



JUSTICE and HOME AFFAIRS COUNCIL

Monday 7 and Tuesday 8 June in Luxembourg

The Council will be chaired by Francisca Van Dunem, Portuguese minister of justice, on Monday and by Eduardo Cabrita, Portuguese minister of the interior, on Tuesday.

On Monday, justice ministers will hold a debate on how to **combat illegal content online** in the context of the Digital Services Act proposal. They will also exchange views on **key elements for public prosecution services**, including as regards judicial cooperation in criminal matters.

The Council will aim to reach general approaches on the **regulation on assignments of claims**, the **regulation on e-Codex system and amending Regulation 2018/1726** (e-CODEX) and the **regulation amending the regulation establishing the EU Agency for Fundamental Rights**.

The Council is expected to approve conclusions on the **protection of vulnerable adults** across the EU, with regard to both civil and criminal law matters.

Ministers will also take stock of the ongoing negotiations regarding **the EU's accession to the European Convention on Human Rights**, the **setting up of the EPPO** and the **e-evidence negotiations**.

On Tuesday, home affairs ministers will hold a debate on the **impact of COVID-19 on fighting crime**. They will also exchange views on the **internal security outlook with regard to artificial intelligence**. The **Counter-Terrorism Group** will provide its regular update on further cooperation between authorities dealing with counter-terrorism.

Ministers will have an initial discussion on the **Schengen strategy** which was presented by the European Commission on 2 June.

Ministers will take stock of progress in the discussions regarding the regulation amending the **Europol** regulation and the directive on the **resilience of critical entities**. They will also assess the state of play regarding the new **pact on migration and asylum**.

The Commission will also inform ministers of the state of play in the **implementation of interoperability**.

Press conferences:

- **Justice Council** (**Monday** +/-18.00)
- **Home Affairs Council** (**Tuesday** +/- 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://newsroom.consilium.europa.eu/permalink/226312>

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

JUSTICE

Assignments of claims

The Council will aim to reach a general approach on the regulation on assignments of claims. Once the Council has agreed its mandate, negotiations can start with the European Parliament.

This proposal is part of the Capital Markets Union (CMU) launched in 2015 and its main objective is to ensure greater legal certainty for businesses and citizens when it comes to cross-border transfers of claims, thereby facilitating access to finance for businesses and consumers.

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, for instance, to obtain liquidity and access to 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 member states' substantive rules governing the third-party effects of assignments of claims are divergent.

The new proposed conflict-of-law rules will clarify according to which law disputes are to be resolved: as a general rule, 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. Certain specific assignments of claims are exempted from the general rule and the law of the assigned claim applies.

The proposal complements the rules in the Rome I regulation which deal with the law applicable to the contractual aspects of assignments of claims.

e-CODEX system

The Council will aim to reach a general approach on the regulation on e-Codex system and amending Regulation 2018/1726 (e-CODEX). Once the European Parliament has adopted its mandate, negotiations between the institutions will start.

e-CODEX is the system used to allow for interoperability between the IT systems used by judicial authorities. It enables different national e-justice systems to be interconnected, in order to carry out cross-border procedures in civil and criminal matters.

This system has been in development for a number of years through a consortium of member states, who are in charge of managing and maintaining the system until 2024. However, its long-term sustainability can only be ensured by transferring it to a permanent structure, to be managed by an EU agency.

The objective of this proposal is to ensure the proper and timely transfer of e-CODEX to eu-LISA. The compromise text to be approved by the Council introduces provisions protecting the independence of the judiciary, detailing the governance and management structure to be implemented within eu-LISA, and methods for involving stakeholders.

Fundamental rights agency

The Council will aim to reach a general approach on the regulation amending the regulation establishing the EU Agency for Fundamental Rights.

The mandate of the EU Agency for Fundamental Rights is set out in a 2007 Council regulation. In June 2020 the Commission presented a proposal to adapt the mandate of the agency to the Lisbon Treaty and to bring the regulation in line with the common approach on decentralized agencies.

