



Justice and Home Affairs Council **Brussels, Thursday 9 and Friday 10 December 2021**

The Council meeting will be chaired by Aleš Hojs, Minister for the Interior of Slovenia, on Thursday and, by Marjan Dikaučič, Minister for Justice of Slovenia, on Friday.

On Thursday, **home affairs ministers** will take stock of progress on the directive on the resilience of critical entities and on the Council regulation on a Schengen evaluation and monitoring mechanism. They will also hold a debate on migration as a tool for hybrid attacks, in light of recent events at the EU border with Belarus.

Ministers will discuss the Next Generation EU recovery funds and how infiltration by organised crime into legal structures and processes can best be prevented. They will also exchange views on the implementation of interoperability and receive an update on the state of play on cooperation between competent authorities dealing with counter-terrorism.

On Friday, **justice ministers** will take stock of progress in the ongoing negotiations regarding the e-evidence regulation. Ministers will exchange views on lessons learned from the COVID-19 pandemic for the functioning of courts and for judicial review and scrutiny of emergency measures. They will also be updated on the state of play on the EU's accession to the European Convention on Human Rights and on the latest developments regarding the setting up of the European Public Prosecutor's Office.

Over lunch, ministers will discuss how to combat hate speech and hate crime better.

In the margins of the Council, the Mixed Committee (EU plus Iceland, Liechtenstein, Norway and Switzerland) will discuss the Council regulation on a Schengen evaluation and monitoring mechanism and the implementation of interoperability.

Press conferences:

- **Home affairs (Thursday +/- 18.00)**
- **Justice (Friday +/- 15.00)**

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[Justice and Home Affairs Council - meeting page](#)

[Press conferences and public events by video streaming](#)

[Video coverage in broadcast quality \(MPEG4\) and photo gallery](#)

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

HOME AFFAIRS

Resilience of critical entities

Ministers will take stock of progress regarding the directive on the resilience of critical entities, in respect of which the presidency aims to secure an agreement on the Council's negotiating mandate before the end of the year.

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 infrastructures that provide fundamental services supporting social or economic activities and the well-being of citizens. The Commission proposal covers critical entities in a wide range of sectors, from energy and health to space.

These entities need to be able to prevent, resist, absorb and recover from natural disasters, accidents, terrorism or public health emergencies. Under the new rules, critical entities should report disruptive incidents to national authorities, while EU member states should identify critical entities, carry out national risk assessments and have a strategy for ensuring the resilience of such entities.

The proposed directive would replace the current directive on the identification and designation of European critical infrastructure, which was adopted in 2008. A 2019 evaluation of that 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 vulnerable critical infrastructures and societies can be to a pandemic and the high level of interdependence that exists between EU member states as well as globally.

In addition to the proposed directive on critical entities, the Commission has presented a proposal for a directive on measures for a high common level of cybersecurity across the EU (NIS2), which aims to address the same concerns from a cybersecurity perspective.

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

> [How the EU responds to crises and builds resilience \(background information\)](#)

Schengen evaluation and monitoring mechanism

Ministers will assess progress on the proposed Council regulation on a Schengen evaluation and monitoring mechanism.

The proposal aims to make the Schengen area more adaptable to current and future challenges. The proposed changes to the mechanism include:

- **increasing the strategic focus of the mechanism** by adapting the scope of evaluations, moving towards fully risk-based evaluations, enabling evaluation of the activities of EU agencies and private parties supporting member states in the operational application of provisions of the Schengen acquis, and increasing the proportion of unannounced and thematic evaluations
- **shortening and simplifying the evaluation and monitoring procedures** by merging reports and recommendations into a single document, focusing the Council's work on cases of greater importance, with an escalation mechanism in the event of lack of progress, and putting in place a fast-track procedure to ensure serious deficiencies are identified and addressed promptly

- **strengthening verification of respect for fundamental rights** in the implementation of the Schengen acquis, by means of more risk analysis by the EU agency for fundamental rights and unannounced evaluations if there are indications of serious fundamental rights violations
- **optimising the participation of all state and EU actors** by creating a pool of national experts available to carry out evaluations and by strengthening cooperation with the relevant EU agencies

> [Commission proposal for a Council regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis](#)

Countering hybrid threats and migration challenges

Ministers will discuss the issues of hybrid attacks and migrant smuggling. They will focus in particular on the effectiveness of the current tools for responding to these phenomena and on which tools are needed to be better prepared for the future.

The European Union has been facing increased migration flows at the external border for several years. However, the phenomenon recently acquired another dimension, when migration became a tool in a state-sponsored hybrid attack aimed at destabilising Europe. This in turn extended the existing challenges well beyond border protection and migration management and required an even more comprehensive and determined EU response, including the adaptation of existing measures and the development of new ones.

