

## **Justice and Home Affairs Council**

### **Thursday 6 and Friday 7 June in Luxembourg**

The Council will be chaired by Ana Birchall, Romanian Vice Prime Minister, Minister for Justice ad-interim, on Thursday and by Carmen Daniela Dan, Romanian Minister for Internal Affairs, on Friday.

On Thursday, justice ministers will discuss the **negotiating mandates for agreements on access to e-evidence** with the US and within the Council of Europe, which are expected to be adopted on that occasion.

Ministers will also adopt **conclusions on the retention of data** for the purpose of fighting crime. This topic has been discussed several times in the past based on the needs of law enforcement and judicial authorities and on the developing case-law of the Court of Justice.

Justice ministers will have a debate on the **digitalisation of judicial cooperation in civil and commercial matters, in the context of the revision of the regulation on service of documents, as well as of the regulation on taking of evidence**. They will also be briefed on the state of play of discussions at technical level on the regulation on the **law applicable to the third-party effects of assignments of claims**.

The Council will also discuss the way forward on issues related to criminal law, including **substantive criminal law** and **mutual recognition in criminal matters**. In the same context, the Council is expected to adopt conclusions on the synergies between Eurojust and the networks established by the Council on judicial cooperation in criminal matters.

In addition, justice ministers will be updated by the Commission on the implementation of the regulation on the European Public Prosecutor's Office (EPPO).

Over lunch, ministers will discuss judicial training as a way to foster mutual trust.

On Friday, ministers will begin discussions on the **future of EU law enforcement policy**, which are expected to continue in more detail in the coming months. They will also be updated on **cooperation between competent authorities dealing with counter-terrorism**. Under any other business, ministers will be updated on the **implications of 5G in the area of internal security**.

The Council will aim to reach **partial general approaches on sectoral home affairs funds** in the context of the next multiannual financial framework (MFF). It will also seek to reach a **partial general approach on a proposal to reform the return directive**. This proposal aims to improve the rate of returns of those who do not have the right to stay in Europe.

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

Finally, ministers will hold a first debate on the **challenges ahead with regard to migration and asylum**, which will be continued later this year. Over lunch, ministers will exchange views on this topic in the presence of the UN High Commissioner for Refugees and the Director General of the International Organization for Migration (IOM).

In the margins of the Council, the **Mixed Committee** (the EU plus Iceland, Liechtenstein, Norway and Switzerland) will discuss the proposal on the revised return directive and the MFF proposal on the border management and visa instrument. Exceptionally, the Schengen associated states will be present for the update on cooperation between competent authorities dealing with counter-terrorism.

**Press conferences:**

- **Justice Council (Thursday +/-17.15)**
- **Home Affairs Council (Friday +/-17.30)**

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

*Video coverage in broadcast quality (MPEG4) and photo gallery on:* <https://europa.eu/!Bc49Fk>

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# JUSTICE

## Regulation on assignments of claims

The Council will be invited to take note of the report summarising the progress made at technical level on the regulation on assignments of claims ([9562/19](#)).

This proposal is part of the capital markets union (CMU) launched in 2015 and its main objective is to ensure greater legal certainty for investors in cross-border transactions in claims.

In this respect, the new rules will clarify according to which law disputes are to be resolved. The Commission has proposed, as a general rule, that the law of the country where creditors ('assignors') have their habitual residence would apply, regardless of which member state's courts or authorities examine the case. However, in the Commission's proposal, the law of the assigned claim applies to the following two specific claims, which are exempted from the general rule:

- cash on the account of a credit institution (e.g. a bank, where the consumer is the creditor and the credit institution is the debtor); and
- claims derived from financial instruments, such as derivatives.

In addition, for securitisation transactions, the Commission proposes a choice between the law of the assignor and the law of the assigned claim.

