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Justice and Home Affairs

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Presidents **Maria Ohisalo**
Minister of the interior
Anna-Maja Henriksson
Minister of justice of Finland

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- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- Documents for which references are given in the text are available on the Council's internet site (<http://www.consilium.europa.eu>).
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's internet site or may be obtained from the Press Office.

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ITEMS DEBATED

HOME AFFAIRS

Future of EU migration and asylum policy

Ministers discussed the future of the EU migration and asylum policy, on the basis of a report prepared by the Finnish Presidency. This debate wrapped up the reflection process which was started at the informal JHA ministers meeting in July and which has continued during the past months in various Council bodies.

During the debate, ministers welcomed the Commission's intention to present a new pact on migration and asylum. They confirmed the need for a comprehensive approach to migration, with a whole-of-government and whole of route approach. They also highlighted several areas where further work would be needed, including:

- Improving cooperation with third countries by building balanced and sustainable partnerships, both to prevent irregular migration and improve cooperation on return
- Setting up more efficient asylum procedures which cover all circumstances
- Further supporting member states under specific pressure, notably frontline member states
- Enhancing the link between asylum and return procedures to improve the level of returns
- Building on the central role of EU agencies, including Frontex and EASO

[Presidency report: way forward for EU migration and asylum policy](#)

[EU migration policy \(background information\)](#)

Future of EU internal security

Ministers discussed the future of EU internal security, with a view to providing guidance for future developments in the area of internal security during the next legislative cycle (2019-2024).

This discussion took place over lunch, on the basis of a report prepared by the Finnish Presidency, which summarises the main themes and work strands that have been discussed in the past six months as part of this reflection process. Key horizontal issues highlighted by the Presidency report include:

- proactive approach to new technologies: The establishment of a joint innovation lab at Europol should support EU law enforcement authorities in order to be able to benefit from new technologies, while anticipating and managing the risks associated with them.
- effective information management: Law enforcement cooperation at EU level will increasingly be based on better and more efficient technological solutions and information systems and their interoperability. It is particularly important to ensure that information systems are supplied with high quality, timely and complete data and used effectively.
- multidisciplinary cross-border cooperation: due to the constantly evolving, cross-cutting nature of various security threats (CBRN weapons, hybrid activities) the actions taken to respond to and prevent these activities require a horizontal approach, going beyond traditional cross-border law enforcement cooperation and involving other authorities and EU agencies.
- comprehensive approach to security: a comprehensive and whole-of-society approach to security necessitates better coordination, resources and technological capacities, but also depends on a better situational awareness and preparedness to address a variety of challenges.

[Presidency report: future direction of EU internal security](#)

Counter-terrorism cooperation¹

Ministers were updated, in the presence of the Counter Terrorism Group (CTG), on cooperation between competent authorities dealing with counter-terrorism.

The counter-terrorism group is an informal group outside the EU framework that gathers the security services of the 28 EU member states, Norway and Switzerland. The Council regularly holds exchanges with the group on counter-terrorism cooperation. The latest exchange between home affairs ministers in the presence of the CTG had taken place at the June 2019 Home Affairs Council meeting.

¹ Exceptionally, in the presence of the Schengen associated states

Implementation of interoperability

Ministers were informed by the Commission and the Presidency on the implementation of the interoperability regulations and held an exchange of views on this topic. Steps to be taken include:

- an overall coordination at national level, by setting up a multi-sectoral coordination group in each member state and elaborating a national implementation plan
- the planning of human and financial resources
- the development by member states of operational business processes, taking into account the needs of end users

The implementation of interoperability is a coordinated process between the Commission, the EU agency for large-scale IT systems (eu-LISA) and the member states. It requires not only the development of technical infrastructure, but also for member states to redesign business processes and build their capacity. Given the comprehensive changes involved, the Commission regularly monitors progress through a series of instruments.

The regulations establishing a framework for interoperability between EU information systems in the area of justice and home affairs entered into force on 11 June 2019. Interoperability will allow the systems to complement each other, help facilitate the correct identification of persons and contribute to fighting identity fraud.