The compromise text would include in the remit of the agency the areas of police and judicial cooperation in criminal matters, to align its mandate with the Lisbon treaty. It would maintain the current situation as regards the Common Foreign and Security Policy, which would remain outside the agency's remit. Finally, the current multiannual framework to define the work programme of the agency would be replaced with a more operational annual and multiannual programming.

The proposed text is a Council regulation based on Article 352 TFEU, which requires unanimity for adoption by the Council. This adoption can only take place once the European Parliament has given its consent to the text.

> [Draft compromise on the proposal for a Council regulation amending the regulation establishing an EU Agency for Fundamental Rights](#)

Combatting illegal content online

Ministers will hold a debate on how to combat illegal content online in the context of the Digital Services Act proposal. They will focus on two aspects in particular:

- orders to act against illegal content and orders to provide information
- notification of suspicions of criminal offences

On 14 December 2020 the Commission presented a proposal for a digital services act. The main objectives of this proposal are to modernise the rules governing digital services across the EU, to clarify concepts of liability, to make the internet safer for users and to increase accountability and administrative cooperation between competent national authorities.

The proposal is being discussed in the Competitiveness Council and related preparatory bodies. However, some of its objectives cover issues of immediate relevance for justice ministers, in particular in relation to how to counter illegal content online.

The draft regulation is a horizontal act which would allow for existing national and sector-specific EU legislation to exist alongside it. This includes EU legislation in the area of justice and home affairs, such as the draft legislation on e-evidence.

> [Commission proposal for a digital services act, 16 December 2020](#)

> [The Digital Services Act package \(European Commission\)](#)

Protection of vulnerable adults

The Council is expected to approve conclusions on the protection of vulnerable adults across the EU, with regard to both civil and criminal law matters.

Vulnerable adults can face challenges and difficulties in protecting their rights, defending their interests and accessing justice, both in national and in cross-border situations. The COVID-19 crisis has affected all of society, with a particular impact on those adults who were already vulnerable.

Further work should be carried out by the member states and by the Commission in order to strengthen their protection in both civil and criminal law matters. In the draft conclusions, the Council invites member states to use available funding opportunities from the EU budget to develop actions related to the protection and promotion of the rights of vulnerable adults, including on digital literacy. It also calls on them to promote greater awareness of the 2000 Hague convention and advance procedures to ratify it or consultations on possible accession. The Council invites member states to ensure the full implementation of existing legislation in the field of criminal law, enhance the use of cross-border victim protection mechanisms and ensure that vulnerable adults, whether suspects, accused or victims, are properly identified so that they can fully exercise their rights.

The draft conclusions call on the Commission to conduct a study aimed at reflecting on how the protection of vulnerable adults could be further strengthened, and to consider the possible need for a legal framework within the EU to facilitate free circulation of judicial and extra-judicial decisions on the protection of vulnerable adults in civil matters. On criminal law matters, the draft conclusions invite the Commission to consider whether there is a need to strengthen the procedural safeguards for vulnerable adults and to carefully reflect on the need to identify common criteria for identifying vulnerable adults in criminal proceedings.

> [Draft Council conclusions on the protection of vulnerable adults across the EU](#)

European Public Prosecutor's Office

The Presidency and the Commission will inform ministers of the latest developments on the implementation of the EPPO, which has started its operations on 1 June.

In the past months, work has continued in order to get the EPPO up and running, including with regard to relations with third countries and international organisations, the adaptations of national legislation and the appointment of European delegated prosecutors..

The EPPO has the authority, under the conditions set out in the regulation, to investigate and prosecute cases of EU fraud and other crimes affecting the EU's financial interests. It brings together European and national law enforcement efforts to counter EU fraud. To date, 22 member states have formally decided to join the EPPO. The EPPO's central office is based in Luxembourg.

> [European Public Prosecutor's Office \(background information\)](#)

> [European Public Prosecutor's Office website](#)

Key elements for public prosecution services

Ministers will exchange views on key elements for public prosecution services, on the basis of a Presidency note. This topic is part of a dialogue on justice-specific topics concerning the rule of law.