The assignment of a claim refers to a situation where a creditor transfers the right to claim a debt to another person in exchange for a payment. This system is used by companies to obtain liquidity and access credit. At the moment, there is no legal certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case, because no uniform Union conflict-of-law rules have been adopted on the law applicable to the third-party (or proprietary) effects of assignments of claims.

The European Parliament confirmed its position on the proposed regulation on 13 February 2019.

## Digitalisation of judicial cooperation in civil and commercial matters

Ministers will debate the issue of the digitalisation of judicial cooperation in civil and commercial matters in the framework of the revision of the regulations on the service of documents and on the taking of evidence ([9566/19](#)).

In particular, they will be invited to reflect on whether such digitalisation should be based on a secure decentralised IT system comprising interconnected national systems and whether its introduction and use should be mandatory and under which conditions. Finally, they will be asked to reflect on whether e-CODEX could be the software solution to be used for that purpose.

The current regulation on the service of documents has put in place a fast, secure and standardised transmission procedure for documents in civil or commercial matters between courts and other parties located in different EU countries. The 2001 regulation on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters is meant to provide a framework for cross-border judicial assistance between EU countries by facilitating the collection of evidence across borders.

The key common objective of the revision of both regulations, in addition to a number of other improvements, is to address the need for modernisation, in particular 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, while strengthening procedural safeguards.

E-CODEX is an IT system developed with EU financial support by a consortium of member states over a period of almost 10 years. E-CODEX is currently used for the following: the business registers interconnection system (BRIS); the interconnection of national insolvency registers; and the e-evidence digital exchange system (in criminal matters).

For more information:

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

### **The future of EU substantive criminal law**

Ministers will be invited to debate on the future of EU substantive criminal law based on a report ([9726/19](#)) presented by the Romanian presidency.

The report aims to feed into the reflection process on further developing the regulatory framework in the field of EU substantive criminal law. It does not aim to be a list of requirements by member states as needs may further evolve over the coming years. Instead, the objective is to refresh the Council's assessment of the advisability of introducing further criminal provisions in new areas. This is without prejudice to the Commission's right of initiative.

In preparing the report, the presidency focused on the following issues:

- defining areas where it could be necessary to broaden the regulatory framework
- defining areas of substantive criminal law instruments where it could be necessary to further harmonise the sanctioning system
- the need to develop a common understanding of terms that are regularly used
- analysis of the current application of the regulatory framework

Based on questionnaires answered by member states and expert discussions, the report concludes that, while a specific focus should be given to ensuring the effectiveness and quality of the implementation of existing EU legislation, it may be worth continuing the reflection process on the need to further legislate on some common definitions and/or on some new specific areas.

In recent decades, the European Union has steadily built up its legislation in the area of substantive criminal law. In this respect, the Treaty of Lisbon (2009) provides the EU with new legal bases on which to legislate in the field of substantive criminal law. This is notably the case in the area of serious crime with a cross-border dimension, where the Treaty expressly provides for the establishment of minimum rules concerning the definition of offences and sanctions.

Such common minimum rules on substantive criminal law have made it easier to apply the principle of mutual recognition and allowed for the approximation of sanctions and common definitions of certain offences. They have also provided the EU with appropriate tools to respond to global challenges (notably the fight against terrorism and its funding, and organised crime).

Among the legislation adopted in the area of substantive criminal law in the last few years, one can find, for example, the directive on preventing and combating trafficking in human beings (2011), the directive on combating terrorism (2017), the directive on freezing and confiscation of assets (2014) and the directive on combating money laundering (2018).

For more information

[European Commission - portal on criminal justice](#)

## **The way forward in the field of mutual recognition in criminal matters**

Ministers will be invited to exchange views on the way forward in the field of mutual recognition in criminal matters on the basis of a report prepared by the Romanian presidency ([9728/19](#)).

The objective of the presidency report is to give an overview of the challenges of the current EU legal framework in the field of judicial cooperation in criminal matters, in order to gauge what has been achieved so far, assess whether there are any deficiencies or gaps, and examine how these could be addressed in an efficient manner.

