

## **JUSTICE and HOME AFFAIRS COUNCIL**

### **Thursday 11 and Friday 12 October in Luxembourg**

The Council will be chaired by Josef Moser, Minister for Constitutional Affairs, Reforms, Deregulation and Justice of Austria, on Thursday and by Herbert Kickl, Minister of the Interior of Austria, on Friday.

On Thursday, the Council is expected to adopt a general approach on the **directive on insolvency, restructuring and second chance**.

Ministers will hold a policy debate on the regulation on European production and preservation orders for **e-evidence in criminal matters**.

Ministers will also exchange views on the issue of **mutual recognition in criminal matters** and **exchange with the Director of the Fundamental Rights Agency (FRA)** and will be informed by the Commission on measures it proposes **to ensure free and fair elections**, in particular with a view to the European elections next year.

Finally, ministers will be updated by the Commission on the state of play on the implementation of the **EPPO regulation**.

On Friday, home affairs ministers are expected to discuss the Commission proposal on the **European Border and Coast Guard Agency (EBCG)**, the Commission proposal reforming the **return directive** and the Commission sectoral proposals for the field of home affairs in the context of the **Multiannual Financial Framework (MFF)**.

The Presidency is also expected to report on progress regarding the **reform of the Common European Asylum System**.

Under any other business ministers will be informed by the Presidency of the state of play of other current legislative proposals, the recent conference on security and migration which took place in Vienna on 13-14 September and the EU-Western Balkans ministerial forum which took place on 4-5 October. The Commission will provide information on the issue of legal migration.

Over lunch, ministers will exchange views on ongoing work on several aspects of the EU's comprehensive response to **migration**. They will also be briefed by the Presidency on the state of play of the Vienna process.

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway and Switzerland) will discuss the EBCG proposal and the proposal on the return directive. Under any other business they will be informed by the Presidency of the state of play of other current legislative proposals. Exceptionally, the Schengen associated states will be present at the discussions on the MFF proposals.

---

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

**Press conferences:**

- **Justice Council** (*Thursday*, +/- 17:00)
- **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/110003>

# JUSTICE

## **Directive on Insolvency, Restructuring and Second Chance**

The Council is expected to reach a general approach on the directive on insolvency, restructuring and second chance ([12334/18](#)).

During their June 2018 meeting, ministers had already reached a partial agreement on the articles of Title III (Discharge of debts and disqualifications), Title IV (Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt) and Title V (Monitoring of procedures), as well as key related recitals.

The proposal was presented by the Commission on 22 November 2016. It aims to provide access for viable enterprises in financial difficulties to national insolvency frameworks that enable them to restructure at an early stage with a view to preventing their insolvency. It also aims at giving honest bankrupt entrepreneurs a second chance across the Union and introduces measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The overall objective of the text is to reduce the most significant barriers to the free flow of capital stemming from differences in member states' restructuring and insolvency frameworks and to enhance the rescue culture in the EU. In doing so, the proposal aims to strike an appropriate balance between the interests of the debtors and the creditors.

The text is a minimum harmonization directive. It introduces a set of principles along with more targeted rules in some specific cases, while allowing member states to go further when transposing the rules into national law.

## **E-evidence package: regulation on European production and preservation orders**

The Council will hold a policy debate on the regulation on European production and preservation orders for e-evidence in criminal matters ([12856/18](#)).

Ministers will be invited to discuss whether the approach taken in the proposal should be kept or modified by introducing a notification procedure. This will have to be assessed, so that a swift and efficient procedure to obtain e-evidence can be guaranteed. Production/preservation orders could be addressed directly to service providers offering services in the EU whose legal representative is located in another member state without the involvement of that MS at the stage of the request for production or preservation of data.

The notification procedure has been extensively debated at experts level. It would provide the opportunity for either the enforcing member state or the member state of the affected person to get involved in the ongoing procedure and/or have the possibility to object to it following an assessment of the legality of the order, including its compatibility with fundamental rights.

