which allows for the transfer of EU citizen's data between the EU and the UK without limitation or additional safeguards, were adopted by the EU Member States on 16 June 2021 and came into effect on 28 June 2021. In response to the UK Court of Appeal judgment which found the UK's immigration GDPR exemption invalid, the Commission decided to temporarily carve out immigration data from the scope of the GDPR Adequacy Decision.

European Council

The Portuguese Presidency chaired European Council meetings in January, February, March, May and June 2021. The response of the EU and the Member States to the Covid-19 pandemic, including vaccines and the EU Digital Covid Certificate, remained a priority topic. At the June European Council, the current migration situation was discussed.

Justice and Home Affairs Council Meetings

The Portuguese Presidency hosted an informal video-conference Justice and Home Affairs (JHA) Ministerial meeting on 28 and 29 January. It also chaired JHA Council meetings in March and June and a joint Foreign Affairs/JHA Council in March. The March Council meetings took place virtually, however, the June JHA Council took place in person in Luxembourg.

Key Policy and Legislative Developments in the JHA Council

The Portuguese Presidency achieved good results across the Justice and Home Affairs area.

In the area of civil law and equality, this included one of their key priorities - Council Conclusions on the Protection of Vulnerable Adults across the European Union. On the legislative side, the Presidency's work behind the scenes achieved a general approach on the new Fundamental Rights Agency Regulation.

The Portuguese Presidency were also successful in the area of Internal Security, adopting a number of important Council Conclusions and launched the new EMPACT policy cycle. Less successful was the area of Judicial Cooperation in Criminal Matters where little progress was made on the e-Evidence package, which remains the subject of discussion with the European Parliament. One major development in this area was the European Public Prosecutor's Office (EPPO), which started operations on 1 June.

The Portuguese Presidency devoted substantial time to the Migration and Asylum Pact with little progress to show for it given the underlying difference between the Member States. On the positive side, the Presidency successfully reached an agreement with the Parliament on the European Asylum Agency Regulation. The new COVID-19 Digital Certificate was also adopted.

Key Policy and Legislative Developments in the JHA Council during the six-month reporting period are set out below.

JUSTICE

Civil Law

On the civil law side, the Portuguese Presidency was dominated by finalising the difficult negotiations on the Assignment of Claims Regulation (negotiated by the Department of Finance) and the time-bound discussions on the e-CODEX Regulation. The e-CODEX Regulation, which will entrust the further development and maintenance of e-CODEX to eu-LISA, reached General Approach at the June JHA Council. Ireland intends on opting into this Regulation upon adoption.

The proposed amending Regulation regarding the European Union Agency for Fundamental Rights aims to amend the current Regulation on the Fundamental Rights Agency to align it with the Lisbon Treaty and with the Common Approach on decentralised agencies. The FREMP Working Party had previously held six informal virtual meetings under the Danish Presidency however there were objections to the proposed extension of the Agency's remit to include the area of Police Cooperation and Judicial Cooperation in Criminal Matters. Through bi-lateral engagement, the Portuguese Presidency successfully managed to negotiate a compromise and a General Approach was reached at the June JHA Council.

The Portuguese Presidency failed to achieve the necessary consensus on Conclusions on the EU Citizenship Report 2020 with difficulties encountered on the recognition of rainbow families and their rights. Council Conclusions were however adopted on the Protection of Vulnerable Adults across the European Union; and on Strengthening the Application of the Charter of Fundamental Rights in the European Union.

Criminal Law and Judicial Cooperation

The Presidency had some successes but it was unable to deliver on its most important priority in this area; progressing the e-Evidence file to a conclusion. That said, it oversaw the completion of one of two important international negotiations on e-Evidence and it succeeded in getting the operational start of EPPO over the line.

The Presidency commenced the e-Evidence trilogues in January, and succeeded in holding four political trilogues with the Parliament, as well as many technical meetings, during its term.

