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OUTCOME OF THE COUNCIL MEETING

3816th Council meeting

Justice and Home Affairs

Brussels, 7 and 8 October 2021

Presidents **Aleš Hojs**
Minister of the Interior of Slovenia
Marjan Dikaučič
Minister for Justice of Slovenia

P R E S S

Rue de la Loi/Wetstraat 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu <http://www.consilium.europa.eu/press>

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CONTENTS¹

ITEMS DEBATED

JUSTICE - 7 October	4
Pre-trial detention.....	4
European Public Prosecutor's Office (EPPO)	5
Rights of the child	5
Any other business	6
– Current legislative proposals	6
– Conference on regulation of artificial intelligence	6
– Situation of members of the judiciary in Afghanistan	6
– Code of conduct on countering illegal hate speech online	7
Strategic lawsuits against public participation (SLAPP)	7
HOME AFFAIRS - 8 October	8
Situation in Afghanistan.....	8
External dimension of migration.....	9
– Migration action plans.....	9
– Migratory situation on various routes.....	9
Screening and detention at the border	10
Digital dimension of investigating child sexual abuse.....	11
Any other business	11
– Current legislative proposals	11

¹ • Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
• Documents for which references are given in the text are available on the Council's internet site (<http://www.consilium.europa.eu>).
• Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's internet site or may be obtained from the Press Office.

– Salzburg Forum ministerial conference.....	11
Implementation of interoperability	12
MIXED COMMITTEE.....	12
– Challenges of screening and detention at the border	12
– Implementation of interoperability	12
– Any other business	12

OTHER ITEMS APPROVED

– Schengen evaluations	13
– 1965 Hague Convention - Georgia's accession	13
– Blue card directive.....	14
– Europol executive director	14
– Cabo Verde - visa facilitation.....	14
– Gambia visa measures	14
– COVID-19: list of countries for which travel restrictions should be lifted.....	15

ITEMS DEBATED

JUSTICE - 7 October

Pre-trial detention

Ministers held a debate on pre-trial detention, including on detention conditions. This issue has an impact on individual freedoms and is also important for mutual trust and mutual recognition.

They focused in particular on which minimum standards for material detention conditions and procedural rights in pre-trial detention should be prioritised in order to enhance mutual trust between member states. Ministers also discussed what further actions at EU level could help to improve detention conditions or enhance the use of alternative measures to detention.

Ministers agreed that detention should be used as a last resort and highlighted the importance of alternative measures to detention. Priority areas of action highlighted in terms of minimum material standards included overcrowding, medical and psychological assistance and sanitary and hygiene measures.

Ministers considered there is no need for additional legal instruments on minimum standards at EU level as these standards are already set out in various international fora. Instead, the focus should be on a more effective application of existing standards, e.g. those laid down in the Council of Europe. A number of ministers suggested action at EU level could focus on sharing of best practices and facilitation of training. The ministers welcomed the possibilities already provided by the Commission in respect of funding for the improvement of material detention conditions, and encouraged the Commission to take further action in this regard.

[Non-paper from the Commission services on detention conditions and procedural rights in pre-trial detention](#)

European Public Prosecutor's Office (EPPO)

The Commission and the presidency informed ministers about the latest developments regarding the setting up of the European Public Prosecutor's Office (EPPO). The European Chief Prosecutor also attended the discussion on this point.

The EPPO started its operations on 1 June and is already carrying out a number of investigations in relation to cases which fall under its mandate. It has registered more than 1700 crime reports from participating member states and private parties and 300 investigations have already been open.

Work also continues in a number of areas including the adaptation of national justice systems to the EPPO regulation, the appointment of the European Delegated Prosecutors and staff recruitment.

Within the Council, work is ongoing on the relations of the EPPO with third countries and international organisations, in particular with respect to the notification of the EPPO as competent judicial authority under the 1959 European convention on mutual assistance in criminal matters.

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

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

Rights of the child

The Council acknowledged the lack of consensus on the approval of the conclusions on the EU strategy on the rights of the child. The strategy, presented by the Commission on 24 March 2021, proposes concrete actions to protect, promote and fulfil children's rights.

Children rights remain a priority and member states strongly support the main lines of action set out in the draft text, including the need to develop comprehensive policies to fulfil the rights of all children without any discrimination, to increase efforts to prevent and combat all forms of violence against children, to strengthen justice systems so that they are compliant with the rights of all children and to increase opportunities for children to be responsible and resilient members of the digital society. Nevertheless, consensus could not be reached on some of the wording in the draft text and the conclusions could therefore not be approved. The Presidency will now reflect on the way forward.

[The EU strategy on the rights of the child \(European Commission\)](#)

Any other business

– ***Current legislative proposals***

The Council took note of the information communicated by the Presidency on the current legislative proposals in the justice sector. These include the proposals on e-evidence, e-codex, assignments of claims, the alignment of EU instruments on criminal law with data protection rules and the adaptation of two annexes on the insolvency proceedings regulation.