[How interoperable databases will boost Europe's security \(infographic\)](#)

[IT systems in the area of freedom, security and justice](#)

Implementation of the European Border and Coast Guard regulation

Ministers exchanged views on ongoing work regarding the implementation of the European Border and Coast Guard Regulation, which will enter into force on 4 December. They focused in particular on the development of the multiannual strategic policy cycle for the European integrated border management (EIBM) concept, which is currently ongoing. Ministers were also briefed on the overall implementation of the European Border and Coast Guard regulation.

The EIBM concept sets out the basic principles for effective border control and return activities within the European Union. Its aim is to manage crossings of the EU's external borders efficiently and to address migratory challenges and potential future threats at those borders. The concept is applied through five-year policy cycles, for which a multiannual strategic policy is elaborated by the Commission, the Council and the European Parliament. On this basis, Frontex prepares a technical and operational integrated border management strategy, with member states then preparing national strategies.

Under the new rules, the European Border and Coast Guard Agency (Frontex) is being strengthened in terms of staff and technical equipment. To ensure the coherent management of EU external borders and to be able to respond to crises, Frontex will have at its disposal a standing corps. This corps, to be established gradually, will consist of up to 10 000 operational staff by 2027. The agency is also being given a broader mandate to support member states' activities, especially on border control, return and cooperation with third countries.

[Strengthening the EU's external borders \(background information\)](#)

Any other business

– *Current legislative proposals*

The presidency updated the Council on the state of play of a number of legislative proposals, including the regulation on preventing the dissemination of terrorist content online, the JHA funds, the ETIAS consequential amendments, the regulation on the false and authentic documents online (FADO) system, the visa information system regulation, the EU civil protection mechanism and the Schengen borders code.

[Overview of the current legislative proposals under the Finnish Presidency](#)

– *EU cooperation mechanism on the prevention of radicalisation*

The Commission updated ministers on the work of the EU cooperation mechanism on the prevention of radicalisation. This mechanism was set up mid-2018 as an outcome of the high-level expert group on radicalisation, to ensure that concrete actions on prevent policies are developed in close cooperation with all relevant stakeholders and covering all relevant areas.

– *Salzburg forum ministerial conference (Vienna, 6-7 November 2019)*

Austria briefed ministers on the results of the Salzburg forum ministerial meeting, which took place in Vienna on 6-7 November.

[Salzburg forum ministerial meeting - joint ministerial declaration](#)

– *Presidency report on the progress made in the fields of justice and security*

The Council took note of a Presidency report on the progress made in the fields of justice and security.

– *EU-US justice and home affairs ministerial meeting (Washington DC, 11 December 2019)*

The Council was informed by the Presidency on the agenda for the EU-US JHA ministerial meeting which will take place in Washington DC on 11 December.

EU-Western Balkans ministerial forum on justice and home affairs (Skopje, 18-19 November 2019)

The Council took note of the information provided by the Presidency on the outcome of the EU-Western Balkans ministerial forum on Justice and Home Affairs, held in Skopje on 18-19 November.

[EU – Western Balkans Justice and Home Affairs ministerial forum - joint press statement](#)

– ***Search and rescue activities in the Mediterranean***

The Council took note of the information provided by Italy on search and rescue activities in the Mediterranean.

– ***Meeting of interior ministers of the Visegrad Group (Prague, 21 November 2019)***

The Council took note of the information provided by the Czech Republic on the meeting of interior ministers of the Visegrad group which took place in Prague on 21 November.

– ***Work programme of the incoming Presidency***

The incoming Croatian presidency presented its work program in the area of home affairs, focusing on strengthening internal security, providing for a more effective control of external borders, ensuring the full interoperability of IT systems and strengthening resilience to external threats and malicious cyber activities. Key elements include:

- Comprehensive and effective migration policy
- Strengthened control of the EU external border and return to the normal functioning of the Schengen area
- Improved internal security and interoperability of information systems
- Sustainable framework for home affairs funds
- Continued work on the EU mechanism for civil protection

Future work in home affairs

Over lunch, ministers heard from the Commission and upcoming presidencies their expected priorities in the area of home affairs.

They also held a discussion on the future of internal security.

