

## **JUSTICE and HOME AFFAIRS COUNCIL** **Thursday 12 and Friday 13 October in Luxembourg**

The meeting will be chaired by **Urmas Reinsalu**, Estonian Minister for Justice, and **Andres Anvelt**, Estonian Minister for the Interior.

Thursday morning will be dedicated to the justice items. Justice and Home Affairs ministers will then meet on Thursday afternoon for a joint session. Friday will be dedicated to home affairs items.

Justice ministers are expected to adopt the regulation establishing the European Public Prosecutor's Office (**EPPO**) through enhanced cooperation. They will then discuss the proposal on mutual recognition of **freezing and confiscation** orders, as well as the proposal on the exchange of information on third-country nationals on the European Criminal Records Information System (**ECRIS**). They will also discuss fundamental rights and are expected to adopt conclusions on the application of the EU Charter on Fundamental Rights in 2016.

Over lunch, justice ministers will exchange their experiences on the implementation of the **data protection** legislation.

In the afternoon, justice and home affairs ministers are expected to meet jointly to discuss **criminal justice in cyberspace**, as well as the **mid-term review** of the JHA strategic guidelines, which were established by the European Council in June 2014.

On Friday, home affairs ministers will have a preliminary discussion on the European Commission proposal to amend the **Schengen Borders Code**. Ministers will also discuss the latest developments on **counter-terrorism**. They will be informed of progress on the reform of the Common European Asylum System.

Over lunch, home affairs ministers are expected to discuss the issue of **resettlement**.

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway and Switzerland) will take a first look at the proposal on the Schengen Borders Code. Exceptionally, the Schengen associated states will be present at the discussion on counter-terrorism and the lunch on migration.

### **Press conferences:**

- *Thursday +/- 14.30*
- *Friday +/- 14.30*

*Press conferences and public events by video streaming: <http://video.consilium.europa.eu>*

*Video coverage in broadcast quality (MPEG4) and photo gallery on:*

*<https://tvnewsroom.consilium.europa.eu/permalink/98796>*

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<sup>1</sup> This note has been drawn up under the responsibility of the press office.

# JUSTICE

## European Public Prosecutor's Office (EPPO regulation)

The Council is expected to **adopt the regulation** establishing the European Public Prosecutor's Office (EPPO) through enhanced cooperation.

The aim of the regulation is to create an office with the authority, under certain conditions, to investigate and prosecute EU fraud and other crimes affecting the Union's financial interests. It will bring together European and national law-enforcement efforts to counter EU fraud.

On 7 February 2017, after three and a half years of negotiations, the Council registered the absence of unanimity on the draft regulation. The lack of unanimous agreement was confirmed by the European Council on 9 March 2017.

In accordance with the applicable procedure, on 3 April 2017, 16 member states notified their intention to establish enhanced cooperation. On 8 June, the 20 member states which had joined or expressed their intention to join the enhanced cooperation agreed on the legislation setting up the EPPO. The regulation was then presented to the European Parliament for consent.

So far, 20 member states have joined the enhanced cooperation: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia

For more information:

- [Press release: 20 member states agree on details on creating the EPPO, 8 June 2017](#)
- [Commission website: webpage on the EPPO](#)

## Mutual recognition of freezing and confiscation orders

Ministers will hold a **policy debate** on the proposed regulation on the mutual recognition of freezing and confiscation orders. The discussion will focus on the issue of scope, in particular whether certain systems of preventive confiscation should also be covered by the proposed regulation, provided that the confiscation order is clearly linked to criminal activities and that appropriate procedural safeguards apply.

Freezing and confiscation of property related to criminal activities is a very efficient tool to combat the financing of terrorism and other serious crime, as it prevents the entry of illegal assets into the legal economy. The proposal for a regulation on the mutual recognition of freezing and confiscation orders aims to facilitate the freezing and confiscation of financial assets that could be moved across borders by terrorists or other criminals.

The regulation will simplify the current framework by providing a single legal instrument with a broader scope of cross-border recognition rules. The speed and efficiency of freezing and confiscation orders will also be improved through the standardisation of documents and procedures. Lastly, the text ensures that victims' rights to compensation and restitution are respected in cross-border cases.

## European Criminal Records Information System (ECRIS)

Ministers will **discuss two questions** on the proposed regulation to supplement and support the existing ECRIS by establishing a centralised system regarding conviction information on third-country nationals. This discussion aims to provide guidance for work to continue at technical level and will focus on:

- whether to also include in the central system information on EU nationals who hold another nationality in addition (from a third country or another EU member state)
- when to enter fingerprints in the system and, in particular, confirming that, as a minimum, fingerprints should be entered in the system when the person concerned has been convicted to a custodial sentence in relation to an intentionally committed criminal offence.