Public prosecution services are particularly important for the proper functioning of the criminal justice system and for effective prosecutions and judicial cooperation in criminal matters between member states. Their organisation varies throughout the EU and, while there is no single model for their institutional set-up, institutional safeguards are necessary to ensure that prosecutors are able to fulfil their professional duties under adequate conditions and without interference.

The COVID-19 pandemic has highlighted challenges for the prosecution service and underlined the importance of digitalised justice. It has further strengthened the need to have appropriate tools and infrastructure allowing for secure communication and remote access to the workplace.

Finally, effective justice systems rely on adequate human and financial resources. The economic and social effects of the COVID-19 crisis have underlined the need to strengthen the resilience of the justice system, not least because the caseload can be expected to grow.

On this basis, ministers will be asked to start reflecting on possible ways to address existing and future challenges. They will be invited, in particular, to identify the key challenges to a well-functioning prosecution service and to exchange views on how justice ministers could further engage in a more specific discussion on this topic.

> [Key elements for the public prosecution services including as regards judicial cooperation in criminal matters \(Presidency note\)](#)

EU accession to the European Convention on Human Rights

Ministers will be briefed on the state of play of negotiations for the EU's accession to the European Convention on Human Rights.

To ensure that the EU and EU law are subject to the same standards as member states, the Treaty of Lisbon sets out the obligation for the European Union to accede to the convention. The accession would complete the protection of fundamental rights of EU citizens and would strengthen fundamental values. It would also improve the effectiveness of EU law and enhance the consistency of fundamental rights protection in Europe.

In April 2013, the Council reached an agreement on the draft agreement for accession to the European Convention on Human Rights. However, on 18 December 2014, the Court of Justice of the EU gave a negative opinion on the compatibility of the draft agreement with the EU treaties.

In October 2019, the Council agreed to the swift resumption of negotiations with the Council of Europe and adopted supplementary negotiation directives. Negotiations in a Council of Europe ad-hoc group have resumed since the summer of 2020.

> [Protection and promotion of human rights \(background information\)](#)

e-evidence negotiations

Ministers will take stock of the ongoing negotiations regarding e-evidence, which include negotiations for an EU-US agreement on cross-border access to e-evidence and negotiations in the Council of Europe on a second additional protocol to the Budapest Convention.

In June 2019 the justice ministers authorised the Commission, on behalf of the EU, to open negotiations with the US and to participate in the negotiations within the Council of Europe.

Currently, US-based service providers work with European law enforcement authorities through direct cooperation on a voluntary basis or through procedures for 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. The Commission and the US have held four negotiation rounds since the mandate was given to the Commission. The last session took place in March 2020. A stock-taking meeting took place at the end of March 2021.

In September 2017, the Council of Europe undertook to prepare a second additional protocol to the Budapest Convention on Cybercrime. After a long process due to the complexity of the topic and the difficulties found in the negotiations in certain areas such as data protection, a draft text was adopted by the T-CY Plenary on 28 May 2021. Once the internal Council of Europe procedure completed, adoption will take in November 2021, at the Budapest Convention Anniversary data.

The objective of the protocol is to lay down provisions for a more efficient mutual legal assistance (MLA) regime for direct cooperation with service providers in other states that are parties to the Convention. The protocol includes strong safeguards and data protection requirements. The advantage of such an agreement is its potential to apply across the globe, and has the vocation to be considered the preferred instrument by EU member states for international cooperation in the matter, in particular in view of the process for an international agreement on the same field started at the UN level at Russia and China's initiative. A total of 66 countries are currently parties to the Convention, including 26 member states.

These agreements will complement the future EU framework on access to e-evidence currently being discussed by the EU institutions.

> [Council gives mandate to Commission to negotiate international agreements on e-evidence in criminal matters, 6 June 2019 \(press release\)](#)

> [Better access to e-evidence to fight crime \(background information\)](#)

Any other business

– Current legislative proposals

The presidency will inform ministers about the latest developments in work on current legislative proposals.