The report focuses on four areas on which ministers will be asked to comment:

- a) challenges encountered in the application of the criteria set out in the *Aranyosi* judgment or in the application of grounds for non-recognition in the mutual recognition instruments;
- b) training and guidance on mutual recognition instruments;
- c) identification of gaps in the application of mutual recognition instruments and possible solutions to fill these gaps;
- d) enhancing the institutional framework which allows for a proper functioning of judicial cooperation in criminal matters at EU level, and making comprehensive use of this institutional framework.

Judicial cooperation in criminal matters in the EU is based on the principle of mutual recognition of judgments and judicial decisions as outlined by the European Council of Tampere in 1999. The efficient application of this principle is largely based on mutual trust between judicial authorities.

Since 1999, the EU has had a comprehensive legal framework in the area of judicial cooperation in criminal matters, founded on shared values regarding the rule of law and fundamental rights. This framework includes instruments such as the European arrest warrant, the European investigation order and the legislation on the mutual recognition of freezing and confiscation orders. Once adopted, the regulation on European production and preservation orders for electronic evidence will further complement the EU “tool box” in criminal matters.

In December 2018, the Council adopted conclusions on mutual recognition in criminal matters ([14540/18](#)). The objective of these conclusions was to support efforts to foster and enhance cooperation and mutual trust between judicial authorities by setting out a number of practical measures to be taken.

For more information:

[Press release following the informal meeting of justice ministers in Innsbruck](#)

[Press outcome of the JHA Council - October 2018](#)

[Commission website: mutual recognition of judgments](#)

## **Conclusions on the synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters**

The Council is expected to adopt conclusions ([9643/19](#)) to encourage Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters to further develop the coordination and synergies between them. To this end, the conclusions will endorse the possibilities and proposed line of action described in a joint paper prepared by Eurojust and four networks established by the Council.

The conclusions also touch upon the issue of financial resources for Eurojust and, by extension, for the networks. These resources should be sufficient to allow them to carry out their activities properly. Finally, the conclusions address the possibility of establishing a lean secretariat for the European Judicial Cybercrime Network (EJCN).

Eurojust and four networks established by the Council, namely the European Judicial Network (EJN), the “Genocide network”, the joint investigation teams (JITs) network and the European Judicial Cybercrime Network (EJCN), play a vital role in the area of cooperation in criminal matters. While the coordination and synergies between them have improved considerably in recent years, there still seems to be room for further improvement in this regard.

Eurojust (the European Union Agency for Criminal Justice Cooperation) was created in 2002. It was set up to improve the coordination and cooperation between member states in investigations and prosecutions. It deals with serious cross-border and organised crime.

The European Judicial Network in criminal matters (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters. The contact points assist by establishing direct contacts between competent authorities and by providing the legal and practical information necessary to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.

The European Judicial Cybercrime Network (EJCN) was established to foster contacts between practitioners specialised in countering the challenges posed by cybercrime, cyber-enabled crime and investigations in cyberspace, and to increase the efficiency of investigations and prosecutions.

The network of national experts on joint investigation teams (JITs network) was established to facilitate the work of practitioners. The JITs network primarily encourages the use of JITs, facilitates their setting up, and contributes to the sharing of experience and best practice. A joint investigation team (JIT) is a team consisting of judges, prosecutors and law enforcement authorities of several states, established for a fixed period and a specific purpose by way of a written agreement, to carry out criminal investigations in one or more of the involved states.

The European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, known as the “Genocide network”, aims to ensure close cooperation between the national authorities in investigating and prosecuting the crime of genocide, crimes against humanity and war crimes.

For more information:

[Eurojust website](#)

[EJN website](#)

### **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 the regulation.

For more information:

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

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

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

The Council is expected to adopt the two negotiating mandates presented by the Commission on 5 February.