Owing to concerted EU efforts, the number of daily irregular arrivals at the EU external border with Belarus has dropped sharply. However, the migratory pressure at the border remains high.

At the same time, other migration challenges at the external borders must not be overshadowed, in particular in the Mediterranean. As the tragic loss of lives in the English Channel has demonstrated, fighting migrant smuggling remains an important challenge. Another phenomenon requiring an immediate response is the constant increase in unauthorised movements inside the EU.

> [EU relations with Belarus \(background information\)](#)

> [Restrictive measures against Belarus \(background information\)](#)

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

Application of the Schengen acquis in Croatia

Conclusions on the fulfilment of the necessary conditions for the full application of the Schengen acquis in Croatia are on the agenda. The purpose of these conclusions is to establish that Croatia fulfils the conditions for full application, a necessary step before a decision can be taken on the full application of the Schengen acquis in Croatia.

The Schengen evaluation of Croatia took place between 2016 and 2020. In March 2021, the Commission informed the Council of the closure of the last action plan. The following step in the process is verification by the Council that the necessary conditions are met for the full application of the Schengen acquis in Croatia.

Implementation of interoperability

Ministers will exchange views on the implementation of interoperability. On the basis of the assessment by eu-LISA and the European Commission, they will decide whether the implementation timelines of the entry/exit system (EES), the European travel information and authorisation system (ETIAS), the Schengen information system (SIS) and the European criminal records information system regarding third-country nationals (ECRIS-TCN) need to be adjusted.

The new interoperability framework, which will help to improve border management and internal security in Europe, is a game-changer in the field of information exchange. Its implementation is closely linked to the creation and upgrading of a number of IT systems in the area of justice and home affairs, in particular the EES, ETIAS and ECRIS-TCN.

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

- a European search portal for searching simultaneously in multiple EU information systems
- a shared biometric matching service for searching for and cross-checking 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. They 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 \(infographic\)](#)

Next Generation EU: infiltration by organised crime

Ministers will hold a debate on the Next Generation EU recovery funds and on how infiltration by organised crime into legal structures and processes can best be prevented.

During the pandemic, criminals have shown both resilience and adaptability in diversifying their criminal markets and business opportunities so as to continue to amass criminal profits wherever possible. It is highly probable that the significant recovery funds will also attract significant criminal attention. However, the wider context of this issue is criminal infiltration into legal structures. This goes beyond specific crimes and encompasses the numerous ways in which criminals can abuse such structures for money laundering, fraud, corruption, embezzlement, or other direct or indirect criminal purposes.

Ministers will consider whether there is a need for a more coordinated EU-level approach to tackling, and especially preventing, the infiltration of legal structures by organised crime. They will also consider whether there is a need for a more comprehensive assessment of the vulnerabilities of legal structures so that prevention can be more effective and that the tools chosen are more fit for purpose.

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 CTG is an informal group outside the EU framework that gathers together the security services of the 27 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 for cooperation between the CTG and Europol in areas of common interest, while fully respecting the sole competence of member states for national security.

> [The EU's response to terrorism \(background information\)](#)

Any other business

- *Current legislative proposals*

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

- *Schengen package*

The Commission is expected to present the police cooperation code and new Prüm proposals.

- *EU-Western Balkans JHA ministerial meeting*

The presidency will report on the outcome of the EU-Western Balkans Justice and Home Affairs ministerial meeting, which took place in Slovenia on 2-3 December 2021.

> [EU-Western Balkans Justice and Home Affairs ministerial meeting \(joint press statement\)](#)

- *EU-US JHA ministerial meeting*

The presidency will report on the preparations and the agenda for the upcoming EU-US Justice and Home Affairs ministerial meeting, which will take place in Washington on 16 December 2021.

- *Ministerial conference on child sexual abuse*

The presidency will report on the outcome of the virtual ministerial conference on the prevention and investigation of child sexual abuse, held on 11-12 November 2021.

> [Joint statement \(12 November 2021\)](#)

> [Virtual ministerial conference on the prevention and investigation of child sexual abuse \(Slovenian presidency\)](#)

- *Work programme of the incoming presidency*

The upcoming French presidency of the Council will present its work programme and priorities for the next six months.

Migration and asylum pact

Over lunch, ministers will discuss sustainable solutions concerning the migration and asylum pact.

JUSTICE

E-evidence regulation

Ministers will take stock of progress in the ongoing negotiations between the Council and the European Parliament regarding the e-evidence regulation.

Throughout its mandate, the presidency has focused on technical discussions, given the substantial divergence between the legislators' positions and the agreed need to find a compromise package on the notification regime. The discussions with the European Parliament have taken place in a good atmosphere and have enabled progress on defining the main structures for a possible compromise package. However, it has not been possible to reach an agreement on the main components of the envisaged package.

