

JUSTICE and HOME AFFAIRS COUNCIL

Monday 2 and Tuesday 3 December in Brussels

The Council will be chaired by Maria Ohisalo, Finland's minister of the interior on Monday and by Anna-Maja Henriksson, Finland's minister of justice on Tuesday.

Home affairs ministers will hold two thematic debates to wrap up the reflection process on the **future of EU migration and asylum policy**, and on the **future of EU internal security**.

Ministers will also exchange views on ongoing work regarding the **implementation of the new European Border and Coast Guard Regulation** with special emphasis on the multiannual strategic policy for the European integrated border management. They will then focus on the **implementation of the interoperability regulation**.

The Council will also be updated by the Counter-Terrorism Group on further cooperation between competent authorities dealing with **counter-terrorism**.

The Council will aim to reach two general approaches on the **regulation on the service of documents** and the **regulation on the taking of evidence**. Justice ministers will also discuss **environmental crime** on the basis of the final report on the 8th round of mutual evaluations in the field of criminal matters. Ministers are expected to adopt **conclusions on victims' rights** and **conclusions on alternative measures to detention**. The Council will also aim to adopt **conclusions on the future of civil justice cooperation**.

The Commission will brief ministers on the state of play of the establishment of the **European Public Prosecutor Office** and the newly appointed European Chief prosecutor, Laura Codruța Kövesi, will present her vision and plans for the office. On **e-evidence**, the Council will be informed on the negotiations with the US and the Council of Europe.

In the margins of the Council, the **Mixed Committee** (EU plus Iceland, Liechtenstein, Norway and Switzerland) will discuss the implementation of the interoperability regulations and the implementation of the European Border and Coast Guard Regulation. Exceptionally, the Schengen associated states will be present for the update on further cooperation between competent authorities dealing with counter-terrorism.

Press conferences:

- **Home Affairs Council** (**Monday** +/- 18.15)
- **Home Affairs Council** (**Tuesday** +/- 17.15)

Press conferences and public events by video streaming: <http://video.consilium.europa.eu>

Video coverage in broadcast quality (MPEG4) and photo gallery on: <http://nwsr.eu/p/215538>

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

HOME AFFAIRS

Future of EU migration and asylum policy

Ministers will discuss the future of the EU migration and asylum policy, on the basis of a report prepared by the Finnish Presidency. This debate wraps up the reflection process which was started at the informal JHA ministers meeting in July and which has continued during the past months in various Council bodies.

In its paper the Presidency highlights the importance of a comprehensive approach to migration, with a whole-of-government approach which will allow to overcome existing and future challenges and step up policy coherence. On the external aspects of migration, it notes the need to build balanced, sustained and mutually beneficial partnerships with relevant countries and regions of origin and transit, both to prevent irregular migration and improve cooperation on return and readmission.

In the area of border management the Presidency reports that ambitious regulations have been adopted in previous years and their timely implementation is a major task for the near future.

On the asylum system, the Presidency notes there is a shared understanding that the current system is not suitable to ensure a fair distribution of asylum seekers across member states, and that a crisis mechanism for supporting member states under specific pressure remains necessary. Moreover, in terms of what really needs to be harmonised in order to achieve a well-functioning system, what seems to be the key is to have efficient procedures covering all circumstances, including the use of accelerated procedures, across member states.

The Presidency also highlights the central role of EU agencies, including Frontex and EASO, and the need of a higher level of situational awareness, including through the systematic use of forecasting and foresight methods.

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

Future of EU internal security

Ministers will discuss the **future of EU internal security**, with a view to providing guidance for future developments in the area of internal security during the next legislative cycle (2019-2024). This discussion will take place **on the basis of a report prepared by the Finnish Presidency**, which summarises the main themes and work strands that have been discussed in the past six months as part of this reflection process.

