

JUSTICE and HOME AFFAIRS COUNCIL **Thursday 8 and Friday 9 June in Luxembourg**

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

On Thursday morning, justice ministers are expected to reach a general approach on the **directive on the supply of digital content**, the **directive on countering money laundering by criminal law**, as well as on the regulation on the processing of personal data by Union institutions and bodies.

Those member states participating in enhanced cooperation in the establishment of the **European Public Prosecutor's Office (EPPO)** are expected to reach an agreement on the regulation.

Finally, ministers will also debate two pieces of legislation; the revision of the **Brussels IIa** framework on matrimonial matters and parental responsibility, and the proposed **directive on insolvency, restructuring and second chance**.

Over lunch, justice ministers will exchange views on countering illegal hate speech online.

In the afternoon, Justice and Home affairs ministers will jointly discuss common dossiers related to criminal justice in cyberspace, and will exchange views on the issue of the protection of children in migration.

On Friday, ministers will take stock of the current situation on **migration**, in particular in the Central Mediterranean, and will discuss **return policy**. They will also touch upon the issue of improving the **interoperability of information systems**.

Ministers will take stock of work carried out so far regarding the proposals to **reform the common European asylum system** and will discuss the proposals on the **Schengen Information System (SIS)**. The Council is expected to adopt a general approach on a proposal on a European travel and information authorisation system (**ETIAS**).

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway, Switzerland) will take stock of work on the proposals on the SIS and on ETIAS. Exceptionally, the Schengen associated states will be present in the discussions on migration, return policy and information systems and interoperability.

Over lunch, ministers will discuss counter terrorism.

Press conferences:

- *To be confirmed*

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/95021>

¹ This note has been drawn up under the responsibility of the press office.

JUSTICE

European Public Prosecutor's Office (EPPO Regulation)

The Council will discuss the regulation on the creation of a European Public Prosecutor's Office (EPPO). Those Member States participating in enhanced cooperation in the establishment of the EPPO are expected to reach a general approach on the proposed regulation implementing enhanced cooperation.

The aim of the regulation is to create a European Public Prosecutor's Office with the authority, under certain conditions, to investigate and prosecute EU-fraud and other crimes affecting the Union's financial interests. It would 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. Two additional Member States joined the enhanced cooperation at a later date, thereby increasing the number of participating Member States to that of 18 (Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia).

For more information:

- [Commission website: webpage on the EPPO](#)

Digital single market strategy - Directive on the supply of digital content

Ministers are expected to reach an agreement ([9901/17](#)) on the directive on certain aspects concerning contracts for the supply of digital content.

The directive on digital content aims to regulate contracts for the supply of digital content in business-to-consumer (B2C) contracts. The objective is to provide a high level of consumer protection and increased legal certainty with a view to building greater confidence amongst European consumers when buying cross-border and to making it easier for businesses, especially SMEs, to sell EU-wide.

The scope of the proposal is broad and 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 the sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively as a carrier of digital content (e.g. DVDs).

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.

For more information:

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

Revision of Brussels IIa: recognition and enforcement of decisions in matrimonial matters and parental responsibility

The Council will hold a policy debate ([9317/17](#)) on the revision of the so-called Brussels IIa Regulation (regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction).

Ministers will, in particular, be invited to confirm the suggested policy approaches related to the right for the child to be heard in proceedings on parental responsibility matters, as well as in proceedings for the return of the child.

The proposal was presented by the Commission on 30 June 2016. It aims at improving the current legal EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. A key objective of the new rules is to ensure quicker overall procedures given that time is of the essence in order to protect the best interests of the child in these cross-border parental responsibility disputes.

The proposed regulation is subject to the special legislative procedure which foresees the need to have unanimity of the Council after consultation of the European Parliament. The opinion of the Parliament is expected before the end of 2017.

