



## **JUSTICE and HOME AFFAIRS COUNCIL** **Thursday 8 and Friday 9 December in Brussels**

The meeting will be chaired by **Lucia Žitňanská**, Minister for Justice of Slovakia and by **Robert Kaliňák**, Minister for the Interior of Slovakia.

On **Thursday, Justice** ministers will continue discussions on the proposals on the **establishment of the European Public Prosecutor's Office** (EPPO regulation) and the presidency will give an update on the latest development regarding the directive on the **fight against fraud to the EU's financial interests** (PIF directive).

The Council will also hold a policy debate on the proposed directive on certain aspects concerning contracts for the **supply of digital content** in order to provide guidance for further work at technical level.

Finally, they will discuss progress made on the broad issue of **criminal justice in cyberspace** after the adoption of Council conclusions on the topic in June this year.

On **Friday, Home affairs** ministers will take stock of work on the proposal on the **entry/exit system**.

Ministers will have a discussion on **migration**, focusing on the situation on the ground and the implementation of measures already agreed.

The Council will address the **fight against terrorism and organised crime**. Ministers are expected to take note of a report from the EU Counter-terrorism coordinator setting out policy options to face the phenomenon of **foreign terrorist fighters returnees**. They will also discuss a joint proposal from France and Germany on the cooperation between law enforcement agencies and electronic communication service providers.

Ministers will then exchange views on the **management of the consequences following terrorist attacks**. The focus will be on the ways through which the EU can support the member states in order to strengthen preparedness and response by the civil protection services and their cooperation with other involved emergency and security services.

The Council will discuss the reform of the **common European asylum system**. Ministers will try to reach a partial general approach on the Eurodac regulation and will take stock of work on the remaining proposals.

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway, Switzerland) will also take stock of work on the entry/exit system. Exceptionally, they will also be present in the discussion on migration and fight against terrorism and organised crime.

### **Press conferences:**

- **Justice Council** (*Thursday*, +/- 18.30)
- **Home Affairs Council** (*Friday*, +/- 17.00)

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/88779>

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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 directive)**

Building on the progress made during previous meetings, the Council will continue the discussion on the EPPO regulation. The Slovak presidency's intention at this stage is to work towards an agreement of the text at the Council.

The proposed regulation is aimed at helping combat crimes against the EU's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The proposed regulation requires the unanimous support in the Council which adopts it after having obtained the consent of the European Parliament. The proposal was presented by the Commission on 17 July 2013.

This file is closely linked to the proposed directive on the fight against fraud to the Union's financial interest by means of criminal law, so called PIF directive, which constitute in principle the substantive law to be applied by the EPPO (see part on PIF directive).

In previous meetings, the Council has already reached a broad consensus on a number of articles.

For more information:

- [Outcome of the Council meeting, October 2016](#)

## **Fight against fraud to the Union's financial interests ("PIF" directive)**

The Slovak presidency will update ministers on the latest progress in the negotiations with the European Parliament in trilogue.

During the October session of the Council, the Slovak presidency noted that a majority of member states were in favour of prosecuting serious cross-border VAT fraud at the EU level, on the basis of the PIF directive. The VAT issue was the main point on which the European Parliament and the Council could not agree in the previous trilogues.

The objective of the so-called PIF directive is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds thereby increasing the protection of EU taxpayers' money.

The proposed directive provides common definitions of a number of offences against the EU budget, such as fraud, and other fraud related crimes such as active and passive corruption, the misappropriation of funds, money laundering and minimum rules on prescription periods, within which the case must be investigated and prosecuted, as well as minimum rules on sanctions, including imprisonment for the most serious cases to strengthen the deterrent effect. These common rules should help to ensure a level playing field and improved investigation and prosecution across the EU.

For more information:

- [Outcome of the Council meeting, October 2016](#)

## **Digital single market strategy**

Ministers will hold a policy debate on the proposal for a directive on certain aspects concerning contracts for the supply of digital content. The objective of the discussion is to provide some further guidelines for the work to continue at technical level.

Ministers will in particular be invited to comment on:

- the question of which rules should apply to 'embedded digital content'. On this issue, two options are put for discussion: to either apply the rules designed for the supply of digital content (as presented in this directive) or those designed for the sales of goods (as outlined in the directive on the consumer sales and guarantees (1999/44/EC) and/or the new rules of the proposed directive on the online and other distance sales of goods (once adopted));
- the question whether 'other data' (i.e. data other than personal data) should be considered as a possible counter-performance under the directive and hence be covered by the directive;
- the right balance the directive should set between subjective conformity criteria (i.e. criteria agreed in the contract) and objective conformity criteria (i.e. criteria stipulated in the law)

The proposed directive on certain aspects concerning contracts for the supply of digital content was presented by the Commission on 9 December 2015 together with a proposal for a Directive on certain aspects concerning contracts for the online and other distances sales of goods. The two proposals were among the first legislative initiatives presented as part of the Digital Single Market Strategy.