Unfortunately, despite this high activity rate, the Portuguese Presidency did not succeed in advancing the discussions beyond a limited measure of outline agreement on a number of relatively uncontentious issues. This left the more contentious issues, such as the notification procedure. The Portuguese Presidency tried very hard to make progress with the negotiations but its failure to make real inroads was due in no small measure to a refusal on the part of the Parliament to engage on some of the more delicate issues, even at the political level. It will therefore fall to the Slovenian Presidency to unlock what has turned into somewhat of a deadlock in the discussions.

The Portuguese Presidency made little real progress on the EU/US e-Evidence negotiations as the COVID crisis severely affected the proposed negotiating timetable. The Presidency did succeed in re-starting the discussions with the US in March but further negotiating sessions did not materialise, mainly because of the lack of progress with the parallel e-Evidence trilogue discussions with the Parliament. The progress on the Budapest Second Additional Protocol negotiations, however, were much more fruitful and the Presidency can say that it stewarded the negotiations through to a successful conclusion by the informal adoption of the draft text of the Protocol during its term.

On the very important issue of retention of telecommunications data for purposes of investigating crime, the Portuguese Presidency kept this topic firmly on the political agenda by further discussions at the COPEN working party and at the JHA Council in March. Those discussions resulted in an unequivocal call by the Member States, including Ireland, for the Commission to initiate a harmonised approach by way of a new EU legal instrument to replace the previous Data Retention Directive, which the Court of Justice struck down in 2014. To that extent, therefore, the achievement represents a key step along the way towards a resolution of the data retention problem and another success of the Portuguese Presidency.

One of the key achievements of the Portuguese Presidency was to get the actual operational start date of EPPO over the line on 1 June 2021. Work also continued on the way forward for cooperation between EPPO and third countries, and between EPPO and the non-participating Member States (NPMS) including Ireland.

HOME AFFAIRS

Internal Security and Counter Terrorism

The Portuguese Presidency completed significant work launching the new EMPACT (European Multidisciplinary Platform Against Criminal Threats) Policy Cycle. It adopted Council Conclusions setting the EU's priorities for the fight against serious and organised crime between 2022-2025 based on the Policy Advisory Document it drafted with the European Commission, which in turn was based on the EU Serious and Organised Crime Threat Assessment (SOCTA) 2021. In addition, it adopted Council Conclusions on the permanent continuation of the EU Policy Cycle for organised and serious international crime: EMPACT 2022+, which made EMPACT a permanent instrument, meaning it is no longer necessary to issue the Council Conclusions on the continuation of EMPACT every four years.

The Portuguese Presidency held 13 Working Party meetings on the new proposal strengthening Europol's mandate and significantly progressed this file towards agreement. A General Approach and negotiation mandate on this Regulation was agreed by Member States on 30 June 2021. This priority file will now progress onto trilogue stage under the Slovenian Presidency. Ireland has opted into this measure.

The Portuguese Presidency also achieved agreement with the Parliament on the ePrivacy derogation proposal, which will allow service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online.

Borders & Migration and Asylum

The Portuguese Presidency delivered amendments to the Council Recommendations on travel within the EU (Council Recommendation (EU) 1475/2020) and into the Schengen area (Council Recommendation (EU) 912/2020). These Recommendations took account of the evolving epidemiological situation, the rollout of vaccinations and included an emergency brake provision.

The Presidency also secured the adoption of the Regulation on the EU Digital Covid Certificate. This Regulation will facilitate safe free movement within the EU for the summer season and will be fêted as a key achievement for this presidency.

Negotiations continued on the Asylum Procedures Regulation and the Asylum and Migration Management Regulation and these files remain the most sensitive and divisive components of the New Pact on Migration and Asylum. While no substantive progress was made, simulations on the solidarity mechanism helped MS to gain a better understanding of how the proposals might work in practice. The Council Legal Service provided a legal opinion on the Pact, which was of particular significance to Ireland considering our unique position in terms of Protocol 19 and Protocol 21. The opinion highlighted a number of concerns with the legal structure of the Pact that would have direct implications for Ireland and suggested a number of amendments to the proposals.