For more information:

- [Commission website : new rules to better protect children in cross-border family proceedings](#)

Insolvency directive

The Council will hold a policy debate ([9316/17](#)) on the so-called Insolvency directive, that is, the directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

Following intensive work done at technical level, ministers will be asked to reflect and provide guidance on:

- The **role of national courts in preventive restructuring frameworks**, in particular with regards to which extent member states should be given more flexibility than foreseen in the Commission proposal to decide on cases when the courts should be involved.
- The **principle of 'debtor in possession'**. This principle foresees that debtors should remain totally or partially in control of their business when they start a preventive restructuring procedure. Ministers will be asked to confirm that this principle should be kept within the directive and to reflect on the need for flexibility to be given at national level regarding the possibility to require the mandatory appointment of a restructuring practitioner.

The objective of the proposed directive is to harmonise rules on insolvency and restructuring in order to reduce the most significant barriers to the free flow of capital stemming and to ensure that viable companies and entrepreneurs in financial difficulty have access to effective preventive restructuring and second chance procedures, while protecting the legitimate interests of creditors.

Overall the new framework should help reducing bankruptcy and avoid laying off staff. Currently, every year in the EU, 200 000 firms go bankrupt which results in about 1.7 million job losses.

This proposal is part of the Capital markets union action plan and the Single market strategy, both presented by the Commission in 2015. It will complement the 2015 Insolvency regulation which focuses on resolving the conflicts of jurisdiction and laws in cross-border insolvency proceedings.

For more information:

- [Council website: policy page on capital markets union](#)
- [Council website: single market strategy](#)
- [Commission website: press release on the presentation of the proposal for a directive on business insolvency](#)
- [Commission website: capital markets union action plan](#)
- [Commission website: single market strategy](#)

Countering money laundering by criminal law

Following extensive work conducted at experts' level during the Maltese presidency, ministers are expected to reach a compromise ([9718/17](#)) on the proposed directive on countering money laundering by criminal law.

The objective of the proposal is to establish minimum rules concerning the definition of criminal offences and sanctions relating to money laundering, supplementing the fourth anti-money laundering directive. Furthermore, the directive will also bring EU rules in line with international obligations, in particular those arising from the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention) and the relevant Financial Action Task Force (FATF) Recommendations.

The European Agenda on Security of 28 April 2015 called for additional measures in the area of terrorist financing and money laundering. In its Communication on an 'Action Plan to strengthen the fight against terrorist financing' of 2 February 2016, the Commission highlighted the need to counter money laundering by means of criminal law and the need to ensure that criminals who fund terrorism are deprived of their assets.

In this respect, on 21 December 2016 the Commission adopted two draft legislative proposals namely a proposal for a directive on countering money laundering by criminal law and a proposal for a regulation on the mutual recognition of freezing and confiscation orders.

For more information:

- [Council website: Fight against money laundering and terrorist financing](#)

Data protection by EU institutions and bodies

The Council is expected to adopt its position on the regulation on the protection of individuals with regards to the processing of personal data by the EU institutions and bodies ([9091/17](#)).

This regulation lays down rules on the processing of personal data by all Union institutions, bodies, offices and agencies as well as on the free movement of such data in the Union. Furthermore, it sets out the provisions on the European Data Protection Supervisor whose role is to monitor the application of the rules to all processing of personal data carried out by Union institutions, bodies, offices and agencies.

This text is the last building block of the modernisation of the EU data protection regime. The objective is that rules on data protection applied by EU institutions and bodies are aligned, as far as possible, with the general data protection rules adopted in April 2016.

For more information:

- [Website of the European data protection supervisor](#)
- [Council website - data protection reform](#)

JOINT SESSION JUSTICE AND HOME AFFAIRS

Criminal justice in cyberspace

Ministers will discuss **e-evidence**, on the basis of a paper by the Commission services. They will be invited to consider the practical and legislative options outlined in the paper, endorse the implementation of the practical measures that should form part of the common EU approach in improving cross-border access to electronic evidence and exchange views on the feasibility and necessity of legislative measures as presented therein.