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

– ***Conference on regulation of artificial intelligence***

Ministers received information on the outcome of the virtual conference on regulation of artificial intelligence - ethical and fundamental rights aspects (20 July 2021).

The first part of the event focused on the EU perspective and the recent proposal for a regulation on artificial intelligence. The second part of the conference was dedicated to the international perspective on artificial intelligence and the various ongoing initiatives.

[Press release on the virtual conference on the regulation of artificial intelligence \(Slovenian Presidency\)](#)

– ***Situation of members of the judiciary in Afghanistan***

Ministers were informed about the situation of members of the judiciary in Afghanistan and the measures which have been taken to support Afghan people who are at risk of persecution due to their involvement in the Afghan justice system.

– ***Code of conduct on countering illegal hate speech online***

The Commission informed ministers of the results of the sixth evaluation of the code of conduct on countering illegal hate speech online, which were published by the Commission on 7 October.

The code of conduct was drafted in cooperation with member states and agreed in May 2016 by the Commission and IT companies (Microsoft, YouTube, Facebook and Twitter) to ensure the effective countering of illegal hate speech online. Regular evaluation exercises are organised by the Commission with member states' authorities, IT platforms and NGOs to verify progress by IT platforms in countering illegal hate speech online.

[EU Code of Conduct against illegal hate speech online: results remain positive but progress slows down \(press release, European Commission\)](#)

[The EU code of conduct on countering illegal hate speech online \(European Commission\)](#)

Strategic lawsuits against public participation (SLAPP)

Before the meeting, ministers attended a working lunch to discuss the issue of strategic lawsuits against public participation (SLAPP) and the need to protect journalists from abusive litigation.

As announced under the European democracy action plan published in December 2020, the Commission is preparing an initiative to protect journalists and rights defenders against this type of abusive litigation. To contribute to the preparation of this initiative, ministers focused on national experience and good practices in fighting SLAPP, as well as on the cross border dimension of this phenomenon.

HOME AFFAIRS - 8 October

Situation in Afghanistan

Ministers took note of the information provided by the Commission, the EEAS and the Counter-Terrorism Coordinator on the situation in Afghanistan with regard to international protection, migration and security. Work is currently ongoing to implement the different strands outlined in the statement adopted by home affairs ministers at their extraordinary meeting on 31 August.

On the migration and forced displacement aspect, an updated action plan on Afghanistan was presented by the Commission and the EEAS and was reviewed by the Council at technical level on 17 September. This action plan addresses the evolving situation in the country and covers work in the areas of protection, humanitarian assistance, development support, prevention of irregular migration, protection of the external borders, returns and capacity building.

The Commission also informed about the High-level Resettlement Forum on Afghanistan held on 7 October 2021.

On the security aspect, a counter-terrorism action plan has been developed by the EU counter-terrorism coordinator in close consultation with EU member states, institutions and agencies. It includes recommendations for actions in the following areas:

- security checks to prevent infiltration of terrorists into the EU
- strategic intelligence and foresight to prevent Afghanistan from becoming a safe haven for terrorist groups
- monitoring and countering propaganda and mobilisation
- tackling organised crime as a source of terrorist financing.

Ministers welcomed the action plan as a common reference for future work.

[Afghanistan: counter-terrorism action plan](#)

[Statement on the situation in Afghanistan \(31 August 2021\)](#)

External dimension of migration

– *Migration action plans*

The Commission and the presidency informed ministers about progress on the development of action plans for strengthening comprehensive migration partnerships with priority countries of origin and transit.

In June 2021, the [European Council](#) called for action plans to be put forward in autumn 2021 and to include clear objectives, further support measures and concrete timelines. Discussions have already taken place at technical level within the Council on action plans regarding Afghanistan, Bosnia and Herzegovina, Tunisia, Niger, Nigeria and Iraq. During these discussions, member states have broadly supported the action plans and highlighted the importance of being concrete and operational.

The examination of the remaining action plans, including Libya and Morocco, is expected to take place next week.

[European Council conclusions on COVID-19 and migration \(24 June 2021\)](#)

– *Migratory situation on various routes*

Ministers exchanged views on the situation on various migration routes. They highlighted the need to continue focusing on cooperation with third countries and the protection of the EU external border. Several member states also highlighted the need to make progress on the migration and asylum pact. The EU will continue to monitor closely the situation on all routes.

The number of illegal border crossings at the EU's external borders in the first eight months of 2021 was 64% higher than one year ago when COVID-19 restrictions were in place.

The Central Mediterranean route has experienced the highest number of arrivals of all routes, with an increase also seen in Spain, in particular due to arrivals in the Canary Islands. On the Eastern Mediterranean route, the overall figure is lower than last year, although arrivals in Cyprus have increased.

New *modi operandi* have been applied, with the instrumentalisation of migration for political ends, in particular the state-sponsored organised smuggling of migrants by Belarus.

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

[Migration flows: Eastern, Central and Western routes \(infographic\)](#)

Screening and detention at the border

Home affairs ministers discussed the issue of screening and detention of migrants at the border.

