

JUSTICE and HOME AFFAIRS COUNCIL

Thursday 7 and Friday 8 March in Brussels

The Council will be chaired by Carmen Daniela Dan, Romanian Minister of the Interior, on Thursday and by Tudorel Toader, Romanian Minister of Justice, on Friday.

On Thursday, home affairs ministers will be briefed on the progress of negotiations with the European Parliament on the **European Border and Coast Guard (EBCG)** regulation. They will also hear a report on the state of play on the **reform of the Common European Asylum System**.

The Council will exchange views on EU **cooperation with third countries in the context of migration**. Ministers will also be invited to debate the state of play and way forward on the EU **response to terrorism**.

Finally, ministers will be updated by the presidency on the state of play on **securing free and fair elections and countering disinformation**.

Over lunch, ministers are expected to have a forward-looking discussion on home affairs.

In the margins of the Council, the **Mixed Committee** (the EU plus Iceland, Liechtenstein, Norway and Switzerland) will be briefed on progress on the EBCG proposal.

On Friday, justice ministers are expected to adopt the Council's position on the directive on rules on the appointment of **legal representatives for the purpose of gathering evidence** in criminal proceedings.

On the same topic of e-evidence, the Council will debate on **negotiating mandates for agreements with the US**, on the one hand, and in the context of international negotiations on a **new protocol to the Budapest convention**, on the other hand.

The Council will take note of the progress made in the negotiations with the Parliament on the **directive on the protection of whistle-blowers**, and be updated on the most recent steps taken in the **implementation of the EPPO regulation**.

Over lunch, ministers will discuss the use of artificial intelligence in the field of justice.

Press conferences:

- **Home Affairs Council** (*Thursday* +/-17.00)
- **Justice Council** (*Friday* +/-15.00)

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/207315>

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

HOME AFFAIRS

European Border and Coast Guard

The presidency will brief ministers on the progress of negotiations with the European Parliament on the regulation on the European Border and Coast Guard (Frontex). Political discussions with the Parliament started on 27 February, with the aim of reaching an agreement on this file before the European elections.

On 12 September 2018, the Commission proposed an updated mandate for Frontex, to further improve control of the EU's external borders. The agency is being strengthened in terms of staff and technical equipment. It is also being given a broader mandate to support member states' activities on border protection, return and cooperation with third countries.

On 20 February 2019, EU ambassadors agreed the Council's negotiating position on this file. This position foresees the setting up of a standing corps to respond to situations of crisis, with up to 10 000 operational staff by 2027. To be able to adapt to future situations and capabilities, a mid-term review would take place, followed by a proposal to confirm or amend the number by March 2024. Staff deployed would be able to exercise some executive powers to carry out border controls or return tasks, always subject to the authorisation of the host member state.

In addition, under the Council position Frontex would be allowed to provide technical and operational support to member states in return operations. The proposed rules would also contribute to strengthening cooperation with third countries, by giving the agency wider scope for action and not limiting its possibilities for cooperation to neighbouring countries.

For more information:

[European Border and Coast Guard: Council agrees negotiating position \(press release\)](#)

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

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). ([6600/19](#))

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.

The **Dublin regulation** determines the member state responsible for examining an application for international protection. The proposed update of the rules aims to enhance the system's efficiency, ensure the fair sharing of responsibilities between member states and discourage abuse and secondary movements of applicants within the EU. Following the discussions carried out during the Austrian presidency, the Romanian presidency considered that there was no realistic prospect of making any major progress on this file in the short term. It has therefore concentrated its main efforts on advancing as much as possible on the other files.

A proposal on the **Eurodac** database includes the necessary changes to adapt the system to the proposed Dublin rules. Eurodac will also become a database for wider immigration purposes, facilitating return and the fight against irregular migration. Interinstitutional negotiations with the European Parliament (trilogues) started on 6 September 2017 and significant progress has been achieved on this file. In February 2019, EU ambassadors did not give a mandate to the presidency to continue trilogues with the European Parliament, due to concerns over the 'package approach'.

A **European Union Agency for Asylum** proposal 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. A further amended proposal was presented by the European Commission in September 2018, building on a provisional agreement reached by the Council and the European Parliament on the original text. This update aims to reinforce the operational support provided by the Agency and cooperation with other relevant experts, including from the European Border and Coast Guard Agency or Europol. The Romanian presidency continued discussions on this file, however, EU ambassadors did not lend support to the presidency's compromise suggestions, both for reasons of substance and concerns over the 'package approach'.