During this time, several thematic debates have taken place, including on enhancing the operational cooperation framework for law enforcement, the impact of new technologies and hybrid threats on internal security, the role of EU agencies, information management and automation and training for law enforcement authorities. The Presidency report covers a series of key horizontal issues that emerged from these debates and which the Presidency believes should be carried over to the next legislative cycle:

- **proactive approach to new technologies:** the increasing pace of innovation challenges the capacity of law enforcement agencies to adapt to the rapidly developing technological world. The establishment of a joint innovation lab at Europol should support EU law enforcement authorities in order to be able to benefit from new technologies, while anticipating and managing the risks associated with them.
- **effective information management:** Law enforcement cooperation at EU level will increasingly be based on better and more efficient technological solutions and information systems and their interoperability. It is particularly important to ensure that information systems are supplied with high quality, timely and complete data and used effectively.

- **multidisciplinary cross-border cooperation:** due to the constantly evolving, cross-cutting nature of various security threats (CBRN weapons, hybrid activities) the actions taken to respond to and prevent these activities require a horizontal approach, going beyond traditional cross-border law enforcement cooperation and involving other authorities and EU agencies.
- **comprehensive approach to security:** a comprehensive and whole-of-society approach to security necessitates better coordination, resources and technological capacities, but also depends on a better situational awareness and preparedness to address a variety of challenges.

Counter-terrorism cooperation

Ministers will be briefed on the cooperation between competent authorities dealing with counter-terrorism, in the presence of the counter-terrorism group (CTG).

The counter-terrorism group is an informal group outside the EU framework that gathers the security services of the 28 EU member states, Norway and Switzerland. Lessons learned from the terrorist attacks in Europe clearly showed that cooperation between law enforcement and intelligence actors is needed. In November 2016, ministers agreed to explore opportunities between the CTG and Europol in areas of common interest, while fully respecting the sole competence of member states for national security.

The most recent exchange between home affairs ministers in the presence of the CTG took place at the June 2019 Home Affairs Council meeting.

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

Implementation of interoperability

Ministers will be informed by the Commission and the Presidency on the implementation of the interoperability regulations and will then have an exchange of views on this topic. Ministers will, in particular, be asked to highlight challenges being faced in the implementation process and how they envisage tackling them in practice.

The implementation of interoperability is a coordinated process between the Commission, the EU agency for large-scale IT systems (eu-LISA) and the member states. It requires not only the development of technical infrastructure, but also for member states to redesign business processes and build their capacity. Given the comprehensive changes involved, the Commission regularly monitors progress through a series of instruments.

The regulations establishing a framework for interoperability between EU information systems in the area of justice and home affairs entered into force on 11 June 2019. Interoperability will allow the systems to complement each other, help facilitate the correct identification of persons and contribute to fighting identity fraud.

[Interoperability between EU information systems: Council adopts regulations \(press release, 14 May 2019\)](#)

[How interoperable databases will boost Europe's security \(infographic\)](#)

[IT systems in the area of freedom, security and justice](#)

Implementation of the European Border and Coast Guard regulation

Ministers will exchange views on ongoing work regarding the implementation of the European Border and Coast Guard Regulation, which will enter into force on 4 December. They will focus in particular on the **development of the multiannual strategic policy cycle for the European integrated border management (EIBM) concept**, which is currently ongoing.

The EIBM concept sets out the basic principles for effective border control and return activities within the European Union. Its aim is to manage crossings of the EU's external borders efficiently and to address migratory challenges and potential future threats at those borders.

The concept is applied through five-year policy cycles, for which a multiannual strategic policy is elaborated by the Commission, the Council and the European Parliament. On this basis, Frontex prepares a technical and operational integrated border management strategy, with member states then preparing national strategies.

Ministers will also be briefed by the Presidency, with the support of the Commission and Frontex, on the **overall implementation of the European Border and Coast Guard regulation**.

Under the new rules, the European Border and Coast Guard Agency (Frontex) is being strengthened in terms of staff and technical equipment. To ensure the coherent management of EU external borders and to be able to respond to crises, Frontex will have at its disposal a standing corps. This corps, to be established gradually, will consist of up to 10 000 operational staff by 2027. The agency is also being given a broader mandate to support member states' activities, especially on border control, return and cooperation with third countries.