MIXED COMMITTEE

The Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the following items:

– ***Implementation of interoperability***

See above

– ***Implementation of the European Border and Coast Guard regulation***

See above

– ***Any other business***

The presidency updated the Mixed Committee on the state of play of a number of legislative proposals.

[Overview of the current legislative proposals under the Finnish Presidency](#)

JUSTICE

Digitalisation of judicial cooperation

The Council adopted its negotiating position (general approach) on two amended regulations, one on the taking of evidence and a second on the service of documents. The Council Presidency will now start negotiations with the European Parliament on the basis of these mandates.

The draft regulations provide for the modernisation of judicial cooperation in civil and commercial matters in the taking of evidence and service of documents. The draft amendments improve the efficiency and speed of cross-border judicial proceedings by taking advantage of digitalisation and the use of modern technology, and by these means advance access to justice and fair trial for the parties.

The current regulation on the service of documents has put in place a fast-track and standardised transmission procedure for the service of documents between courts and other parties located in different EU countries.

The current regulation on the taking of evidence provides a framework for cross-border judicial assistance between EU countries by facilitating the collection of evidence across borders.

[Modernising judicial cooperation: Council adopts negotiating mandates on the taking of evidence and the service of documents regulations](#)

[Draft amending regulation on the service of documents \(general approach\)](#)

[Draft amending regulation on the taking of evidence \(general approach\)](#)

Victims rights

Ministers adopted conclusions on victims' rights, following the discussions which took place at the JHA Council in October.

The conclusions take stock of the comprehensive EU framework developed in this field, including legislative and non-legislative instruments as well as cooperation at operational level. Their objective is to improve its effectiveness and implementation and identify concrete actions and initiatives to be taken to improve and further develop this framework.

The conclusions call on the Commission to draw up an EU strategy for 2020-2024 on victims' rights, covering all victims of crimes. They also invite the relevant EU agencies to look into the question of how to improve cooperation between competent authorities concerning victims of violent crime in cross-border cases.

Member states are notably called on to ensure the effective practical implementation of EU legislation and to ensure a comprehensive and holistic approach to victims' rights that will involve all actors likely to come into contact with victims and include victims' access to information about their rights. They are also asked to ensure that national compensation policies exist and if necessary to improve their functioning.

[Council conclusions on victims' rights](#)

Alternative measures to detention

The Council adopted conclusions on alternative measures to detention. The conclusions aim to promote the use of sanctions other than prison when this is appropriate, considering the seriousness of the criminal offence and related circumstances.

The conclusions highlight that an important role of alternative measures to detention is to promote social rehabilitation and reintegration of the offender, reducing reoffending and promoting public security. Depending on the individual member state, alternative measures may include, for example, suspended prison sentences, community service, financial penalties and electronic monitoring. These should be considered throughout the whole criminal justice chain, including also the pre-trial stage of proceedings.

Alternatives to detention have been on the EU's agenda for several years in different contexts. They were last discussed at the informal meeting of justice and home affairs ministers in July 2019. At this meeting, ministers acknowledged that there is a need to tackle complex issues relating to prison conditions, prison overcrowding, prison radicalisation and cooperation in criminal matters. The ministers also emphasised the importance of enhancing the use of alternative measures to detention in member states in the coming years.

[Council conclusions on alternative measures to detention](#)

Future of civil justice cooperation

The Council adopted conclusions on the future of civil justice cooperation. These conclusions wrap up the reflection process on this matter, started in the first half of 2019 under the Romanian Presidency.

The draft conclusions emphasise the need to prioritise effective implementation, enforcement, evaluation of application and functioning of existing EU instruments, as well as digitalisation. Any new legislative initiatives must be based on evidence of clear added value and of practical needs of citizens and businesses. The draft conclusions also stress the key role of the European Judicial Network and the European e-Justice portal and invite the Commission and member states to enhance the visibility and use of these tools among practitioners. Finally, the draft conclusions express support to the key multilateral organisations in the field: the Hague conference on private international law, UNCITRAL and UNIDROIT.

[Council conclusions on the future of civil justice cooperation](#)

European Public Prosecutor's Office (EPPO) regulation

Justice ministers were informed by the Commission about the state of play in the implementation of the EPPO regulation. The newly appointed EPPO Chief prosecutor, Ms Laura Codruța Kövesi, also presented her vision and plans for the office.