In June 2016, the Council adopted conclusions on improving criminal justice in cyberspace. Since the adoption of these conclusions, the Commission has been carrying out work at expert level, in particular on ways to improve cooperation with service providers, mutual legal assistance efficiency 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.

- [Improving cross-border access to electronic evidence](#)
- [Findings from the expert process and suggested way forward](#)
- [Press release on the fight against criminal activities in cyberspace, June 2016](#)

The presidency will inform ministers on the ongoing work on a common reflection process at EU level on **data retention**, in light of the recent judgements of the European Court of Justice (ECJ). The presidency is working in a specific working group format to hold discussions on the requirements of the relevant judgements, to exchange best practices and to analyse what is needed for the purposes of criminal proceedings related to the availability of certain types of data.

The reflection process in the Council allows for synergies with the work undertaken by the Commission to provide guidance on bringing national data retention laws into line with the Tele 2 Judgment.

Finally, the European Commission will provide an update of the work carried out in the expert process on **encryption**.

Protection of children in migration

Ministers of Justice and Home affairs will debate on the current challenges related to the increased number of children in migration travelling to and arriving in the European Union. They are also expected to adopt conclusions on this topic.

During the debate, ministers will in particular be asked to exchange on actions that have proved effective at national level and to reflect on how to ensure cooperation at all levels (national and EU) to develop integrated child protection systems. To feed into the discussion, the Maltese presidency has invited representatives of the External Action Service (EEAS), the Fundamental Rights Agency (FRA), the UNICEF and the UNHCR to take part in the debate.

In the context of the migration crisis, the number of child migrants arriving in Europe has increased significantly. In 2015 and 2016, 30 percent of asylum applicants in the EU were children, many of them traveling without their family.

As children in migration are exposed to high risks of violence, trafficking or exploitation along migration routes or may go missing, or become separated from their families, they require a specific protection. Children have the right to be protected, in line with relevant provisions of EU law, including the EU Charter of Fundamental Rights, and with international law on the rights of the child.

Drawing on expertise from all relevant policy areas, the Commission published a Communication in April 2017 proposing a number of priority areas for Member States to focus on, supported by the Commission and EU Agencies, to improve the protection of children in migration and ensure a closer link between the asylum and child protection services.

For more information:

- [Commission Communication on the protection of children in migration](#)
- [Commission : factsheet on the protection of children in migration](#)
- [Council website : finding solutions to migratory pressures](#)

HOME AFFAIRS

Migration policy

Ministers will exchange views on **migration policy** and in particular on the situation in the Central Mediterranean including on the implementation of the Malta declaration of 3 February 2017.

Return policy

Ministers will be updated on the state of play regarding the **implementation of the European Commission recommendation on return**.

In March 2017, the Commission presented a recommendation on making returns more effective when implementing directive 2008/115/EC ('return directive'). This recommendation contains a series of measures aimed at improving the return system through a more uniform implementation by member states of the return directive. Following the discussion by home affairs ministers at their meeting in March, work has continued at technical level on this recommendation to identify any difficulties for implementation.

The Council is also expected to adopt **conclusions on enhancing return and readmission of illegally staying persons** on Thursday. These follow discussions at the Justice and Home Affairs meeting in March.

For more information:

- [Commission recommendation on making returns more effective when implementing directive 2008/115/EC](#)
- [Council website: Managing migration flows and curbing migrant smugglers](#)

Information systems and interoperability

Following a number of terrorist attacks and terrorism-related incidents in the EU and facing the ongoing migration crisis, the European Council and the Council have repeatedly underlined the importance of enhancing information exchange and information management and the concomitant need to devise interoperability solutions for EU databases and information systems as one of the means to address the present security challenges.

The aim of increased information exchange and interoperability is being pursued in particular by implementing the **roadmap to enhance information exchange and information management, including interoperability solutions in the Justice and Home Affairs area**, endorsed by the Council on 9 June 2016.

The roadmap sets out the framework for a more integrated EU information architecture and specific, practical short and medium-term actions as well as long-term orientations to enhance information management and information exchange.