[European Border and Coast Guard: Council adopts revised regulation \(press release\)](#)

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

JUSTICE

Digitalisation of judicial cooperation in civil and commercial matters

The Council is expected to adopt its position (general approach) on the two amended regulations on the taking of evidence, on the one hand, and on the service of documents, on the other hand. The two regulations regard civil and commercial matters.

The key common objective of the revision of both regulations is to address the need for modernisation, through digitalisation and the use of IT, of cross-border exchanges between courts, authorities and agencies in relation to the taking of evidence and service of documents. By these means the amended regulations should advance access to justice and fair trial for the parties.

The current regulation on the service of documents has put in place a secure and standardised transmission procedure for the service of documents between courts and other parties located in different EU countries.

The current regulation on the taking of evidence provides a framework for cross-border judicial assistance between EU countries by facilitating the collection of evidence across borders.

[Commission press release - Commission proposes to modernise and digitalise EU civil judicial cooperation](#)

Victims rights

Ministers are expected to adopt conclusions on victims' rights, following the discussions which took place at the JHA Council in October. This point will take place in public session.

The draft conclusions take stock of the comprehensive EU framework developed in this field, including legislative and non-legislative instruments as well as cooperation at operational level. Their objective is to improve its effectiveness and implementation and identify concrete actions and initiatives to be taken to improve and further develop this framework.

The draft conclusions call on the Commission to draw up an EU strategy for 2020-2024 on victims' rights, covering all victims of crimes. They also invite the relevant EU agencies to look into the question of how to improve cooperation between competent authorities concerning victims of violent crime in cross-border cases.

Member states are notably called on to ensure the effective practical implementation of EU legislation and to ensure a comprehensive and holistic approach to victims' rights that will involve all actors likely to come into contact with victims and include victims' access to information about their rights. They are also asked to ensure that national compensation policies exist and if necessary to improve their functioning.

The minimum EU standards on the rights, support and protection of victims of crime are set out in directive 2012/29/EU and complemented through a number of other legislative instruments (ie. on combatting terrorism, on mutual recognition of freezing and confiscation orders). Through their reporting, the European Commission and relevant agencies, including the Fundamental Rights Agency, provide analysis of the situation and identify possible improvements in this area. In addition, cooperation networks, including the European network on victims' rights, contribute to an effective implementation of existing policy.

[Draft Council conclusions on victims' rights](#)

Alternative measures to detention

Ministers are expected to adopt conclusions on alternative measures to detention. The draft conclusions aim to promote the use of sanctions other than prison when this is appropriate, considering the seriousness of the criminal offence and related circumstances. This point will take place in public session.

The draft conclusions highlight that an important role of alternative measures to detention is to promote social rehabilitation and reintegration of the offender, reducing reoffending and promoting public security. Depending on the individual member state, alternative measures may include, for example, suspended prison sentences, community service, financial penalties and electronic

monitoring. These should be considered throughout the whole criminal justice chain, including also the pre-trial stage of proceedings.

Alternatives to detention have been on the EU's agenda for several years in different contexts. They were last discussed at the informal meeting of justice and home affairs ministers in July 2019. At this meeting, ministers acknowledged that there is a need to tackle complex issues relating to prison conditions, prison overcrowding, prison radicalisation and cooperation in criminal matters. The ministers also emphasised the importance of enhancing the use of alternative measures to detention in member states in the coming years.

[Draft Council conclusions on alternative measures to detention](#)

Future of civil justice cooperation

The Council is expected to adopt conclusions on the future of civil justice cooperation. These conclusions aim to wrap up the reflection process on this matter, started in the first half of 2019 under the Romanian Presidency. This point will take place in public session.