> [Overview of the current legislative proposals under the Portuguese Presidency](#)

– EU strategy on the rights of the child

The Commission will present the first comprehensive EU strategy on the rights of the child, which was submitted by the Commission in March. This strategy identifies a number of actions across six thematic areas to improve the life of children in the EU. It aims to bring together all relevant EU legislative, policy and funding instruments within one comprehensive framework.

> [Communication from the Commission on an EU strategy on the rights of the child, 24 March 2021](#)

- *Criminal law and protection of intellectual property rights*

The Presidency will brief the Council on the work that has been carried out in the recent months on the fight against counterfeiting.

> [Criminal law and protection of intellectual property rights: connections between counterfeiting and organized crime \(presidency note\)](#)

- *EU-US justice and home affairs ministerial meeting*

The Presidency will report on the preparations and the agenda for the upcoming EU-US Justice and Home Affairs ministerial videoconference, which will take place on 22 June in Lisbon.

- *EU-North Africa enhanced dialogue on justice and home affairs*

Ministers will be informed about the latest developments on the presidency's initiative to launch a political dialogue on justice and home affairs issues with North African countries.

- *High-level conference on e-Justice*

The Presidency will brief ministers on the high-level conference on e-Justice which it organised on 26-27 April via video conference, focusing on people-centered justice.

> [High level conference on e-Justice, 26-27 April 2021 \(Presidency website\)](#)

- *Judicial aspects of the EU strategies to tackle organised crime and to combat trafficking in human beings*

The Commission will draw ministers' attention to the strategy on tackling organised crime and the strategy on combatting trafficking in human beings, which it adopted in April 2021. These strategies contain measures in the area of law enforcement but also in the field of justice.

> [Communication from the Commission on the EU strategy to tackle organised crime 2021-2025, 14 April 2021](#)

> [Communication from the Commission on the EU strategy on combatting trafficking in human beings 2021-2025, 14 April 2021](#)

- *Work programme of the incoming presidency*

The upcoming Slovenian Presidency will present its work programme and priorities for the next six months.

- *Follow up to the Schrems II judgement*

Over lunch, the Commission will inform the Council about the ongoing negotiations with the US following the invalidation of the Privacy Shield by the EU Court of Justice in July 2019.

HOME AFFAIRS

Artificial intelligence: internal security outlook

Ministers will exchange views on the internal security outlook regarding artificial intelligence, following a presentation by the Commission of its recent proposal for a regulation on artificial intelligence. They will be invited to focus on:

- a preliminary assessment on the impact of the relevant parts of the proposed regulation regarding internal security and law enforcement use of AI tools in the future
- whether a more detailed assessment of the critical implications for JHA in general and law enforcement in particular is needed.

On 21 April the European Commission presented its proposal for a regulation on artificial intelligence. This proposal aims to guarantee the safety and fundamental rights of people and businesses, while strengthening AI investment and innovation across the EU.

The proposal will be discussed in the Telecommunications Council and related preparatory bodies. However, some of its objectives cover issues of immediate relevance for home affairs ministers, with practical implications in the field of internal security.

In particular, the AI proposal lists eight sensitive areas identified as high-risk, including three relevant for internal security: biometric identification and categorisation of natural persons, law enforcement, and migration, asylum and border control management. High-risk AI systems will be subject to strict obligations and limitations. For example, the use of "real-time" remote biometric identification systems for the purposes of law enforcement would be prohibited as a principle, due to the heightened risks for the rights and freedoms of the persons concerned. There would, however, be specific exceptions to this ban, for example for the purposes of an ongoing missing child case. Each individual use would be subject to a prior authorisation granted by a judicial authority or by an independent administrative authority.

COVID-19 and fighting crime

Ministers will hold a debate on the impact of COVID-19 on fighting crime. They will be invited to provide political guidance on the priority actions to strengthen resilience and preparedness in the area of internal security, to tackle the consequences of the COVID-19 crisis and with a view to potential similar crises in the future.