A first implementation report of the roadmap was presented to the Council on 18 November 2016. Ministers will have the opportunity to assess and **discuss the progress made so far** on the basis of a second implementation report on the roadmap.

The Council is also expected to adopt **conclusions on improving information exchange and ensuring interoperability of EU information systems**. These conclusions follow the final report by the High Level Expert Group on Information Systems and Interoperability (HLEG), set up by the Commission in June 2016. The HLEG examined the ways in which member states implement and use existing systems as well as the possible development of new systems. With regard to three possible dimensions of interoperability, the Council conclusions invite the Commission to work on the creation of a European search portal and to explore the future implementation of a shared biometric matching service for all types of biometric data as well as the future establishment of a common identity repository.

Finally, the Council is expected to adopt **conclusions recommending security checks in case of irregular migration**. These conclusions recommend that member states, when faced with irregular migrants, perform checks against, where relevant, a non exhaustive list of national, European and international databases.

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 common European asylum system, 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 abuses and prevent secondary movements of the applicants within the EU.

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 20 December 2016, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, a mandate for negotiations with the European Parliament on the regulation on the European Agency for Asylum. Several trilogues have already taken place on this proposal.

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;
- 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 **EU 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.

For more information:

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

European travel information and authorisation system (ETIAS)*

The Council is expected to reach a general approach (negotiating position) on the proposal on a European travel and information authorisation system (ETIAS).

This proposal, submitted by the Commission in November 2016, will allow for advance checks and, if necessary, deny entry to visa-exempt travellers. It will contribute to improve internal security, fight illegal immigration, limit public health risks and reduce delays at the borders by identifying persons who may pose a risk in one of these areas before they arrive to the external borders.

Under this system, third country nationals who do not need a visa to travel to the EU will have to obtain a travel authorisation before their trip, via an online application. The information submitted will be verified and each application will be automatically processed against other EU databases to determine if there are reasonable grounds to issue or refuse a travel authorisation. When no hits or elements requiring further analysis are identified, the travel authorisation will be issued automatically. If there is a hit or an element requiring analysis, the application will be handled manually by the competent authorities.

For more information:

- [General approach - draft regulation establishing a European travel information and authorisation system \(ETIAS\)](#)
- [General approach - draft regulation amending regulation 2016/794 for the purpose of establishing ETIAS](#)

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

Schengen information system (SIS)*

Ministers will discuss the legislative proposals to improve the SIS and provide guidance for further work at technical level. Discussions are expected to focus on three points: preventive alerts for children at risk of abduction, alerts on persons and objects for inquiry checks and enhancing the use of SIS in the area of judicial cooperation.

In December 2016, the European Commission presented a legislative package to improve the performance of the SIS and respond to developing forms of serious crime and terrorism. The package included three legislative proposals:

- **proposal on returns:** it improves and extends the use of SIS by making it obligatory for member states' authorities to introduce all return decisions issued. This allows EU-wide visibility and improves their enforcement.
- **proposal on border checks:** it replaces the existing legislation to improve its technical functioning, reduce administrative burdens and make sure all users receive the data they need. It also makes it compulsory for member states to introduce an alert when an entry ban has been issued to an illegally staying third country national.
- **proposal on police cooperation:** it consolidates existing rules to improve its technical functioning, reduce administrative burdens and make sure all users receive the data they need. It also introduces new elements such as harmonising procedures with regard to terrorism related offences and children at risk of parental abduction and introducing new biometric identifiers to existing alerts.

The SIS is the most used and performant IT system of the EU in the area of immigration, police, customs and judicial cooperation. It provides competent authorities with access to high quality information about wanted or missing persons and objects, as well as instructions about what needs to be done in each case. In 2016 it was accessed by authorities 4 billion times. It contains more than 70 million alerts.

For more information:

- [Issues for discussion - proposals on the SIS](#)
 - [Proposal on returns](#)
 - [Proposal on border checks](#)
 - [Proposal on police cooperation](#)
 - [Schengen information system \(European Commission\)](#)
-