

Justice and Home Affairs Council, Luxembourg, Thursday 13 and Friday 14 October 2022

The Council meeting will be chaired by Pavel Blažek, Czech Minister of Justice, on Thursday and by Vít Rakušan, Czech Minister of Interior, on Friday.

On Thursday, **justice** ministers will be updated on judicial responses and the fight against impunity in Ukraine. They will exchange views on judicial training and its impact on access to justice, as well as on upholding fundamental rights in times of crises. Ministers will assess progress on the draft environmental crime directive and take stock of the work of the European Public Prosecutor's Office.

On Friday, **home affairs ministers** will discuss the situation of refugees in the EU and internally displaced persons, as well as the internal security implications in the context of the war in Ukraine. The Presidency will provide a state of play on asylum and migration files. Over lunch, ministers will discuss recent evolutions in the Western Balkans migratory route.

In the margins of the Council, the 'Schengen Council' or mixed committee at ministerial level (EU plus Iceland, Liechtenstein, Norway and Switzerland) will exchange views on the overall state of the Schengen area, with a particular focus on the management of external borders.

Press conferences:

- **Justice (Thursday +/- 15.30)**
- **Home affairs (Friday +/- 17.30)**

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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.

JUSTICE

Judicial responses and the fight against impunity in Ukraine

Ministers will take stock of ongoing work on judicial responses and the fight against impunity regarding crimes committed in connection with Russia's war of aggression against Ukraine. This includes support for the investigation and prosecution of war crimes and the other most serious crimes, as well as action to ensure the full implementation of the individual and economic sanctions adopted.

Since Russia began a war of aggression against Ukraine, the EU has been fully mobilised to ensure a response commensurate with the seriousness of the circumstances. The main initiatives in this field include a number of actions by national and judicial authorities and at EU level:

- Fourteen member states have opened criminal investigations into the alleged crimes based on personal or universal jurisdiction
- A joint investigation team (JIT) has been set up by the competent authorities of two member states and Ukraine, three other member states formally joined after. The International Criminal Court (ICC) also participates in the JIT. This JIT, which is supported by Eurojust, aims to facilitate the exchange of information and evidence and to support criminal investigations into the crimes committed in Ukraine.
- The Council has amended the mandate of the EU advisory mission to Ukraine so that it can support the Ukrainian authorities in the investigation and prosecution of war crimes.
- The EU has strengthened Eurojust's role as a coordinating body by adopting a regulation allowing the agency to preserve and analyse evidence of war crimes.
- Europol is supporting competent authorities in investigating and prosecuting war crimes by processing and analysing information.
- EU member states have provided more than € 7 million in additional financing, as well as experts, to support the ICC in its work. Member states have also provided forensic support to the Ukrainian authorities for the collection of evidence.

On the implementation of sanctions, the European Commission has set up a 'freeze and seize' taskforce to ensure the coordination and effective implementation of the measures adopted. On 25 May, the Commission adopted a proposal to extend the list of 'EU crimes' to violations of the EU's restrictive measures. On 30 June the Council requested the European Parliament's consent to adopt this decision. Following the parliament's consent, the Council intends to adopt this decision as soon as possible.

- > [Judicial responses and the fight against impunity regarding crimes committed in connection with Russia's war of aggression \(state of play\)](#)
- > [Support in the investigation and prosecution of war crimes \(background information\)](#)
- > [EU restrictive measures against Russia over Ukraine \(background information\)](#)
- > [Council requests European Parliament consent to add the violation of restrictive measures to the list of EU crimes \(press release, 30 June 2022\)](#)

Judicial training

Ministers of justice will exchange views on judicial training and its impact on access to justice in the context of the rule of law.

They will focus on how to ensure a high level of participation by judges in continuing training and share existing national measures for monitoring participation in judicial training and assessing its impact and effectiveness. Ministers will also consider how judicial training is linked to the career development of judges and whether any perceived tensions exist between the obligation to take part in training and judges' independence.