The Presidency will also inform the Council of the suggested way of following up to the debate ministers held in June 2018 regarding real-time interception.

The proposed regulation seeks to introduce an alternative mechanism to the existing tools of international cooperation and mutual legal assistance. It addresses specifically the problems stemming from the volatile nature of e-evidence and the "loss of location" aspect by setting new procedures for quick, efficient and effective cross-border access.

The regulation on European production and preservation orders for e-evidence in criminal matters is part of a package tabled by the Commission in April 2018 which includes also a directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings. The objective of the package is to improve cross-border access to e-evidence by creating a legal framework for judicial orders addressed directly to service providers in another member state.

For more information:

- [Council - outcome of the June 2018 Justice and Home affairs meeting](#)
- [Commission - press release on the new e-evidence proposals](#)
- [Commission - Factsheet: Facilitating Access to electronic evidence](#)
- [Press release on the fight against criminal activities in cyberspace, June 2016](#)
- [Council of Europe - Towards a Protocol to the Budapest Convention](#)

## **Fundamental rights**

As usual during the October meeting, ministers will exchange views on current fundamental rights challenges with the Director of the Fundamental Rights Agency (FRA).

The discussion will be held on the basis of the Fundamental Rights Report produced by FRA and of the annual Commission report on the application of the EU Charter of Fundamental Rights

Following this, ministers are expected to adopt Conclusions on the application of the EU Charter on Fundamental Rights in 2017.

For more information:

- [Fundamental Rights Agency - Fundamental Rights Report 2018](#)
- [European Commission - Annual reports on the application of the Charter](#)

## **Ensuring free and fair elections including from personal data misuse and cyber incidents**

Ministers will be informed by the European Commission of its proposals to address potential threats to elections, in particular in the context of the European elections taking place next year.

In his State of the Union speech in September 2018, President Juncker announced a set of concrete measures to address potential threats to elections and thereby strengthen the resilience of the Union's democratic systems. The proposed measures also aim at greater transparency in online political advertisements and provide for the possibility to impose sanctions for the illegal use of personal data aimed at deliberately influencing the outcome of the European elections

The package includes:

- guidance on the application of Union data protection law in the electoral context,
- A Recommendation on election cooperation networks, online transparency and protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament
- A Communication on Securing free and fair European elections, adopted on the same day, forms part of a security package.
- A Regulation amending Regulation 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament.

For more information:

- [Commission Press release - European Commission proposes measures for securing free and fair European elections](#)

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

Justice ministers will be informed by the Commission of the state of play on the implementation of the EPPO regulation.

On 7 September, the Council adopted the list of the members of the selection panel ([11513/18](#)) which will play a key role in the selection of both the European Chief Prosecutor and the European prosecutors based in each member state.

22 Member states have so far formally decided to join the enhanced cooperation on the creation of the EPPO.

The EPPO will have the authority, under certain conditions, to investigate and prosecute EU fraud and other crimes affecting the Union's financial interests. It will bring together European and national law enforcement efforts to counter EU fraud.

The EPPO 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. This date will not be earlier than three years after the entry into force of this Regulation.

For more information:

- [Council press release on the agreement of the EPPO regulation](#)
- [Commission Q&A on the EPPO](#)

### **Mutual recognition in criminal matters**

Judicial cooperation in criminal matters in the EU is based on the principle of mutual recognition of judgments and judicial decisions. While some actions are taken at EU level to ensure the effective application of the principle of mutual recognition (e.g. legislation on the mutual recognition of freezing and confiscation), enhancing mutual trust at national level is the key to smooth cooperation.

Ministers will therefore be invited to discuss how to enhance mutual trust between judicial authorities. They will be asked to exchange information on best practices as well as on possible legal measures taken at national level to enhance mutual recognition/mutual trust (e.g. awareness raising and training for practitioners, bilateral activities, etc.), also in view of recent case law of the Court of Justice of the EU.