The Presidency placed a particular emphasis on the external dimension of migration and explored how the EU can increase co-operation with third countries under the partnership approach. The presidency arranged the FAC/JHA Council in March followed by a Ministerial Conference in May that included African countries. Topics covered included returns, supporting third countries, legal migration and conditionality. Other notable achievements of presidency relate to the provisional agreement secured on the Blue Card Directive and a potential breakthrough on the European Union Asylum Agency.

PART 2:

Current status of EU legislative proposals submitted for the attention of the Joint Committee on Justice

1 January – 30 June 2021

	CION Ref No	Proposal Title	Date Reviewed and decision of Oireachtas Committee	Current Status
1	COM (21) 020	COM (21) 020 - 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	Considered by the Committee 2 March 2021. No further scrutiny required.	Following discussions at the COPEN working party in February, March and April, the text of the JIT amending proposal was adopted by written procedure in April (COREPER mandate given on 21/04/2021). The trilogue negotiations with the European Parliament have not yet commenced because the Parliament has not adopted its position (as of 20/07/2021).
2	COM (21) 021	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.	Considered by the Committee 2 March 2021. No further scrutiny required.	Following discussions at the COPEN working party in February, March and April, the text of the EIO amending proposal was adopted by written procedure in April (COREPER mandate given on 21/04/2021). The trilogue negotiations with the European Parliament have not yet commenced because the Parliament has not adopted its position (as of 20/07/2021). It should be noted that Ireland does not participate in the EIO and is therefore not bound by the amending proposal.

3	COM (21) 096	<p>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.</p>	<p>Considered by the Committee 6 May 2021.</p> <p>No further scrutiny required.</p>	<p>The file was presented by the Commission to the Frontiers WP on 31st March 2021. The first reading took place under the Portuguese presidency on 27th May 2021 in the Frontiers WP. There was an examination of the presidency compromise proposals under the Slovenian presidency in the Frontiers WP on 13th July 2021. Member states are invited to submit comments by the end of August and it is proposed to continue working on this file in September.</p> <p>Ireland is not currently participating in the ECRIS-TCN Regulation.</p>
4	COM (21) 170	<p>COM(21) 170- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the EU Strategy to tackle Organised Crime 2021-2025</p>	<p>Not yet considered by the Committee</p>	<p>The Oireachtas Committee on Justice requested an information note on the Strategy on 20 April and it was subsequently laid on 11 May (document number DL200985).</p> <p>Ireland will continue on-going engagement with stakeholders at relevant EU working groups with a view to introduce new operational, legislative or policy measures set out in the strategy.</p>
5	COM (21) 231	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings</p>	<p>Considered by the Committee 6 July 2021.</p> <p>No further scrutiny required.</p>	<p>Under discussion by the Council's General Questions Working Party, with a view to possible first reading agreement between Council and Parliament by Dec 2021.</p> <p>Due to the calendar of presentation of proposal, it was not possible for Ireland to opt in pre-adoption on this occasion. Subject to final outcome, we are likely to seek Government and Oireachtas approval to opt-in, post adoption, later in 2021.</p>

6	COM (21) 278	Proposal for a COUNCIL REGULATION on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013	<p>Considered by the Committee 21 July 2021.</p> <p>No further scrutiny required.</p>	<p>Currently being discussed at working party level, meeting approximately every 6 weeks.</p> <p>No timeline for adoption at this stage.</p>
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Part 3: Slovenian Presidency priorities in the areas of Justice and Home Affairs

Slovenia will hold the Presidency of the Council of the European Union from July to December 2021. This will be the second time they have held the Presidency. Their Presidency motto is “Together. Resilient. Europe.”

The Slovenian Presidency have scheduled Justice and Home Affairs Council meetings on 7-8 October 2021 in Luxembourg and 9-10 December 2021 in Brussels. They also chaired an Extraordinary JHA Council on the situation in Afghanistan on 31 August in Brussels. It is expected that the Councils will take place in person.