If concluded later, 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 March 2019.

Police and judicial authorities would therefore 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 ([9114/19](#), [9666/19](#)).

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.

Currently, US-based service providers cooperate with European law enforcement authorities on a voluntary basis and are not always allowed, under US law, to respond directly to European requests for access to electronic evidence.

The conclusion of an EU-US agreement would put in place a framework for cooperation with the US, including for direct cooperation with service providers. It would also ensure strong mechanisms are in place to protect fundamental rights.

The US authorities recently updated their legislative framework regarding access to e-evidence by adoption the Clarifying Lawful Overseas Use of Data (CLOUD) Act in February 2018. The CLOUD Act obliges US service providers to preserve data and disclose it, including content, without the need for an 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 an 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.

Second additional protocol to the Budapest Convention ([9116/19](#), [9664/19](#)).

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.

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](#)



## **Data retention for the purpose of fighting crime**

The Council is expected to adopt conclusions on the way forward with regard to the retention of electronic communication data for the purpose of fighting crime ([9663/19](#)). It is expected to task the Commission with continuing to gather information and inputs on this issue and with preparing a comprehensive study on possible solutions, including the consideration of a future legislative initiative.

The conclusions are the outcome of an expert group on this topic created by the Council in 2017 to launch and conduct a common discussion process on data retention in the context of recent case-law from the European Court of Justice. In December 2018, ministers were informed about the state of play of the expert discussions and tasked experts with continuing to explore avenues to develop a concept of data retention within the EU.

To fight crime effectively today, it is important that service providers retain certain data, besides those collected strictly for their business purposes, that can be disclosed under certain strict conditions for the purpose of fighting crime. However, such retention of data could infringe upon individual fundamental rights, in particular the rights to privacy and protection of personal data as interpreted by the European Court of Justice (ECJ). For that reason, any legal framework providing for data retention for the purpose of fighting crime must meet strict proportionality and necessity criteria.

In the cases *Digital Rights v Ireland* in 2014 and *TELE2* in 2016, the ECJ prohibited the EU and its member states from laying down rules that entail a general and indiscriminate retention of data. The ECJ's interpretation at that time put limits on the retention of data which make it challenging to conduct effective criminal investigations. All discussion on this topic is therefore conducted keeping in mind the importance of providing effective tools to fight crime, on the one hand, and the need to respect privacy and data protection as interpreted by the Court of Justice, on the other hand.

For more information:

[Commission website - data retention](#)



# HOME AFFAIRS

## Return directive

The Council will **aim to reach a partial general approach** on a proposal to reform the return directive ([9620/19](#)). The proposed new rules would speed up return procedures, prevent absconding and secondary movements, and increase the rate of returns. To achieve this, among other measures the partial negotiating position would include:

- **clearer and faster procedures** for issuing return decisions and for lodging appeals
- an **obligation to cooperate** for persons subject to a return procedure
- more **efficient rules on voluntary returns**
- a list of **objective criteria** to determine the risk of absconding
- the **possibility of detaining** a third country national if they pose a risk to public order, public security or national security
- the possibility of **returning a third country national to any safe third country**, as a last resort

The partial general approach would cover all aspects of the proposed revision apart from the provisions on the border procedure for returns. This is because the scope of this procedure is defined by the asylum procedure regulation, which is currently under discussion.

The proposal to revise the return directive was presented by the European Commission in September 2018, following calls by the European Council to improve significantly the effective return of irregular migrants in the EU.

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 changed considerably.

For more information:

[How the EU manages migration flows \(background information\)](#)

## Multiannual financial framework

The Council will aim to reach **partial general approaches on three sectoral home affairs proposals** in the context of the next multiannual financial framework ([9715/19](#), [9629/19](#), [9349/19](#)). Budget-related and horizontal issues which are currently being discussed as part of the negotiations on the EU's next multiannual financial framework (MFF) for the period 2021 to 2027, as well as issues clearly linked to the common European asylum system reform package, are out of the scope of the partial general approach.