The Chief prosecutor highlighted the need to work on several areas to achieve the objective of making the EPPO operational by the end of 2020. These include the implementation of the PIF directive, national adaptations to the EPPO regulation, the appointment of the European prosecutors to complete the constitution of the college, an agreement on the number of delegated prosecutors and a functional case management system. She also insisted on the importance of providing to the EPPO adequate human and financial resources to enable it to efficiently perform its tasks.

The Commission informed member states of the ongoing work regarding the setting up of the office.

The EPPO will have the authority, under the conditions set by the regulation, to investigate and prosecute in cases of 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. So far, 22 member states have formally decided to join the EPPO.

The EPPO's central office will be based in Luxembourg. The date on which the EPPO will assume its investigative and prosecutorial tasks will be set by the Commission on the basis of a proposal from the European Chief Prosecutor once the EPPO has been set up. It is currently expected to be towards the end of 2020.

[Council press release - Agreement on the EPPO regulation](#)

[Council press release - EPPO: Council confirms Laura Codruța Kövesi as first European chief prosecutor](#)

[Commission Q&A on the EPPO](#)

Environmental crime

Ministers took note of the final report on the 8th round of mutual evaluations in the field of criminal matters, which focused on the topic of environmental crime. They also took account of a Presidency report on EU environmental criminal law.

The Council invited member states to ensure there is a follow up to the recommendations of the final report, as well as those of the individual country reports, with a view to strengthening the prevention and fight against environmental crime across the EU and internationally.

The 8th round of mutual evaluations focused namely on two forms of criminal activities which raise significant challenges, due to the risks they can cause to human health and the environment: the illegal trafficking of waste and the illegal production or handling of dangerous materials. The report underlines the low detection rate of environmental crime and includes recommendations encouraging to improve the situation regarding the fight against environmental crime, such as:

- the adoption of national environmental strategies defining priorities, roles and responsibilities
- the collection of reliable and integrated statistics that allow to better understand the extent and impact of criminal activities in this field
- provide regular training for staff working in this field
- establish a formal framework or central entity to coordinate cooperation among all relevant authorities in a member state
- introduce a clear legislative framework that ensures a proper balance between the administrative and judicial approach to environmental offences
- ensure cooperation with the private sector, in particular NGOs, in order to make use of their expertise
- fully use the possibilities for cooperation within the EU and with third countries

The mutual evaluation mechanism was established by joint action 97/827/JHA. It aims at the peer evaluation of the application and implementation at national level of EU and international law in criminal matters. Each round of mutual evaluations is devoted to a specific topic.

[Final report of the eighth round of mutual evaluations on environmental crime](#)

[EU environmental criminal law \(Presidency report\)](#)

Negotiations on a second additional protocol to the Budapest Convention and on an agreement between the EU and the US on facilitating access to e-evidence

The Commission updated the Council on the state of play on the negotiations for an EU-US agreement on cross-border access to e-evidence, on the one hand, and on a second additional Protocol to the Budapest Convention, on the other hand.

On the EU-US negotiations, the Commission informed that two negotiating rounds have taken place, one in September and one in November. These meetings have provided the opportunity for the parties to present their starting negotiating positions. For the EU, the position is based on the mandate adopted by the Council in June 2019. Another negotiating session will be organised in December.

On the negotiations for a second additional protocol to the Budapest Convention, the work is ongoing and will continue in the coming months. Significant progress has been made but important topics still remain to be addressed.

If concluded, these agreements will complement the EU framework on access to e-evidence currently being discussed by the EU institutions and on which the Council adopted its position in December 2018 and subsequently in March 2019. Law enforcement and judicial authorities would thus be equipped with a swift tool to access e-evidence stored inside or outside the EU.

EU-US agreement on cross-border access to e-evidence for the purpose of judicial cooperation in criminal matters

In June 2019, justice ministers reaffirmed that, given the EU's competence in the matter, the EU, rather than individual member states, should seek to conclude an agreement with the US to facilitate access to e-evidence.