An **asylum procedure** regulation proposal (replacing the asylum procedure 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 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. EU ambassadors have not given the presidency a mandate for further discussions, due to concerns over the package approach.

A proposed recast of the directive on **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. EU ambassadors have not given the presidency a mandate for further discussions, due to concerns over the 'package approach'.

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 on the main elements of the regulation was reached between the presidency and the rapporteur in June. However, this provisional agreement did not achieve the necessary support from member states. Therefore, the presidency held bilateral meetings with the member states that were not in a position to endorse the provisional agreement and presented compromise proposals on the key concerns. In parallel, it also made some compromise proposals on those parts of the regulation that were left out from the provisional agreement. Despite these efforts, EU ambassadors have not given the presidency a mandate for further discussions, due to concerns over the 'package approach'.

For more information:

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

Migration - EU cooperation with third countries

Ministers will review where the EU stands in its cooperation with North African countries, so as to be able to provide more assistance where needed.

In 2018, around 150 000 irregular arrivals were registered at the EU external borders, a 25% decrease compared to 2017, and the lowest level in five years. EU efforts have focused on saving lives, combatting irregular migration and strengthening cooperation with countries of origin and transit, as part of a broader partnership. There has also been a major EU effort to address the root causes of migration in countries of origin and to develop new tools to promote readmission.

The EU can still further expand its assistance to third-countries' on building migration management capacity, encompassing border control, as well as on the adoption and implementation of legislation on legal migration, asylum and refugees and return, readmission and reintegration.

For more information:

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

EU response to terrorism

Ministers will discuss the state of play and way forward on the EU's response to terrorism. They will focus in particular on whether there are any practical or legislative gaps which need to be addressed and which areas should be given priority.

Since the statement by EU leaders in February 2015 following the terrorist attacks in France, substantial progress has been made at national and EU level to prevent and fight terrorism. New rules have been adopted on combatting terrorism, which criminalise actions such as travelling for terrorist purposes or collecting funds related to terrorist groups or activities. Improved controls on firearms and explosive precursors have also been set up.

Particular attention has been paid to enhancing information exchange, through efforts to improve the supply and consultation of databases, as well as through new legislation to improve the functioning of the Schengen Information System and to facilitate the interoperability of EU databases.

Action has also been taken at EU level to fight offline and online radicalisation, including through calls on the industry to improve the detection and removal of terrorist-related content. Work is ongoing on proposed new rules to prevent the dissemination of terrorist content online. On 6 December the Council adopted its negotiating position on the proposed legislation. On the basis of this mandate, the Council presidency will start negotiations with the European Parliament once the latter has adopted its position.

EU agencies including Europol, Eurojust, Frontex, CEPOL and eu-LISA have been strengthened in recent years and are now much more involved in supporting the counter-terrorism efforts of member states.

During recent discussions, member states have signalled specific areas where progress is still needed, including on preventing and countering radicalisation, improving the fight against terrorist financing, creating further synergies between internal and external aspects, managing chemical risks/threats or considering emerging technologies which could be misused by terrorist groups.

For more information:

[Response to the terrorist threat and recent terrorist attacks in Europe \(background information\)](#)

Enhancing democratic resilience: Securing free and fair elections and countering disinformation

In the run-up to the European elections, ministers will be updated by the presidency on ongoing activities related to the securing of free and fair elections and on countering disinformation.

In December 2018, EU leaders asked the Council to continue working on a determined response to disinformation, which addresses its internal and external dimensions on the basis of an assessment of threats. They called for:

- the prompt and coordinated implementation of the joint action plan on disinformation presented by the Commission and the EU High Representative for Foreign Affairs;
- swift and decisive action at EU and national level to secure free and fair European and national elections.

On 12 September 2018, the European Commission presented a package of measures to address potential threats to elections, including recommendations on cooperation networks, online transparency and fighting disinformation, as well as new legislation on European political party funding. On 19 February 2019, the Council adopted conclusions on securing free and fair European elections. The conclusions cover a number of actions to be taken in order to enhance the resilience of electoral systems and avoid manipulation, including through countering disinformation.

For more information:

[Council conclusions on securing free and fair European elections](#)

JUSTICE

E-evidence package: Directive on the appointment of a legal representative for the gathering of evidence in criminal proceedings

The Council is expected to reach its position on the directive on the appointment of a legal representative for the gathering of evidence in criminal proceedings ([6946/19](#)).