Given the increasing relevance of cyberspace, there is a need to establish an effective and reliable mechanism that sets out clear structures and safeguards in relation to obtaining electronic evidence. The e-evidence legislative proposals aim to speed up access to electronic evidence by creating a legal framework for judicial orders addressed directly to a service provider or to its legal representative in another member state. The proposals include:

- a regulation on European production and preservation orders for electronic evidence in criminal matters
- a directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering evidence in criminal proceedings

The Council agreed its negotiating position on the regulation in December 2018 and on the directive in March 2019. Negotiations with the European Parliament started in February 2021.

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

COVID-19 pandemic: lessons learned on the functioning of courts and on judicial review

Ministers will exchange views on the lessons learned from the COVID-19 pandemic on the functioning of courts and on judicial review and scrutiny of emergency measures. They will reflect on possible ways to address existing and future challenges stemming from current and potential future emergency situations.

In order to deal with the challenges raised by the COVID-19 pandemic, all member states have adopted extraordinary measures. In this context, they have had to strike a balance between the protection of fundamental freedoms and the principles of democratic decision-making on the one hand, and the need to effectively tackle the consequences of the health crisis on the other. Constitutional courts and other national courts play an essential role in ensuring the possibility of judicial review of the legal regime and the measures taken.

The COVID-19 pandemic has also affected the functioning of the national justice systems themselves and the activities of courts. In the first phase of the pandemic in particular, there were interruptions or delays in the handling of cases and court proceedings. In this context, steps were taken to mitigate the impact, including through a high degree of digitalisation and the adaptation of procedural rules and deadlines for appeals, which have helped to limit disruption.

Despite these steps, the COVID-19 pandemic has highlighted the need to strengthen the resilience of the justice system.

EU accession to the European Convention on Human Rights

Ministers will be updated on the state of play on the EU's accession to the European Convention on Human Rights (ECHR). The presidency will report on progress made in the negotiations in the Council of Europe and the preparations within the competent Council bodies.

The ECHR, adopted in 1950, has been ratified by the 47 Council of Europe member countries. All 27 EU member states are parties to the convention. To ensure that the EU and EU law are subject to the same standards as member states, the Treaty of Lisbon establishes an obligation for the European Union to accede to the convention.

In April 2013, the Council reached an agreement on the draft accession agreement to the ECHR. 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 negotiating directives. A new solution is under discussion which would make it possible to fulfil the treaty obligation of accession and take into account all aspects mentioned by the Court in its opinion.

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

European Public Prosecutor's Office (EPPO)

The Commission and the presidency will inform ministers about the latest developments regarding the setting up of the European Public Prosecutor's Office (EPPO). The European Chief Prosecutor will attend the discussion on this agenda item.

The EPPO started its operations on 1 June 2021 and is already carrying out a number of investigations on cases which fall within its mandate.

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 in Luxembourg.

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

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

Any other business

– Current legislative proposals

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

– Digitalisation of justice

The Commission will present its recent proposals to digitalise EU justice systems, making them more accessible and effective.

> [Modernising judicial cooperation: Commission paves the way for further digitalisation of EU justice systems \(Commission press release, 1 December 2021\)](#)

– EU-Western Balkans JHA ministerial meeting

The presidency will report on the outcome of the EU-Western Balkans Justice and Home Affairs ministerial meeting, which took place in Slovenia on 2-3 December 2021.

> [EU-Western Balkans Justice and Home Affairs ministerial meeting \(joint press statement\)](#)

– EU-US JHA ministerial meeting

The presidency will report on the preparations and the agenda for the upcoming EU-US Justice and Home Affairs ministerial meeting, which will be held in Washington on 16 December 2021.

- *Future proposals in the area of justice*

The Commission will refer to future proposals in the field of justice, including civil and criminal justice, due to be published this and next year.

- *2021 annual report on the application of the EU charter of fundamental rights*

The Commission will present its first report on the application of the charter with a thematic approach, focusing on fundamental rights in the digital age.

- *Work programme of the incoming presidency*

The upcoming French presidency of the Council will present its work programme and priorities for the next six months.

Combatting hate speech and hate crime

Over lunch, ministers will discuss how to combat hate speech and hate crime better, so as to make Europe more inclusive and protective. They will focus on the biggest challenges and gaps that member states face in their response, on possible facilitating factors to support their efforts, and on best practices on cooperation with civil society and IT companies, and on support and protection for specific groups of victims.

This discussion follows a high-level conference organised by the Slovenian presidency, together with the Commission, on effective response to hate crimes and hate speech online and the protection of victims.

> [Conference on stamping out hate crime and hate speech \(presidency website\)](#)