This discussion is a follow-up to the exchange of views ministers held during the informal meeting of Justice Ministers in Innsbruck in July 2018.

For more information:

- [Press release following the informal meeting of Justice Ministers in Innsbruck](#)
- [Commission website: mutual recognition of judgments](#)

## HOME AFFAIRS

### European Border and Coast Guard

Home affairs ministers will discuss the Commission proposal on the European Border and Coast Guard Agency (EBCG). They are expected to provide indications on the size, composition, tasks and powers of the EBCG standing corps, as well as on the timeframe needed to fully establish the corps. (12768/18)

On 12 September 2018, the Commission proposed an updated mandate for the EBCG, with the aim of further improving the control of the EU's external borders. The proposal contains the following key elements:

- **reinforcing the agency in terms of staff and equipment** to further support member states, including by setting up a European Border and Coast Guard standing corps of 10 000 operational staff with executive powers
- **strengthening cooperation with third countries** by giving the agency a wider scope for action, not limiting its possibilities of cooperation to neighbouring countries
- **supporting member states with return operations** on a technical and operational level, including by allowing EBCG staff to communicate directly with third countries
- **incorporating the European Border Surveillance System (EUROSUR)** into the EBCG frame, to improve its functioning

The effective control of the EU's external borders is an essential part of the EU's comprehensive approach to migration. Since 2015, the European Union has taken several measures to improve external border management. These include the creation of the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS), the reinforcement of checks against relevant databases and the establishment of the EBCG. In its June 2018 conclusions, the European Council called for the further strengthening of the supportive role of the EBCG, including in the cooperation with third countries, through increased resources and an enhanced mandate.

- [Proposal for a regulation on the European Border and Coast Guard](#)
- [Strengthening the EU's external borders \(background information\)](#)

### Return Directive

Ministers will discuss a Commission proposal reforming the return directive. They are expected to focus, in particular, on one of the new elements introduced by this proposal: the border procedure for returns, including its links with the asylum border procedure. ([12562/18](#))

On 12 September 2018, the Commission presented a proposal for a revised return directive. This proposal aims at speeding up return procedures, preventing absconding and secondary movements and improving the rate of returns, in full compliance with international human rights standards. To achieve this, it proposes:

- **accelerated border procedures:** those whose asylum applications have been rejected during asylum border procedures will be subject to a simplified return procedure, ensuring decisions can be quickly adopted and enforced at the border.
- **clearer and faster procedures** for issuing return decisions and for appeal, as well as an obligation to cooperate for persons subject to a return procedure
- **more strict approach to voluntary returns**, including setting up dedicated programmes in member states and granting a shorter period for voluntary returns
- **clear rules on detention**, including a common, non-exhaustive, list of objective criteria to determine the risk of absconding and an initial detention period of not less than 3 months

Effective returns are crucial for an efficient and comprehensive migration management policy. Currently returns are regulated at the European level under the return directive, adopted in 2008. This directive sets common standards and procedures in member states for returning illegally staying third-country nationals. However, since the adoption of this directive the challenges in

return policy have considerably changed. The European Council has, on several occasions, emphasised the need to significantly improve the effective return of irregular migrants in the EU. While the EU and member states have already undertaken significant endeavours, the overall number of returns still needs to be increased.

- [Proposal for a directive on common standards and procedures in member states for returning illegally staying third-country nationals](#)
- [How the EU manages migration flows \(background information\)](#)

## Multiannual Financial Framework

Ministers will also hold a debate on the Commission sectoral proposals for the field of home affairs in the context of the Multiannual Financial Framework. They are expected to focus in particular on the question of the implementation of the external aspects of migration in these three proposals, namely whether the thematic facility should reserve a share of its financial envelope to tackle the external dimension of migration and how to ensure coherence and complementarity between the different possibilities for EU funding on migration. ([12777/18](#))