This directive is essential for the application of the regulation on European Production and Preservation orders for electronic evidence in criminal matters, as it sets out the rules for the appointment of service providers' legal representatives, whose role is to receive and respond to such orders. The creation of the status of legal representative was necessary given the lack of a general legal requirement for non-EU service providers to be physically present in the Union when providing services within the Union.

This directive is part of the e-evidence package tabled by the Commission in April 2018. 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 or their legal representative in another member state.

The directive complements the regulation on European Production and Preservation orders for electronic evidence in criminal matters on which the Council adopted its position in December 2018.

For more information:

[Press release - Regulation on cross border access to e-evidence : Council agrees its position](#)
[Council website - policy page on better access to e-evidence](#)
[Commission - Factsheet: Facilitating Access to electronic evidence](#)

Whistle-blowers' protection

Justice ministers will be updated on the progress made in the negotiations with the European Parliament on the directive on the protection of whistle-blowers.

The Council adopted its position on the directive on 25 January, with trilogue negotiations starting shortly afterwards. Four political trilogues have been held so far and good progress has been achieved. The main outstanding issue at this stage refers to the use of reporting channels. The Romanian presidency is willing to close this file during the current mandate of the European Parliament.

The new directive will impose the creation of safe channels for reporting both within an organisation - private or public if above 50 employees - and to public authorities. It will also give a high level of protection to whistle-blowers against retaliation, and require national authorities to adequately inform citizens and train public officials on how to deal with whistle-blowing.

Whistle-blowers are individuals who speak up when, in the context of their work, they encounter wrongdoing that could harm the public interest. Whistle-blowers' reports can lead to effective detection, investigation and prosecution of violations of EU law that would otherwise remain unknown.

For more information:

[Council press release - Council's position on the whistleblowers directive](#)
[Commission website - factsheet on the whistleblowers directive](#)

Negotiating mandates for the 2nd additional protocol to the Budapest Convention and for an agreement between the EU and the US on facilitating access to e-evidence

The Council will debate on the two negotiating mandates presented by the Commission on 5 February. It will be invited to provide orientation and political direction to guide the work at technical level on the finalisation of the mandates. They will also be asked to reflect on the scope of the mandates and their coordination with the legislation on e-evidence currently being discussed by the EU institutions.

2nd additional protocol to the Budapest Convention

In September 2017, the Council of Europe undertook to prepare a second additional protocol to the Budapest Convention on Cybercrime. The objective of the protocol is to lay down provisions for a more effective and simplified mutual legal assistance (MLA) regime, allowing direct cooperation with service providers in other state parties to the Convention and for searches to be extended across borders. It is to be equipped with strong safeguards and data protection requirements. The advantage of such an agreement is its potential to be of application across the globe. Currently, 62 countries are party to the Convention, including 26 member states. The preparatory work on the protocol is expected to be finalised by December 2019.

EU-US agreement on facilitating access to e-evidence

The Clarifying Lawful Overseas Use of Data (CLOUD) Act was introduced in the US Congress on 6 February 2018. The CLOUD Act obliges US service providers to preserve data and disclose it, including content, without the need for a MLA request, directly to the US government, even if the data are located outside the US. The Act also allows US service providers to deliver such data, also without the need for a MLA request and regardless of where the data are located, to a foreign government with whom the US has concluded an executive agreement. Under the 'comity clause', if a non-US person is concerned, the CLOUD Act allows service providers to challenge the order on the basis of strict conditions.

The conclusion of an executive agreement is subject to a positive determination by the US Attorney General, to be submitted to the US Congress, that the foreign government meets a number of criteria (such as adequate substantive and procedural laws on cybercrime and e-evidence, respect for the rule of law, non-discrimination and human rights, accountability and transparency mechanisms, etc.).

In June 2018, Justice ministers reaffirmed that, given the EU's competence on the matter, the EU, rather than individual member states, should pursue the conclusion of an agreement with the US in order to facilitate access to e-evidence. At the recently held EU-US Ministerial meeting in Washington DC (8-9 November 2018), both sides once again expressed their intention to explore the possibilities of such an agreement between the EU and the US.

For more information:

[Commission press release - Commission recommends negotiating international rules for obtaining electronic evidence](#)

[Recommendation for a Council decision authorising the opening of negotiations in view of an agreement between the EU and the USA on cross-border access to electronic evidence for judicial cooperation in criminal matters](#)

[Recommendation for a Council decision authorising the participation in negotiations on a second Additional Protocol to the Council of Europe Convention on Cybercrime \(CETS No. 185\)](#)

European Public Prosecutor's Office (EPPO regulation)

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

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. So far, 22 member states have formally decided to join the EPPO.

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](#)