ECRIS was established in 2012. It aims to allow efficient information exchange between member states regarding criminal convictions in the EU. It takes the form of an electronic network of criminal records databases which enables central authorities to provide judges and prosecutors with easy access to comprehensive information on the criminal history of persons concerned, regardless of the member states in which those persons have been convicted in the past. This system removes the possibility for offenders to escape their criminal past by moving from one EU country to another. At the moment, most of the information exchanged is on EU citizens. Although it is already possible to exchange information on third-country nationals through ECRIS, there is currently no common European procedure or mechanism in place to do so effectively.

In January 2016, the European Commission presented a proposal to amend ECRIS to make the exchange of information on convicted third-country nationals using this system more effective. However, during the examination of that proposal, member states expressed a strong preference for establishing a centralised system for third-country nationals at EU level, rather than the decentralised system proposed by the Commission. In June 2017, the Commission presented a new proposal for a regulation to establish such a centralised system.

- [Issues submitted to the Council for discussion](#)

### **Fundamental rights**

Ministers will be updated by the European Commission and the Fundamental Rights Agency on current fundamental rights challenges, on the basis of their respective annual reports.

Following this, ministers are expected to **adopt the conclusions on the application of the EU charter on fundamental rights in 2016**.

- [2016 Commission report on the application of the EU Charter of Fundamental Rights](#)
- [Fundamental rights report 2017, Fundamental Rights Agency](#)

### **Data protection**

Over lunch, ministers will exchange their experiences on the implementation of the data protection legislation, which will enter into force on May 2018.

- [Council website - data protection reform](#)

# JOINT JUSTICE AND HOME AFFAIRS SESSION

## Criminal justice in cyberspace

Ministers will receive an update from the European Commission on its ongoing work on **e-evidence**. This follows the discussion by justice and home affairs ministers in June 2017, where they supported the swift implementation of a number of practical measures and the need to consider EU legislative action. Taking into account the sense of urgency raised by a number of ministers, the Commission announced its intention to present a legislative proposal early next year.

In June 2016, the Council adopted conclusions on improving criminal justice in cyberspace. Following the adoption of these conclusions, the Commission carried out work at expert level, in particular on ways to improve cooperation with service providers, the efficiency of mutual legal assistance, and possible solutions to the problems related to the determination and enforcement of jurisdiction in cyberspace. On 22 May 2017, the Commission services presented their views on the way forward, based on the final findings of this work at expert level. These views formed the basis of the discussion by justice and home affairs ministers in June 2017.

The practical measures supported by ministers in June include the creation of an electronic user-friendly version of the European Investigation Order (EIO), the creation of single points of contact within the authorities of member states and service providers to facilitate cooperation, the streamlining of service providers' policies on procedures and conditions to request access, and the standardisation of forms used by member states to request access to e-evidence, among others. To improve cooperation with US authorities, a key partner when it comes to e-evidence, the exchange of best practices and training of practitioners should also be further enhanced.

A large majority of ministers also supported the need to consider EU legislative action regarding direct cooperation with service providers and setting EU common conditions and minimum safeguards for direct access to data by authorities from a computer system.

Ministers will also be briefed by the Commission on the outcome of its expert process (in the run up to the adoption of its formal report) regarding the criminal justice challenges stemming from the use of **encryption** and the possible solutions.

## Mid-term review of the JHA strategic guidelines

Ministers will have an **exchange of views** on the mid-term review of the 2014 strategic guidelines in the area of freedom, security and justice, focusing on the most important achievements so far and the issues which remain to be addressed. Rather than going through each policy field exhaustively, the review is expected to address the overarching actions that can make a difference throughout all policy areas:

- implementation of existing rules
- coherence and synergies between policy areas
- cooperation and coordination between all stakeholders both at EU and at national level

Following this discussion, the presidency, in close cooperation with the General Secretariat of the Council, will organise an informal seminar on Wednesday 8 November 2017.

The outcome of the review process will form the basis of a presidency letter to the President of the European Council including suggestions ahead of the European Council meeting on 14-15 December 2017, when the review will end.

The Treaty of Lisbon tasks the European Council with defining the strategic guidelines for legislative and operational planning in the area of justice and home affairs. In June 2014, the European Council defined the strategic guidelines in the area of freedom, security and justice over the coming years. They build on the progress achieved by the Stockholm programme, the multiannual programme for justice and home affairs for 2010-2014.