As part of this point, ministers will take stock of the new organised crime strategy 2021-2025 and the operational results of the European multidisciplinary platform against criminal threats (EMCACT). They will also take note of conclusions on the impact of COVID-19 on internal security and on terrorism and radicalisation, which are expected to be adopted by the JHA Council as items without discussion.

Since the outset of the pandemic, the EU has focused on two main aspects in the area of internal security:

- fostering continuous situational awareness about crime landscape developments
- ensuring operational continuity in the activities of authorities: the availability of a secure environment to ensure operational continuity and the exchange of relevant real-time information

> [Fight against organised crime: Council sets out 10 priorities for the next 4 years \(press release\)](#)

Communication on a Schengen strategy

Ministers will have an initial discussion on the Schengen strategy which was adopted by the European Commission on 2 June. This strategy is accompanied by a legislative proposal to review the Schengen evaluation and monitoring mechanism.

The strategy and accompanying proposals aim to restore the full functioning of the Schengen area, increase mutual trust among member states and integrate lessons learnt from the COVID-19 crisis, especially regarding better coordination of measures at EU level.

The strategy takes a comprehensive approach to the area of free movement, encompassing external border protection and internal security to address the challenges we face today.

> [Strategy towards a fully functioning and resilient Schengen area \(European Commission\)](#)

> [Proposal to revise the Schengen evaluation and monitoring mechanism \(European Commission\)](#)

Europol regulation

Ministers will take stock of progress in the discussions regarding the regulation amending the Europol regulation

On 9 December 2020 the European Commission presented a proposal to amend the Europol regulation. The proposal aims to improve Europol's cooperation with private parties and third countries, to clarify the possibility for Europol to process large and complex datasets and to strengthen its role in research and innovation. It also seeks to expand the possibility for Europol to request the initiation of a criminal investigation in a member state. At the same time, the Commission presented a proposal amending the Schengen Information System (SIS) to enable the agency to make third-country data available to frontline officers through the SIS.

During the Portuguese presidency, progress has been made on some blocks which can be considered to have been resolved, including those on cooperation with private parties and third countries, on Europol's role in innovation, on the relationship between Europol and the EPPO and on the initiation of criminal proceedings. Significant progress can also be noted on the remaining blocks.

The Presidency remains committed to continue work in the coming weeks with the aim of closing as many elements as possible and obtaining a (partial) mandate for negotiations with the European Parliament by the end of June.

Resilience of critical entities

Ministers will take stock of progress in the discussions regarding the directive on the resilience of critical entities. A number of meetings have already taken place at technical level, with member states also sending more than 700 written questions. The read-through of the articles of the proposal is expected to be concluded before the end of June.

In December 2020 the European Commission presented a proposal for a directive on the resilience of critical entities. This draft instrument aims to help strengthen the level of protection and resilience of critical entities that operate infrastructures and provide services essential for vital societal functions or economic activities, thereby ensuring the good functioning of the internal market. The Commission proposal would cover critical entities in ten sectors: energy, transport, banking, financial market infrastructures, health, drinking water, waste water, digital infrastructure, public administration and space. These entities need to be able to prevent, resist, absorb and recover from natural disasters, accidents, terrorism or public health emergencies.

This proposal would replace the current directive on the identification and designation of European critical infrastructure, which was adopted in 2008. A 2019 evaluation of this directive highlighted the need to update and further strengthen the existing rules in light of the new challenges facing the EU, such as the rise of the digital economy, the growing impacts of climate change, and terrorist threats. The current COVID-19 pandemic has shown in particular how exposed critical

infrastructures and societies can be to a pandemic and the high level of interdependence that exists among EU member states as well as globally.

Together with the proposed directive on critical entities, the Commission has also presented a proposal for a directive on measures for a high common level of cybersecurity across the EU, which aims to respond to the same concerns for the cyber dimension.

