

JUSTICE and HOME AFFAIRS COUNCIL **Thursday 7 and Friday 8 December in Brussels**

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

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

Home affairs ministers are expected to exchange views on **counter terrorism**. They will also discuss **cooperation** between missions and operations which are part of the EU common security and defence policy and EU agencies in the justice and home affairs area. The Council will aim to reach a general approach on the draft **eu-LISA regulation**. Ministers are also expected to be informed of progress on the reform of the **Common European Asylum System** as well as on ongoing work in the field of **interoperability** of EU information systems.

Over lunch, home affairs ministers will exchange views on **strengthening the Schengen area**.

In the afternoon, justice and home affairs ministers will jointly discuss ongoing work on **data retention** and on **encryption**.

On Friday, the Council will aim to reach a general approach on the legislative proposals regarding **ECRIS**. It will also seek to reach a general approach on the proposed regulation on **freezing and confiscation**. Ministers are expected to discuss the proposal reforming the **Brussels IIa regulation**, in particular the issue of the abolition of *exequatur*. They will also exchange views on the **proposed directive on insolvency**, restructuring and second chance.

Over lunch, justice ministers will discuss the **future of e-justice**.

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway and Switzerland) will discuss the draft eu-LISA regulation and interoperability of EU information systems. Exceptionally, the Schengen associated states will be present at the discussion on counter-terrorism

Press conferences:

- *Thursday - after lunch (tbc)*
- *Friday - end of the meeting (tbc)*

[Press conferences and public events by video streaming](#)

[Video coverage in broadcast quality \(MPEG4\) and photo gallery](#)

[For more information, see the meeting page](#)

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

HOME AFFAIRS

eu-LISA regulation

The Council will aim to reach a general approach on the draft eu-LISA regulation. On the basis of this mandate, the presidency will be able to start negotiations with the European Parliament.

eu-LISA is the European agency for the operational management of large-scale IT systems in the area of freedom, security and justice. It was established in 2011 and currently manages systems including EURODAC, the visa information system (VIS) and the Schengen information system (SIS).

On 29 June 2017 the European Commission presented a proposal for a new legal mandate for eu-LISA. The proposed eu-LISA regulation will significantly strengthen the mandate of this agency so that it can better meet current and future challenges in the area of freedom security and justice.

eu-LISA will be entrusted with developing and managing new systems, such as the recently adopted entry-exit system and the European travel information and authorisation system (ETIAS) currently under discussion. It will also play an important role in developing the technical solutions to achieve interoperability, once ongoing discussions on this topic have been finalised. The agency will also be better able to support member states and will play a greater role in research, pilot projects and testing activities.

- [eu-LISA](#)

Interoperability of EU information systems

Ministers will be updated on the ongoing work of the Council forum on interoperability. This work feeds into the Commission preparatory work for an upcoming legislative proposal.

In June 2017, the Council adopted conclusions on improving information exchange and ensuring interoperability of EU information systems. These conclusions followed the final report by the High Level Expert Group on Information Systems and Interoperability, set up by the Commission in June 2016. The group examined the ways in which the use of existing systems could be improved, as well as ways to ensure interoperability.

With regard to three possible dimensions of interoperability, the Council conclusions invited 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. The conclusions also stated the Council's commitment to follow up on the discussions in a dedicated Council forum.

- [Response to foreign terrorist fighters and recent terrorist attacks in Europe \(background information\)](#)
- [Making Europe more secure: connecting databases \(infographic\)](#)

Counter terrorism

Ministers will exchange views on **radicalisation**, focusing on the interim report of the Commission's high level group on radicalisation. This report contains preliminary findings and recommendations for a range of priority areas.

The Commission set up the high level group on radicalisation at the end of July 2017. This group brings together representatives from member states and relevant EU services, institutions and agencies. It is expected to present a final report at the end of 2018.

Ministers will also discuss, in the presence of the counter-terrorism group (CTG) possible opportunities for further **cooperation between competent authorities** dealing with counter-terrorism.

- [Commission decision setting up the high level Commission expert group on radicalisation](#)
- [Response to foreign terrorist fighters and recent terrorist attacks in Europe \(background information\)](#)

Cooperation between CSDP missions/operations and EU JHA agencies

The Presidency will report on ongoing work regarding the cooperation between CSDP missions and operations and EU justice and home affairs agencies. This includes the possibility of creating a pilot project for a crime information cell in a CSDP operation.

The need to enhance cooperation between CSDP missions and operations and JHA agencies in order to combat terrorism and organised crime, including human trafficking and smuggling, has been highlighted at different levels. In May 2017, defence and home affairs ministers discussed how to improve cooperation and information exchange between military and law enforcement structures in relation to terrorism. In its conclusions of October 2017, the European Council called for enhancing information and data sharing within the EU, between member states, JHA agencies and CSDP missions and operations to address trafficking and smuggling networks.