Currently, US-based service providers cooperate with European law enforcement authorities on a voluntary basis or through procedures of mutual legal assistance (MLA) and are not allowed, under US law, to provide directly all types of electronic evidence. An EU-US agreement would provide a framework for cooperation with the US, including for direct cooperation with service providers. It would also ensure strong mechanisms were in place to protect fundamental rights.

Second additional protocol to the Budapest Convention

In September 2017, the Council of Europe undertook to prepare a second additional protocol to the Budapest Convention on Cybercrime. The objective of the protocol is to lay down provisions for a more effective and simplified mutual legal assistance (MLA) regime, allowing direct cooperation with service providers in other state parties to the Convention and for searches to be extended across borders. The protocol will include strong safeguards and data protection requirements. The advantage of such an agreement is its potential to apply across the globe. Currently, 64 countries are party to the Convention, including 26 EU member states.

[Council press release - Council gives mandate to Commission to negotiate international agreements on e-evidence in criminal matters](#)

[Council press release - Council agrees its position on rules to appoint legal representatives for the gathering of evidence](#)

[Council press release - Regulation on cross border access to e-evidence: Council agrees its position](#)

Any other business

– ***Current legislative proposals***

The presidency updated the Council on the state of play of a number of legislative proposals, including the regulation on the assignment of claims, the e-evidence regulation, the directive on legal representatives for gathering evidence in criminal proceedings and the EU justice, rights and values fund.

[Overview of the current legislative proposals under the Finnish Presidency](#)

– ***Retention of data for the purpose of fighting crime***

The Council took note of the progress made so far by the Commission in the implementation of the Council conclusions on data retention, adopted in June 2019, and invited the Commission to pursue all efforts needed to reach a satisfactory balance between privacy and security concerns at EU level.

The June 2019 conclusions encouraged the Commission to conduct targeted consultations with relevant stakeholders on the matter of data retention and, on that basis, to prepare a comprehensive study on the possible solutions for retaining data, including consideration of a future legislative initiative.

[Council conclusions on retention of data for the purpose of fighting crime \(June 2019\)](#)

– ***Presidency report on the progress made in the fields of justice and security***

The Council took note of a Presidency report on the progress made in the fields of justice and security.

– ***EU-US justice and home affairs ministerial meeting (Washington DC, 11 December 2019)***

The Council was informed by the Presidency on the agenda for the EU-US JHA ministerial meeting which will take place in Washington DC on 11 December.

- ***EU-Western Balkans ministerial forum on justice and home affairs (Skopje, 18-19 November 2019)***

The Council took note of the information provided by the Presidency on the outcome of the EU-Western Balkans ministerial forum on Justice and Home Affairs, held in Skopje on 18-19 November.

[EU – Western Balkans Justice and Home Affairs ministerial forum - joint press statement](#)

- ***Conference on the EU charter of fundamental rights 10 years (Brussels, 12 November 2019)***

The Council took note of the information provided by the Commission on the conference "Making the EU charter for fundamental rights a reality for all", that took place on 12 November in Brussels.

The conference had three thematic sessions: the first one looked at awareness and use of the charter at national level by policymakers, administrations, courts, legal practitioners and law enforcement bodies; the second one looked at the use and awareness of the charter by civil society organisations and rights defenders; the third session was dedicated to the next decade of the charter.

- ***Work programme of the incoming Presidency***

The incoming Croatian presidency presented its work program in the area of justice. Work will continue on identifying priorities in the area of freedom, security and justice for the upcoming five-year period. Depending on the outcome of the negotiations on the MFF package, the Croatian Presidency will also seek to close negotiations on the sectorial financial fund: justice, rights and values.

Special attention will be given to the efficient implementation of existing legal instruments in the area of judicial cooperation in criminal matters with emphasis on the legislative package on e-evidence and fulfilment of the preconditions for the EPPO to become operational. The Croatian Presidency will continue high-level discussions with a view to improving education and training practices for the judiciary. Emphasis will be put on further promotion and development of the e-justice system and the use of modern technologies and artificial intelligence in the justice sector, as well as the role of the EU in relation to third countries in the justice area.

Rule of law

Over lunch, ministers discussed the role of the JHA Council in the new rule of law cycle and possible rule of law topics to be discussed in the JHA Council.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Schengen evaluation - Estonia

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Estonia on the application of the Schengen acquis in the field of the Schengen Information System.