On 13 June 2018, as part of the next 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 strong and effective integrated border management at the EU's external borders
- the **internal security fund**, which will support prevention and coordination between police, judicial and other competent authorities to protect citizens

Drawing from lessons learned and taking into account new policy developments, the Commission has proposed a significant reinforcement of the EU budget in the areas of migration, borders and security.

Overall, the three partial general approaches enlarge the scope of the support initially proposed by the Commission for the policy areas concerned. The list of eligible actions and measures has been improved and some limiting percentages have been either removed or increased. Key priorities such as projects in third countries to tackle high migratory pressure, the fight against cybercrime and the interoperability of IT systems have been proposed to benefit from a higher co-financing rate.

Synergies with other EU funds in the field of integration, but also in the use of multipurpose equipment, have also been enabled. The role of decentralised agencies during the programming phase has been better defined and the examination procedure has been proposed for all types of comitology decisions.

For more information:

[Multiannual financial framework: shaping EU expenditure \(background information\)](#)

## **Migration and asylum**

Ministers will hold a first debate on the **challenges ahead on migration and asylum**, in the context of the strategic agenda. This discussion is expected to be continued in more detail later in the year.

The EU and its member states responded to the 2015 migrant crisis by developing a comprehensive approach, with initiatives covering both external and internal aspects as well as border protection. Ongoing strands of action include:

- a pragmatic, flexible and coordinated use and implementation of all available instruments
- support for member states affected, including through continued support from EU agencies
- strong cooperation with international partners, including countries of origin and transit
- reduction of incentives for illegal migration through effective returns and fighting against illegal employment of third-country nationals
- dismantling smuggling networks through operational cooperation
- expanding EU resettlement schemes
- legal migration and integration

As a result, in 2018, the total number of illegal border crossings at the EU's external borders was 92% below the peak year of 2015.

However, the situation in the EU neighbourhood remains volatile and work will need to continue to address any current and future challenges. In this context, ministers will be invited to indicate how best to continue delivering on this comprehensive approach.

Over **lunch**, ministers will also exchange views on global developments to come in the area of migration, in the presence of the **UN High Commissioner for Refugees** and the Director General of the **International Organization for Migration**.

For more information:

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

## Counter-terrorism cooperation

Ministers will be briefed on developments in 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 includes the security services of the 28 EU member states, Norway and Switzerland. The most recent exchange between home affairs ministers in the presence of the CTG took place at the June 2018 Home Affairs Council meeting.

For more information:

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

## Law enforcement cooperation

Home affairs ministers will begin discussions on the **future of EU policy in the area of internal security**, and law enforcement cooperation in particular, in the run-up to the adoption of the strategic agenda by the June European Council, which will set out the EU's political priorities for the coming years. This discussion is expected to be continued in more detail under the upcoming Finnish Presidency of the Council.

Ensuring a high level of security across the EU is a fundamental element in a common area without internal borders. This requires an integrated approach which allows for flexible and targeted responses to existing and emerging threats.

Over the past years, the EU has made substantial progress in this area. The legislative framework on counterterrorism and information exchange has been strengthened, while the general architecture of JHA information systems and databases has been overhauled, with a focus on interoperability. The mandates of JHA agencies have been updated to allow them to provide stronger support to member states in their operational activities. The EU policy cycle on organised crime produces tangible operational results.

However, challenges still remain, including the effective implementation of the agreed measures and the need to keep pace with rapid technological developments and the threats and opportunities they bring.

In this context, ministers will be invited to express their views on a number of possible fields of action, building on an integrated approach to security, including:

- improving data connection and analysis
- pooling resources in research and innovation, and building a technology hub
- working on a stronger operational cooperation framework
- ensuring a sustainable financial outlook and investment in innovation for internal security

For more information:

[The EU fight against organised crime \(background information\)](#)

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

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