On 13 June, as part of the next Multiannual Financial Framework (MFF) package, the Commission issued three sectoral proposals in the area of home affairs. These are:

- the **asylum and migration fund**, which will provide support to member states in their management of asylum and migration
- the **instrument for financial support for border management and visa**, which will ensure a strong and effective integrated border management at the EU's external borders
- the **internal security fund**, which supports prevention and coordination between police, judicial and other competent authorities to protect citizens

Taking into account new policy developments, as well as the creation of new large-scale IT systems, the Commission has proposed a significant reinforcement of the EU budget in the areas of migration, borders and security. Nearly 35 billion euro has been earmarked for the 2021-2027 period, tripling the initially allocated amounts for the current MFF.

In its conclusions of June 2018, the European Council called for the inclusion of dedicated, significant components for external migration management in these three funds.

- [Migration and border management proposals and factsheets \(European Commission\)](#)
- [Security and defence proposals and factsheets \(European Commission\)](#)
- [Multiannual financial framework \(background information\)](#)

## Reform of the Common European Asylum System and Resettlement

The Presidency will present a progress report on the reform of the Common European Asylum System (CEAS). ([12826/18](#))

The reform of the Common European Asylum System is composed of seven legislative files, presented by the European Commission in May and July 2016. An amended proposal on the EU Asylum Agency was presented by the Commission on 12 September 2018.

A 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 Austrian Presidency has continued looking for possible solutions for the overall balance between solidarity and responsibility.

A **Eurodac** proposal includes the necessary changes to adapt the system to the proposed Dublin rules, in line with its primary objective of serving the implementation of the Dublin regulation. Eurodac will also become a database for wider immigration purposes, facilitating return and the fight against irregular migration. Inter-institutional negotiations with the European Parliament (trilogues) started on 6 September 2017 and significant progress has already been achieved on this file.

A 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 6 December 2017, the Permanent Representatives Committee (Coreper) took note of the agreement reached between the representatives of the Council and of the European Parliament on the text of the proposal, excluding the parts of the text related to other legislative proposals in the package. In September 2018, the European Commission presented an **amended proposal**, which builds on the existing agreement and aims to reinforce the operational support provided by the agency and the cooperation with other relevant experts, including from the European Border and Coast Guard Agency or Europol.

A proposed regulation on **qualification** of third-country nationals or stateless persons as beneficiaries of international protection (replacing the qualification directive), aims to set uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection. A provisional agreement was reached between the Presidency and the rapporteur in June. However, this provisional agreement did not achieve the necessary support from member states. Discussions within the Council continued with a view to identifying the minimum amendments required to achieve the necessary support by both institutions.

An **asylum procedures** regulation proposal (replacing the asylum procedures directive) aims to create a genuine common procedure, thereby removing incentives for asylum shopping and secondary movements between member states. Discussions on this proposal are ongoing at the Council.

A proposed recast of the directive for the **reception conditions** of applicants for international protection further harmonises 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. A provisional agreement was reached between the Presidency and the rapporteur in June. However, this provisional agreement did not achieve the necessary support from member states. Discussions within the Council continued with a view to identifying the minimum amendments required to achieve the necessary support by both institutions.

A proposal for a regulation establishing an EU **resettlement framework** aims to 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. A provisional agreement was reached between the Presidency and the rapporteur in June. However, this provisional agreement did not achieve the necessary support from member states. Discussions within the Council continued with a view to identifying the minimum amendments required to achieve the necessary support by both institutions.

- [Reforming the common European asylum system \(background information\)](#)

## Migration

Over lunch, ministers will take stock of the migratory situation along the Mediterranean migratory routes, where action taken by the EU and member states in recent years has resulted in a decrease in the total number of arrivals. They will exchange views on ongoing work on several aspects of this comprehensive response, including internal and external elements.

- [Migration flows: Eastern, Central and Western Mediterranean routes \(infographic\)](#)
  - [EU migration policy \(background information\)](#)
-