Judges play an essential role in upholding the rule of law and securing effective judicial protection. Their continued training supports efforts to improve the independence, quality and efficiency of the national justice systems.

Member states provide specialised judicial training for the members of their judiciaries through the competent bodies. In its EU justice scoreboard and the annual rule of law reports, the Commission looks into relevant developments in the area of judicial training in the member states. Moreover, through the justice programme €17.7 million were provided to support the training of justice professionals.

At EU level, since 2011 the Commission has been providing a general strategic framework for judicial training focused on EU law. The European Judicial Training Network, the Academy of European Law and the European Institute of Public Administration promote the training of the European judiciary and help consolidate knowledge of EU law.

In March 2021, the Council adopted conclusions on boosting the training of justice professionals. These conclusions welcomed the ambitious European judicial training strategy for 2021-2024 and emphasised that European judicial training should contribute to fostering respect for the rule of law and strengthening the European rule of law culture.

- > [Judicial training and its impact on access to justice \(Presidency note\)](#)
- > [Council conclusions on boosting the training of judicial professionals](#)
- > [European judicial training strategy 2021-2024 \(European Commission\)](#)
- > [Annual report: European judicial training 2021 \(European Commission\)](#)
- > [2022 EU justice scoreboard \(European Commission\)](#)
- > [2022 Rule of law report: communication and country chapters \(European Commission\)](#)

Environmental crime

Ministers will assess progress made in discussions on the draft environmental crime directive.

On 15 December 2021, the European Commission proposed a directive on the protection of the environment through criminal law. Once agreed, the new text will replace the existing directive on this topic, adopted in 2008. It will update and enlarge the list of offences covered by the directive to include new types of environmental damage, such as illegal water abstraction, illegal trade in wood or the illegal recycling of polluting boats. The new text will also harmonise, for the first time, the level of sanctions.

In addition, the proposal has a procedural component, including provisions on freezing and confiscation, limitation periods and the protection of persons who report infractions. Finally, the text covers aspects such as coordination between member states' authorities, professional training, setting up national strategies and developing a statistical tool.

In June 2022, the Council agreed on a partial general approach covering the articles and recitals defining criminal offences, and extending the number of offences from the nine that currently exist under EU criminal law to 20. Ministers also discussed the harmonisation of sanctions levels, providing guidance for further work.

During discussions at technical level, experts have made substantial progress towards a legislative text that can be supported by a qualified majority of member states. A large majority could agree to sanction levels for natural persons regarding serious and less serious crimes to be set at five and three years respectively. Other aspects relating to sanctions, including the maximum level of penalties for legal persons, remain open.

- > [Environmental crime directive \(progress report\)](#)
- > [Environmental crime directive \(partial general approach\)](#)
- > [How the EU fights environmental crime \(infographic\)](#)

European Public Prosecutor's Office

The Commission and the presidency will inform ministers about the latest developments in the functioning of the European Public Prosecutor's Office (EPPO). The European Chief Prosecutor will attend the discussion on this point.

The EPPO has the authority, under the conditions set out in the EPPO 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 started its operations in June 2021 and in its first year it opened 929 investigations, issued 28 indictments, secured 4 convictions, and was granted freezing orders for €259 million.

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

Any other business

- *Current legislative proposals*

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

- *Civil liability package*

The European Commission will present its new legislative package, issued on 28 September, on civil liability in relation to the use of artificial intelligence and liability for defective products. The AI liability directive aims to make it easier for victims to prove that someone's fault led to damage and to foster innovation in the AI sector by providing legal certainty and increasing trust. The new directive on liability for defective products aims to bring the EU's liability regime up to speed with the digital age.

- > [New liability rules on products and AI to protect consumers and foster innovation \(European Commission\)](#)

- *Data protection law enforcement directive*

The Commission will inform ministers about the first report on the application and functioning of the data protection law enforcement directive. This report presents an overview of the transposition of the directive and contains a list of recommended actions to realise its full potential.