The directive on digital content is aimed to regulate contracts for the supply of digital content in business-to-consumer (B2C) contracts. The scope of the proposal is broad as it covers: data produced and supplied in digital form (e.g. music, online video, etc.), services allowing the creation, processing or storage of data in digital form (e.g. cloud storage), services allowing sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively as carrier of digital content (e.g. DVDs).

For more information:

- [Council website: Digital single market strategy](#)

## **Criminal justice in cyberspace**

Under the non-legislative items and on the basis of a progress report presented by the Commission, ministers will discuss the implementation of the Council conclusions on improving criminal justice in cyberspace.

These conclusions, adopted in June 2016, set out concrete measures for future follow up and action aiming at streamlining mutual legal assistance (MLA) proceedings, enhancing the cooperation with service providers and reviewing the rules on enforcement jurisdiction in cyberspace.

Under this point, ministers will also discuss the challenges for criminal justice in relation to the use of encryption technologies. The Slovak presidency will present a progress report on this issue based on answers to a questionnaire sent to member state, and will invite ministers to discuss and agree on next steps.

The use of encryption for communications over internet has developed dramatically in the last few years. While the encryption is a legitimate tool to preserve privacy and cybersecurity, it is noted that the opportunities offered by the encryption technologies are also exploited by criminals in order to hide their data and potential evidence, protect their communications and financial transactions.

For more information:

- [Press release on Fight against criminal activities in cyberspace, June 2016](#)

## HOME AFFAIRS

### Entry/Exit System (EES) \*

The Council will take stock of work on the proposal to establish an entry/exit system (EES).

This proposal aims at speed-up, facilitate and reinforce border check procedures for non-EU nationals travelling to the EU. The EES will modernise external border management by improving the quality and efficiency of controls and support member states with the increasing numbers of travellers entering and exiting the EU. The legislative proposal is part of the broader 'Smart Borders Package', addressing the role of information systems in enhancing external border management, internal security and the fight against terrorism and organised crime.

The proposal was submitted in April 2016 and it will allow for the effective management of authorised short-stays, increased automation at border-controls, and improved detection of document and identity fraud. The system will apply to third country nationals who are admitted for a short stay in the Schengen area (maximum 90 days in any 180-day period). The EES will allow to automatically calculate the authorised stay of each traveller. The system will register the name, type of travel document and biometrics and the date and place of entry and exit. This will facilitate the border crossing of bona fide travellers, detect over-stayers and identify undocumented persons in the Schengen area. The system will also record refusals of entry.

The proposal foresees appropriate data protection safeguards and strict access rights in accordance with EU data protection rules. It also establishes the interoperability between the EES and the VIS (Visa Information System).

The package also includes a revised proposal for a regulation amending the Schengen Borders Code to integrate the technical changes that result from the proposed EES. These changes will make self-service systems and e-gates accessible to third country nationals, enabling automated processing of certain steps of the control process and enabling the creation of national Registered Traveller Programmes by member states who wish to implement them.

The 'Smart Borders Package' was first proposed by the Commission in February 2013 and followed the Commission Communication of February 2008 suggesting the establishment of an EES and a Registered Traveller Programme (RTP). During the first examination of the package, which was completed in February 2014, the Council and the European Parliament voiced technical, operational and cost concerns, mainly related to the overall feasibility of the proposed new systems and of some of their features.

In April 2016 the Commission revised its proposals and presented in parallel a Communication on 'Stronger and Smarter Information Systems for Borders and Security'. The communication explores how information systems can become more effective and efficient in enhancing external border management and internal security in the EU. It also looks at ways to improve existing systems, identifies gaps where they exist and highlights the crucial importance of interoperability (while respecting data protection safeguards).

For more information:

- [Council website: Strengthening the EU's external borders](#)
- [Commission communication "Stronger and Smarter Information Systems for Borders and Security"](#)
- [Proposed regulation for the establishment of an Entry/Exit System](#) (and [annex](#))
- [Proposed amendment to the Schengen Borders Code to integrate the technical changes needed for the Entry/Exit System](#) (and [annex](#)).

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\* This item will be discussed by the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland), in the margins of the Council.

## Migration \*

Home affairs ministers will have a discussion on migration.

The discussion will focus on the situation on the ground and on the evaluation of the EU response agreed so far, including issues such as the deployment to agencies, relocations, the implementation of the European Border and Coast Guard regulation, the Partnership Framework, etc.

For more information:

- [Council website: Finding solutions to migratory pressures](#)

## Fight against terrorism and organised crime \*

The Council will address the fight against terrorism and organised crime.

Ministers will discuss a joint proposal from France and Germany on the **cooperation between law enforcement agencies and electronic communication service providers**, set out in a letter from the German and French ministers for the interior.