> [Proposal for a directive on the resilience of critical entities \(progress report\)](#)

Implementation of interoperability

The Commission will inform ministers of the state of play in the implementation of interoperability, and in particular the entry/exit system (EES) and the European travel information and authorisation system (ETIAS), which are expected to be operational by May 2022 and by the end of 2022 respectively.

The new interoperability framework, which will contribute to improving border management and internal security in Europe, is a game-changer in the field of information exchange. Its implementation is closely linked with the creation and upgrade of a number of IT systems in the justice and home affairs area, notably the new entry/exit system, the European travel information and authorisation system (ETIAS) and the European criminal records information system regarding third country nationals (ECRIS-TCN).

The interoperability regulations establish four new tools to improve information flows:

- a European search portal to search simultaneously in multiple EU information systems
- a shared biometric matching service to search and cross-check biometric data in relevant EU information systems
- a common identity repository containing biographical and biometric data of non-EU citizens available in several EU information systems
- a multiple identity detector to detect multiple identities linked to the same set of biometric data

The new rules will help authorities to better detect security threats and combat identity fraud. It will also help to improve checks at external borders and to prevent and combat illegal immigration.

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

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

Migration and asylum pact

Ministers will assess the state of play regarding the new pact on migration and asylum.

On 23 September 2020, the European Commission put forward a number of legislative and non-legislative proposals on various aspects of migration and asylum policy.

The legislative proposals include:

- an asylum and migration management regulation, establishing a common framework for migration management, criteria for examining asylum applications and a solidarity mechanism
- a crisis and force majeure regulation, which provides for specific derogations and establishes a solidarity mechanism to be used in the event of crisis and force majeure situations
- a screening regulation to ensure that the procedure applicable to a particular person entering the EU irregularly is identified quickly
- a proposal revising the 2016 asylum procedures proposal on the border procedure, subsequent applications and the appeal process
- a proposal revising the 2016 Eurodac proposal, to address loopholes and transform Eurodac into an asylum and migration database

The non-legislative texts presented by the Commission include recommendations on preparedness and crisis situations, resettlement and complementary pathways to protection, and search and rescue by private vessels, and guidance on the facilitators directive to fight migrant smugglers.

A number of the 2016 proposals, which are at an advanced stage of negotiation, are also part of the pact. These include the EU asylum agency regulation, the reception conditions directive, the qualifications directive, the resettlement framework and the return directive.

At their video conference on 8 October 2020, home affairs ministers had a first opportunity to exchange views on the proposed pact. Following this debate, the examination of the pact has continued at technical and political level. The topic was last covered by ministers in the video conference on 11 March 2021.

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 which brings together the security services of the 27 EU member states, Norway, Switzerland and UK. 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 reporting has now become a recurrent point - this is the seventh exchange. The most recent exchange between home affairs ministers in the presence of the CTG took place at the December 2019 Home Affairs Council meeting.

[EU's response to the terrorist threat \(background information\)](#)

Any other business

– Current legislative proposals

The presidency will inform ministers about the latest developments regarding work on current legislative proposals.

> [Overview of the current legislative proposals under the Portuguese Presidency](#)

– EU asylum agency regulation

The Presidency will inform ministers of the contacts undertaken to try to move forward the EU asylum agency regulation.

– Blue card directive

The Presidency will highlight the provisional agreement reached between the Council and the European Parliament on the blue card directive.

– Implementation of the European Border and Coast Guard regulation

The Commission will report on the ongoing work to implement the European Border and Coast Guard regulation.

– EU-US justice and home affairs ministerial meeting

The Presidency will report on the preparations and the agenda for the upcoming EU-US Justice and Home Affairs ministerial videoconference, which will take place on 22 June in Lisbon.

- *EU-North Africa enhanced dialogue on justice and home affairs*

Ministers will be informed about the latest developments on the presidency's initiative to launch a political dialogue on justice and home affairs issues with North African countries.

- *Work programme of the incoming presidency*

The upcoming Slovenian Presidency will present its work programme and priorities for the next six months.

Managing migratory flows with neighbouring countries

Over lunch, ministers will have an exchange of views on managing migratory flows with neighbouring countries.