- > [First report on the application and functioning of the data protection law enforcement directive \(European Commission\)](#)

- *Cross border protection of vulnerable adults*

The Presidency will report on the workshop on cross-border protection of vulnerable adults which took place in Brussels on 20 September

Fundamental rights in times of crises

Over lunch, ministers will exchange views on upholding fundamental rights in times of crises, in the presence of the director of the Fundamental Rights Agency. They will be asked to assess the resilience of the human rights infrastructure (in particular national institutions, the judiciary and civil society) in the face of crises. They will also consider what further steps should be taken to increase this resilience.

The current geo-political and socio-economic situation in the EU has been marked by a confluence of crises, including the COVID-19 pandemic, Russia's war of aggression against Ukraine and the climate emergency. The effects of these crises can have a profound impact on people's full enjoyment of their fundamental rights and the ability of member states to uphold these rights.

For example, during the COVID-19 pandemic, judicial independence was an essential prerequisite for the effective oversight of the legality, necessity and proportionality of the emergency measures adopted by member states. In the case of Russia's ongoing war of aggression against Ukraine, national and local authorities and civil society have joined efforts to ensure the protection of fundamental rights and meet the needs of displaced persons. This includes ensuring children's access to education, the prevention of human trafficking and exploitation and the investigation of war crimes.

Therefore, upholding fundamental rights cannot be an after-thought in crisis management, it should be embedded by design in crisis-preparedness and any related oversight mechanism.

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

HOME AFFAIRS

Schengen area

– *Overall state of the Schengen area*

Ministers will exchange views on the overall state of the Schengen area, with a particular focus on the management of external borders. They are expected to commit to concrete actions in this field with a set timeframe.

The exchange will take place on the basis of a Commission barometer, which aims to provide an overall picture of the Schengen area, and a strategic risk analysis by Frontex, which provides a projection of how megatrends and possible future events might affect EU border and migration management between now and 2032. In this regard, the Presidency prepared a discussion paper that thematically reflects both current and future challenges for external borders and Schengen area as a whole with a list of concrete actions and priorities.

Regular discussions on the state of Schengen aim to ensure better overall steering at ministerial level on matters concerning the Schengen area. To this end, a 'Schengen Council' has been set up, which has been convened on the occasion of every Justice and Home Affairs Council meeting since March 2022. This format can also be convened in the event of a crisis.

The work of the Schengen Council takes place in annual cycles. In June 2022 the Presidency set out possible priorities for this cycle on the basis of the Commission's annual report on the state of Schengen. The Council will then regularly examine the implementation of the priorities set, with a possible focus on specific areas, and identify any further measures needed.

> [Schengen Council cycle April 2022 - March 2023](#)

> [Strategic risk analysis 2022 \(Frontex\)](#)

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

– *European integrated border management*

The Council will be invited to approve conclusions on the multiannual strategic policy cycle for European integrated border management (EIBM).

The draft conclusions reiterate that the main purpose of border surveillance is to prevent unauthorised border crossings, counter cross-border criminality and take measures against persons who have crossed the border illegally. The text invites the Commission to devote particular attention to recent phenomena (instrumentalisation of migration, hybrid threats), the emergence of new smuggling methods, pandemics and armed conflicts in the EU's immediate neighbourhood.

Taking into account the political guidance by the Council contained in the conclusions, the Commission will publish its EIBM communication by the end of 2022 and, on that basis, enable Frontex to prepare a technical and operational strategy for EIBM and the member states their national EIBM strategies.

The European integrated border management concept was introduced in 2016 and further defined in the 2019 Frontex regulation. It is based on a four-tier access control model, including measures in third countries, measures with neighbouring third countries, border control measures at the external border and measures within the Schengen area. It is implemented as a shared responsibility of Frontex and the national authorities responsible for border management.

To ensure effective implementation, the Commission sets out a multiannual strategy on the basis of a risk analysis by Frontex and following discussions in the Council and the European Parliament.