The draft conclusions emphasise the need to prioritise effective implementation, enforcement, evaluation of application and functioning of existing EU instruments, as well as digitalisation. Any new legislative initiatives must be based on evidence of clear added value and of practical needs of citizens and businesses. The draft conclusions also stress the key role of the European Judicial Network and the European e-Justice portal and invite the Commission and member states to enhance the visibility and use of these tools among practitioners. Finally, the draft conclusions express support to the key multilateral organisations in the field: the Hague conference on private international law, UNCITRAL and UNIDROIT.

European Public Prosecutor's Office (EPPO regulation)

Justice ministers will be informed by the Commission about the state of play in the implementation of the EPPO regulation. The newly appointed EPPO Chief prosecutor, Ms Laura Codruța Kövesi, will also present her vision and plans for the office.

The EPPO will have the authority, under the conditions set by the regulation, to investigate and prosecute in cases of 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's 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. It is currently expected to be towards the end of 2020.

[Council press release - Agreement on the EPPO regulation](#)

[Council press release - EPPO: Council confirms Laura Codruța Kövesi as first European chief prosecutor](#)

[Commission Q&A on the EPPO](#)

Environmental crime

Ministers will exchange views on the issue of environmental crime, following a presentation by the Presidency of the final report of the 8th round of mutual evaluations in the field of criminal matters, which focused on this topic. Ministers will also take account of a Presidency report on EU environmental criminal law. This discussion will take place in public session.

The 8th round of mutual evaluations focused namely on two forms of criminal activities which raise significant challenges, due to the risks they can cause to human health and the environment: the illegal trafficking of waste and the illegal production or handling of dangerous materials. The report underlines the low detection rate of environmental crime and includes recommendations encouraging to improve the situation regarding the fight against environmental crime, such as:

- the adoption of national environmental strategies defining priorities, roles and responsibilities
- the collection of reliable and integrated statistics that allow to better understand the extent and impact of criminal activities in this field

- provide regular training for staff working in this field
- establish a formal framework or central entity to coordinate cooperation among all relevant authorities in a member state
- introduce a clear legislative framework that ensures a proper balance between the administrative and judicial approach to environmental offences
- ensure cooperation with the private sector, in particular NGOs, in order to make use of their expertise
- fully use the possibilities for cooperation within the EU and with third countries

The mutual evaluation mechanism was established by joint action 97/827/JHA. It aims at the peer evaluation of the application and implementation at national level of EU and international law in criminal matters. Each round of mutual evaluations is devoted to a specific topic.

[Final report of the eighth round of mutual evaluations on environmental crime](#)

[EU environmental criminal law \(Presidency report\)](#)

Negotiations on a second additional protocol to the Budapest Convention and on an agreement between the EU and the US on facilitating access to e-evidence

The Commission will update the Council on the state of play in the negotiations for an EU-US agreement on cross-border access to e-evidence, on the one hand, and on a second additional Protocol to the Budapest Convention, on the other hand.

If concluded, those agreements will complement the EU framework on access to e-evidence currently being discussed by the EU institutions and on which the Council adopted its position in December 2018 and subsequently in March 2019. Police and judicial authorities would thus be equipped with the appropriate tool to access e-evidence stored inside or outside the EU.

EU-US agreement on cross-border access to e-evidence for the purpose of judicial cooperation in criminal matters

In June 2019, justice ministers reaffirmed that, given the EU's competence in the matter, the EU, rather than individual member states, should seek to conclude an agreement with the US to facilitate access to e-evidence.

Currently, US-based service providers cooperate with European law enforcement authorities on a voluntary basis or through procedures of mutual legal assistance (MLA) and are not always allowed, under US law, to respond directly to European requests for access to electronic evidence. An EU-US agreement would provide a framework for cooperation with the US, including for direct cooperation with service providers. It would also ensure strong mechanisms were in place to protect fundamental rights.

Second 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. The protocol will include strong safeguards and data protection requirements. The advantage of such an agreement is its potential to apply across the globe. Currently, 62 countries are party to the Convention, including 26 EU member states.

For more information:

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

[Council press release - Council agrees its position on rules to appoint legal representatives for the gathering of evidence](#)

[Council press release - Regulation on cross border access to e-evidence: Council agrees its position](#)