- [Exchange of views: mid-term review of the 2014 JHA strategic guidelines](#)
- [Strategic guidelines for justice and home affairs](#)

# HOME AFFAIRS

## Schengen Borders Code

Ministers will have a preliminary discussion on the European Commission proposal to amend the Schengen Borders Code as regards the rules on temporary reintroduction of internal border controls. The proposal aims to respond to the evolving threats faced by member states.

The Schengen Border Code allows member states to temporarily reintroduce border controls in cases where there is a serious threat to public policy or internal security. The Commission proposes to extend the current maximum time limit for these controls from 6 months to one year (up to 6 months which can then be prolonged by up to another 6 months), while at the same time introducing further procedural safeguards. It also proposes to allow member states to exceptionally prolong controls beyond one year if the threat persists and exceptional national measures have been taken within the territory, such as a state of emergency. This prolongation, which would require a recommendation of the Council, would be limited to 6-month periods which could be prolonged up to a maximum period of two years.

Ministers are also expected to cover more broadly the **implementation of the current rules** regarding the temporary reintroduction of internal border controls.

- [Commission proposal for a regulation amending the Schengen Borders Code](#)

## Counter-terrorism

Ministers will exchange views on how to improve cooperation between law enforcement and intelligence actors on counter-terrorism, whilst fully respecting the sole competence of member states for national security.

## Reform of the common European asylum system and resettlement

The Council will take stock of work carried out so far on the reform of the common European asylum system (CEAS). A progress report on all legislative proposals will be presented by the presidency.

On 4 May 2016, the Commission adopted a first package of proposals to reform the CEAS, namely the recast of the Dublin regulation, the Eurodac regulation and the regulation on the European Agency for Asylum.

The proposal on the recast of the **Dublin regulation** aims to:

- enhance the system's capacity to determine efficiently and effectively a single member state responsible for examining the application for international protection;
- ensure fair sharing of responsibilities between member states by complementing the current system with a corrective allocation mechanism;
- discourage abuse and prevent secondary movements of applicants within the EU.

The Estonian Presidency has taken forward the discussions by conducting bilateral meetings with all member states, with a view to reaching a compromise on the effective application of the principles of solidarity and responsibility, which so far has not proved possible. Work is continuing in the upcoming months.

The **Eurodac** proposal includes the necessary changes to adapt the system to the proposed Dublin rules, in line with its primary objective to serve the implementation of the Dublin regulation. Eurodac shall also become a database for wider immigration purposes, facilitating return and the fight against irregular migration. On 9 December 2016, the Council endorsed a mandate for negotiations with the European Parliament on the recast of the Eurodac regulation.

The proposal for a **European Union Agency for Asylum** aims to improve the implementation and functioning of the CEAS by building on the work of the European Asylum Support Office and further developing its responsibilities. On 28 June 2017, the Council presidency and the European Parliament representatives reached a broad political agreement *ad referendum* on the European Union Agency for Asylum.

On 13 July 2016, the Commission presented a second package of proposals which contained:

- A regulation on **qualification** of third-country nationals or stateless persons as beneficiaries of international protection (replacing the qualification directive), setting uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection. On 19 July 2017, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, a mandate for negotiations with the European Parliament. Inter-institutional negotiations with the European Parliament (trilogue) started on 25 September 2017.
- A regulation establishing a **common procedure** for international protection in the EU (replacing the asylum procedures directive), in order to create a genuine common procedure, thereby removing incentives for asylum shopping and secondary movements between member states. The Council has finished examining the original Commission proposal and now continues to examine the presidency's compromise proposal.
- A recast of the directive for the **reception conditions** of applicants for international protection, further harmonising reception conditions in the EU to ensure that the treatment of applicants is dignified across the EU, in accordance with fundamental rights and the rights of the child, and to decrease secondary movements. The presidency aims to reach a partial general approach and to start negotiations with the European Parliament at the earliest opportunity.
- A regulation establishing an **EU resettlement framework** that will create a common set of standard procedures for the selection of resettlement candidates and a common protection status for persons resettled to the EU to streamline and better focus European resettlement efforts in the future. The presidency aims to reach a Council mandate to start negotiations with the European Parliament at the earliest opportunity.

For more information:

- [Progress report: reform of the common European asylum system and resettlement](#)
- [Council website: Reforming the common European asylum system](#)

## Migration

Over lunch, home affairs ministers are expected to discuss the issue of **resettlement**. Ministers will be informed by the Commission on its recent recommendation and on how it proposes to coordinate all existing initiatives in this specific area. Ministers are invited to discuss the role resettlement could take in the overall migration management and asylum policies of the EU.

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