Russia's aggression against Ukraine²

Ministers will discuss the situation of Ukrainian refugees in the EU and internally displaced persons, as well as the internal security implications of Russia's war of aggression against Ukraine.

On the first topic, ministers are expected assess contingency planning and efforts to ensure warm, safe and dignified living conditions during winter for Ukrainians, notably in the EU.

On the second topic, ministers will consider ongoing work to tackle the impact of the war against Ukraine on the EU's internal security. The EU Counter Terrorism Coordinator will brief ministers on the outcome of his visit to Ukraine at the end of September.

Since 24 February, EU member states have put in place reception capacities to host over 4 million people who have arrived in the EU seeking refuge from the war in Ukraine. The EU has also provided support to the most affected member states through its civil protection mechanism and EU agencies and is working to unlock additional funds to provide emergency support.

On 4 March, the Council unanimously introduced temporary protection to provide immediate and collective protection to persons fleeing Ukraine as a consequence of the war. The objective is to alleviate pressure on national asylum systems and to allow displaced persons to enjoy harmonised rights across the EU. These rights include residence, access to the labour market and housing, medical assistance, and access to education for children. Initially the temporary protection was activated for a period of one year, until March 2023, but it is expected to be automatically prolonged by two six month periods until March 2024.

EU home affairs ministers have also supported the mobilisation of the EU platform for fighting organised and serious crime (EMPACT) to help EU member states tackle criminal networks and individuals who may try to exploit the war in Ukraine. Crimes in conflict situations may include human trafficking, cyber-attacks or arms trafficking.

> [EU solidarity with Ukraine \(background information\)](#)

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

Asylum and migration³

The presidency will provide a state of play on asylum and migration files. It will present a proposal for a way forward on EU migration solidarity and crisis response, with the aim of receiving support to continue work at technical level.

The EU pact on migration and asylum proposed by the European Commission includes, among other proposals, the asylum and migration management regulation and the crisis situations and force majeure regulation. Together, they provide for a unified response in terms of solidarity and crisis. Since the reform was proposed, several major events have affected the EU: instrumentalisation of migrants, arrival of a large number of Ukrainian refugees, growing uncertainty in the volume of mixed flows along various routes and large-scale secondary movements. All these should be taken into account when shaping a common solidarity and crisis response mechanism.

In this context, the Czech Presidency has proposed a mechanism allowing for a legally binding but tailor-made and needs-based approach (a mandatory but flexible solidarity mechanism).

² Exceptionally in the presence of Schengen associated countries

³ Exceptionally in the presence of Schengen associated countries

This proposal builds on the gradual approach agreed by ministers earlier this year, which led, as a first step, to the adoption of negotiating mandates on the Eurodac and screening regulations, as well as the adoption by 21 states of a declaration on solidarity.

> [Council approves negotiating mandates on the Eurodac and screening regulations and 21 states adopt a declaration on solidarity \(press release 22 June 2022\)](#)

> [EU asylum reform \(background information\)](#)

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

Any other business

– Current legislative proposals

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

– Enlargement of the Schengen area

The presidency will inform ministers about the enlargement of the Schengen area without internal border controls, in particular the state of play in relation to Bulgaria, Croatia and Romania.

– Implementation of interoperability

The Commission and eu-LISA will update ministers on progress made on the implementation of interoperability.

Western Balkans migratory route

Over lunch, ministers will discuss recent evolutions in the Western Balkans migratory route, which has seen a large upsurge in migrant numbers this year. They will focus in particular on the visa policy of the Western Balkan region and the impact the non-alignment on visa-free regimes has on the migratory and asylum situation in neighbouring EU countries.

The Western Balkans migratory route has seen an increase of 190% in irregular border crossings in the first eight months of 2022, compared with the same period in 2021. More than 86 000 border crossing attempts were recorded in this period, with 15 900 detections in August alone.

> [EU external borders in August: Highest number of arrivals since 2016 \(Frontex\)](#)