The proposal contains four broad objectives:

- being able to rely more on the responsibility of electronic communication service providers, particularly those that are not based within EU;
- reinforcing the legal obligation of electronic communication service providers to cooperate with the competent authorities of the member states when it comes to criminal investigations;
- ensuring greater speed and reactivity in the processing of requisitions by judicial authorities in order to obtain information from electronic communication service providers;
- improving the extracting of content that may be linked to terrorism.

In addition, on 8 December, the Commission will host the 2nd ministerial conference of the EU Internet Forum, gathering home affairs ministers. One of the aims of the conference is to reduce accessibility to terrorist material online, one of the key speeches dealing with the EU Internet Referral Unit of Europol's Counter Terrorism Centre (ECTC).

Ministers are also expected to take note of a report from the EU Counter-terrorism coordinator, Gilles de Kerchove, setting out policy options to face the phenomenon of **foreign terrorist fighters returnees**.

The report lists areas where the EU could support member states and is based on the deliberations of the group of 13 member states, together with Norway and Switzerland (the so-called G15), which are most affected by the phenomenon of foreign terrorist fighters.

For more information:

- [Council website: Response to foreign terrorist fighters and recent terrorist attacks in Europe](#)
- [German-French letter concerning cooperation between law enforcement agencies and electronic communication service providers.](#)

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\* This item will be discussed by the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland), in the margins of the Council.

## Management of the consequences following terrorist attacks

The Council will have a discussion on the management of the consequences following terrorist attacks. The discussion will focus on how the EU could support the member states to strengthen preparedness and response by the civil protection services and their cooperation with other involved emergency and security services.

Ministers will be invited to discuss how the EU and its member states can learn from each other's experience in this field, share best practices and innovative approaches in a systematic way, and support cross-sector synergies between different disciplines (civil protection, security/police, medical) both at national and EU level. They will also be invited to address what lessons can be drawn from recent terrorist attacks in terms of communication to the public.

To illustrate the Council discussion, an exhibition of member states' civil protection, security and medical capabilities relevant for the consequence management of terrorist attacks will be held in the Council premises. This event will showcase member states' assets such as a field hospital, mobile chemical, biological, radiological and nuclear treatment facilities, ambulances and fire trucks, demonstrating synergies and cooperation among member states and at EU level.

The recent terrorist attacks in some member states have proven that member states' emergency services need to be prepared for rapid and coordinated interventions in difficult security conditions. This requires enhancing even further cooperation between different actors at national and EU level, including civil protection, other emergency services and security services.

## Reform of the Common European Asylum System and Resettlement

The Council will discuss the reform of the Common European Asylum System (CEAS). Ministers will discuss the Eurodac regulation with a view of agreeing a mandate for negotiations with the European Parliament ('partial general approach'), on the understanding that the parts of the text relating to other files of the CEAS reform will be revisited once there is agreement on them. The mandate will also be updated in the light of the discussions on the issue of interoperability of information systems.

Ministers will also be briefed by the Presidency on the state of play of the remaining files of the reform of the CEAS and resettlement. Two progress reports will be submitted. The first report covers the Dublin regulation, the Reception Conditions directive, the Qualification regulation, the Asylum Procedure regulation and the Resettlement Framework regulation. The second report covers the EU Asylum Agency regulation.

On 4 May 2016 the Commission adopted a first package of proposal to reform the Common European Asylum System, namely the recast of the Dublin regulation, the Eurodac Regulation as well as 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. This mechanism would be activated automatically in cases where member states would have to deal with a disproportionate number of asylum seekers;
- discourage abuses and prevent secondary movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the member state of first entry and remain in the member state determined as responsible.

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.

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 develop it into an Agency responsible for facilitating the functioning of the CEAS, for ensuring convergence in the assessment of applications for international protection across the Union, and for monitoring the operational and technical application of Union law.

On 13 July 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;
- 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;
- 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 rights of the child, and to decrease secondary movements;
- a regulation establishing a **Union Resettlement Framework**, that will establish 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. This will ensure orderly and safe pathways to the EU for persons in need of international protection, with the aim of progressively reducing the incentives for irregular arrivals. To support member states' resettlement efforts under the targeted EU schemes, the Commission will provide €10,000 from the EU budget for each person resettled.

For more information:

- [Progress report on the Dublin regulation, the Reception Conditions directive, the Qualification regulation, the Asylum Procedure regulation, the Reception Conditions directive, the Qualification regulation and the Resettlement Framework regulation](#)
- [Progress report on the EU Asylum Agency regulation](#)

## Legal migration and integration

The Council and the representatives of the government of the member states will adopt conclusions on the integration of third-country nationals legally residing in the EU, elaborating on the measures proposed in the [Action Plan on the integration of third-country nationals](#) adopted by the Commission on 7 June 2016.

Ministers will be briefed by the Presidency on the state of play of the proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (EU Blue Card Directive).