The Slovenian Presidency's work programme will focus on four main priorities:

- 1. The Resilience, Recovery & Strategic Autonomy of the European Union**
- 2. The Future of Europe**
- 3. The European Way of Life, Rule of Law & Equal Criteria for all**
- 4. Credible & Secure European Union**

JUSTICE

In line with the Commission's 2020 Communication on digitalisation of justice in the European Union, a new proposal to make the digital channel the default one for all EU cross-border judicial cooperation communication and data exchanges between the competent national authorities is expected during the Slovenian Presidency. This will have implications for civil and criminal judicial cooperation.

Civil Law

In the sphere of e-Justice trilogues will begin on Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX). The Regulation aims to entrust the further development and maintenance of e-CODEX to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) as of 2023. The time constraints will be a significant factor for the Slovenian Presidency.

Criminal Law and Judicial Cooperation

The main focus of the Slovenian Presidency in Criminal Law and Judicial Cooperation will be on the e-Evidence package, including not only the much anticipated trilogue discussions with the Parliament on the Regulation and Directive, but also the ongoing external negotiations with the US which it will hope to advance.

In relation to the internal e-Evidence package, the Slovenian Presidency will take up the mantle of the inter-institutional discussions and there will be significant obstacles to overcome including the controversial notification procedure. The Parliament, supported by a group of Member States, including Germany, wants to remove or seriously curtail the direct cooperation nature of the proposal in favour of a more traditional mutual legal assistance instrument, making it very difficult to operate in practice. Ireland, along with a number of other Member States, favours a very limited notification procedure for only the most sensitive category of data, content data. This position seeks to protect the direct cooperation nature of the proposal as much as possible in order to secure the most efficient instrument for practitioners, by making it easier.

With the European Public Prosecutor's Office (EPPO) now up and running, the Slovenian Presidency aim to further the work by overseeing the appointment of the remaining delegated prosecutors, the completion of working arrangements with the non-participating Member States (including Ireland) and the initiation of cooperation arrangements with third countries, all with the objective of providing EPPO with the tools it needs to protect the EU budget.

HOME AFFAIRS

Internal Security and Counter Terrorism

The European Commission published the new Schengen Strategy on 2 June 2021, along with a proposal to amend the Regulation establishing the Schengen evaluation mechanism. Both the proposal and the Strategy will be key priorities for the Slovenian Presidency, as well as related files on the EU Police Cooperation Code and revision of the Prüm framework.

Another key objective for the Slovenian Presidency is ensuring the conditions for operation and development of Europol, therefore, advancing the proposal amending the Europol Regulation is also a priority.

The Slovenian Presidency will also prioritise building on the work of the Portuguese Presidency in terms of finalising the new EMPACT Policy Cycle 2022-2025.

Borders & Migration and Asylum

The main body of work for the incoming Presidency remains the Pact on Migration and Asylum. Further meetings at a technical level are expected on the measures contained within the package however, given the divergent and established positions of Member States, it is difficult to see how this Presidency can break the stalemate. A matter of particular interest for Ireland relates to concerns with the legal structure of the Pact. The likelihood of the return of physical Councils brings the prospect for more intensive discussions at political level that may help break the deadlock.

On the external dimension of migration, based on the work of the Portuguese Presidency and the outcomes of the EU Council, we can expect the Presidency to action a number of initiatives to strengthen co-operation with third countries.

The recent situations at the EU border with Belarus and in Afghanistan will also bring a sharp focus to migration and asylum matters during the Slovenian Presidency.

HORIZONTAL MEASURES

The proposal for a Regulation on a Single Market for Digital Services (Digital Services Act - DSA), and the proposal for a Regulation on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act - AI Act) both contain a number of provisions of great importance to the Justice and Home Affairs area. Although these proposals are not being negotiated in JHA Working Parties, it is expected that the Slovenian Presidency will schedule JHA Working Party meetings to specifically discuss the JHA elements of these proposals.