PNR directive: transposition and implementation

Ministers will receive an update on the state of play regarding the implementation of the passenger name record (PNR) directive. The PNR directive was adopted in 2016 and has implementation deadline of 28 May 2018.

The directive regulates the transfer from the airlines to the member states of PNR data of passengers of international flights, as well as the processing of this data by the competent authorities. The directive establishes that PNR data collected may only be processed for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

- [Council adopts EU Passenger Name Record \(PNR\) directive \(press release, 21 April 2016\)](#)

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.

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. Inter-institutional negotiations with the European Parliament (trilogues) started on 6 September 2017 and significant progress has already been achieved on this file.

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 representatives of the Council and of the European Parliament reached a broad political agreement ad referendum on the European Union Agency for Asylum. The finalising of the text has been progressing well.

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 and have been progressing. They will continue during the next presidency.
- 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. Following the conclusion of a first examination of all provisions of the Commission proposal, the Council preparatory bodies have pursued the examination on the basis of new presidency compromise proposals. They will finish the second examination in the first week of December.
- 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. On 29 November 2017, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, a mandate for negotiations with the European Parliament. Inter-institutional negotiations are expected to start in December
- 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. On 15 November 2017, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, an unanimous mandate for negotiations with the European Parliament. Inter-institutional negotiations with the European Parliament (trilogues) are expected to start in December 2017.

For more information:

- [Progress report - reform of the common European asylum system and resettlement](#)
- [Reforming the common European asylum system \(background information\)](#)

JOINT JUSTICE AND HOME AFFAIRS SESSION

Data retention

The Council will take stock of progress achieved on data retention and will provide guidance for future work at expert level.

At the informal meeting of justice and home affairs ministers in July 2017, ministers agreed that legislative and non-legislative options on data retention should be examined, to assess their feasibility with a view to addressing issues arising from recent judgements of the European Court of Justice.

Taking into account the outcome of these examinations, the presidency proposes to focus further work on: ensuring coherence with the draft e-privacy regulation, restricting the scope of the data retention framework, and setting out strong safeguards for access to retained data.

Encryption

Ministers will discuss proposed measures on encryption, on the basis of a presentation by the Commission on the state of play of their expert process and the proposed measures.

Following a call by justice and home affairs ministers in December 2016, the Commission started an expert process to discuss the role of encryption in criminal investigations with relevant stakeholders. On 18 October 2017, as part of its progress report towards an effective and genuine security union the Commission proposed a series of measures to support law enforcement and judicial authorities regarding encryption, including legal and technical measures.

- [Commission communication: eleventh progress report towards an effective and genuine security union](#)

JUSTICE

European criminal records information system (ECRIS)

The Council will aim to reach a general approach on the legislative proposals for the use of ECRIS regarding third country nationals and stateless persons (TCN).

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.

Freezing and confiscation regulation

The Council will seek to reach a general approach on the proposed regulation on the mutual recognition of freezing and confiscation orders.

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.

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

The Council will hold a policy debate 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 abolition of the exequatur for all remaining decisions in matters of parental responsibility. They are expected to agree that work should continue at technical level to complete this abolition and give guidance on how to do this.

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.

- [Note from the presidency - policy debate](#)

Insolvency directive

The Council will hold a policy debate 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.

Ministers will be asked to provide guidance and endorse the following principles on:

- The viability of the debtor: extending member states' flexibility by including the option for a viability test under national law, as long as it has the purpose to exclude debtors with no prospect for viability and can be carried out without detriment to the debtor's assets.
- The cross-class cram-down: where there is more than one class of affected parties participating in the adoption of the restructuring plan and the required majority is not reached in one or more classes, the restructuring plan may still be confirmed by a judicial or administrative authority.
- The second chance for honest entrepreneurs: including harmonising discharge periods, subject to limitations in cases where it is not deemed to be appropriate.

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.

- [Note from the presidency - policy debate](#)

EU accession to the European convention on human rights

Ministers will be briefed by the Commission on the next steps regarding the EU's accession to the European convention on human rights (ECHR) .

The Lisbon treaty committed the EU to accede to the ECHR. In 2013, a provisional agreement was reached on the text of the draft accession agreement. However, in its opinion of December 2014, the Court of Justice of the EU held that this draft accession agreement was incompatible with EU treaties on a number of grounds. In October 2015, the Council invited the Commission to present a detailed analysis responding to the issues raised by the court. The Commission has presented an analysis on several of these issues, with the last remaining issue to be addressed being the Common Foreign and Security Policy.

- [Opinion of the Court of Justice \(press release\)](#)