Functioning of the Schengen evaluation and monitoring mechanism

The Council invited the Commission to take due account of the views of the member states on the functioning of the Schengen evaluation and monitoring mechanism, as set out in an agreed analysis, when reviewing the functioning of the mechanism.

The current Schengen evaluation and monitoring mechanism was established by a Council regulation in 2013. Article 22 of this regulation establishes that the Commission will undertake a review of the operation of this regulation and submit a report to the Council within 6 months of the adoption of all evaluation reports regarding the evaluations covered by the first multiannual evaluation programme. The first five-year evaluation cycle under the current mechanism ends in December 2019.

Conclusions on widening the scope of PNR data

The Council adopted conclusions recommending that the Commission carry out a study that would explore, by means of an impact assessment, the need for and feasibility of the collection, storage and processing of PNR data from cross-border forms of transport other than air traffic.

[Council conclusions on widening the scope of the use of passenger name record \(PNR\) data to forms of transport other than air traffic](#)

Europol - cooperation with private parties

The Council adopted conclusions on Europol's cooperation with private parties ([14138/19](#)).

In these conclusions, the Council acknowledges the urgent operational need for Europol to request and receive data directly from private parties and agrees that reflection on possible modalities for such a transmission shall continue at all appropriate levels.

It calls on the Commission to take into account these conclusions when examining the practice of direct exchange of personal data with private parties in the framework of its review of the implementation of the Europol regulation. It also calls on the Commission to consider adapting the schedule for this review as necessary, especially in view of the need for European law enforcement to address ongoing technological developments.

Prüm data exchange - United Kingdom

The Council adopted conclusions acknowledging that the UK has fully implemented the general provisions on data protection for the purpose of Prüm automated data exchange with regard to dactyloscopic data.

However, the Council also requests that by 15 June 2020 the UK review its policy of excluding suspects' dactyloscopic files. If by then the UK has not notified the Council that it makes these data available the Council will, within three months, review the situation with a view to the continuation or termination of dactyloscopic Prüm automated exchange with the UK.

Following the adoption of the above conclusions, the Council will adopt, after consultation with the European Parliament, the implementing decision, which would allow UK access to Prüm dactyloscopic data exchange.

FOREIGN AFFAIRS

Combating illicit trafficking in weapons, ammunition and explosives in Ukraine

The Council adopted a Decision in support of Ukraine's efforts to combat illicit trafficking in weapons, ammunition and explosives, in cooperation with the OSCE. The Decision will strengthen the capacities of the State Border Guard Service of Ukraine, the Ministry of Internal Affairs of Ukraine and the State Fiscal Service/State Customs Service of Ukraine in combating illicit trafficking in weapons, ammunition and explosives.

On 19 November 2018, the Council adopted the EU Strategy against illicit firearms, small arms and light weapons and their ammunition (the EU SALW strategy). The purpose of this strategy is to guide integrated, collective and coordinated European action to prevent and curb the illicit acquisition of SALW and their ammunition by terrorists, criminals and other unauthorised actors, and to promote accountability and responsibility with regard to the legal arms trade.

[Council adopts new EU strategy against illicit firearms, small arms and light weapons and their ammunition, 19/11/2018](#)

ECONOMIC AND FINANCIAL AFFAIRS

Review of the supervisory framework for financial institutions

The Council adopted today a first fundamental review of the functioning of the European system of financial supervision (ESFS).

The ESFS was established in 2011 and consists of:

- three European supervisory authorities (ESAs): the European banking authority (EBA), the European insurance and occupational pensions authority (EIOPA) and the European securities and markets authority (ESMA). They supervise and provide regulatory guidance for individual sectors and institutions.

- the European systemic risk board (ESRB) which oversees the financial system as a whole and coordinates EU policies for financial stability.

The texts adopted today review tasks, powers, governance and funding of the ESAs and the ESRB, so as to adapt the authorities to the changed context in which they operate. The reform also includes provisions reinforcing the role of the EBA as regards risks posed to the financial sector by money laundering activities.

For more information, see [press release](#)