In recent months the EU has been exposed to complex security and health situations which have put the spotlight on the importance of a coordinated approach to the protection of the EU's external borders. These include the COVID-19 pandemic, the recent events in Afghanistan and the developments at the Belarus border.

Ministers agreed that increased security and health challenges require swift common action. Harmonised rules on security and health checks at the external borders are essential to achieve the objective of ensuring safety within the Schengen area. However, some member states also highlighted the need to maintain a certain level of flexibility to adapt to the different nature of external borders and national circumstances.

Several ministers also highlighted the need to ensure coherence with the overall asylum reform and to work on all proposals in parallel. The Presidency concluded that the necessary solutions should be sought in the framework of the screening regulation proposal and will continue steering work to find solutions at technical level.

Digital dimension of investigating child sexual abuse

Ministers held a debate on the digital dimension of investigating child sexual abuse. They focused in particular on how access to data for competent authorities can be guaranteed in order to effectively counter these crimes. They also discussed the role of proactive measures by social media platforms, hosting services and electronic communications providers in addressing this phenomenon.

Ministers underlined the importance of ensuring the necessary level of access to data for competent authorities responsible for internal and public security. To achieve this, there is a need to closely follow developments in the different ongoing files that address and define law enforcement access to data.

Ministers also emphasised the need to find suitable ways to strengthen the role of social media, hosting services and electronic communications providers to protect children and prevent the circulation of child sexual abuse content via their services. They highlighted, in particular, the need for a legal framework in this area.

Any other business

– *Current legislative proposals*

The Council took note of the information communicated by the Presidency on the current legislative proposals in the home affairs sector. These include proposals in the fields of migration, security and Schengen matters.

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

– *Salzburg Forum ministerial conference*

The Czech Republic briefed ministers on the Salzburg Forum ministerial conference which took place on 23 and 24 June. Marking the 20th anniversary of the signing of the first Salzburg Forum joint declaration, ministers evaluated their cooperation so far and discussed the future direction of the forum.

[Salzburg Forum ministerial conference joint declaration and declaration on political guidelines](#)

Implementation of interoperability

Over lunch, ministers had an exchange of views on the implementation of the various JHA databases and the interoperability framework. The Commission informed ministers of the state of play and possible delays regarding the implementation of the entry/exit system (EES) and the Schengen information system (SIS) in particular. The Presidency concluded that following the assessment by eu-LISA a decision would be taken during the December JHA Council on the exact date for the rescheduling of the entry into operation of the EES.

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 with the creation and upgrading of a number of IT systems in the area of justice and home affairs, in particular the EES, the European travel information and authorisation system (ETIAS) and the European criminal records information system regarding third-country nationals (ECRIS-TCN).

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

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

MIXED COMMITTEE

The Council in Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) covered the following items:

– ***Challenges of screening and detention at the border***

See above.

– ***Implementation of interoperability***

See above.

– ***Any other business***

The presidency updated the Mixed Committee on the state of play of a number of legislative proposals.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Schengen evaluations

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2020 evaluation of **Liechtenstein** on the application of the Schengen acquis in the field of **police cooperation** ([12634/21](#))

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **France** on the application of the Schengen acquis in the field of **return** ([12635/21](#))

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2020 evaluation of **Cyprus** on fulfilling the conditions necessary for the application of the Schengen acquis in the field of **return** ([12636/21](#))

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **Cyprus** on fulfilling the conditions necessary for the application of the Schengen acquis in the field of **police cooperation** ([12638/21](#))

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **Cyprus** on fulfilling the conditions necessary for the application of the Schengen acquis in the field of **management of the external borders** ([12639/21](#))

1965 Hague Convention - Georgia's accession

The Council approved that the line to be taken by the EU is not to object to Georgia's accession to the 1965 Hague Convention ([12284/21](#) + [ADD1](#)).

Pursuant to Article 28 of the convention, any third state can accede to the convention. However, such accession is only possible if no objection has been made to the accession by any state which was present at the tenth session of the Hague conference of private international law and which has ratified the convention.

Blue card directive

The Council today adopted a directive establishing the entry and residence conditions for highly qualified non-EU nationals coming to live and work in the EU (the blue card directive). This EU-wide admission system aims to attract and retain highly qualified workers, particularly in sectors facing skills shortages. ([PE CONS 40/21](#) + [12025/21 ADD1 REV1](#))

Legal migration: Council adopts blue card directive to attract highly qualified workers ([press release](#))

Europol executive director

The Council adopted a decision extending the term of office of Catherine De Bolle as executive director of Europol until 1 May 2026 ([11877/21](#)).

The executive director of Europol is appointed for a four-year period, extendable once. Catherine De Bolle was appointed executive director of Europol by the Council on 8 March 2018.

Cabo Verde - visa facilitation

The Council adopted a decision to conclude an agreement between the EU and Cabo Verde amending the existing agreement on facilitating the issue of short-stay visas. ([5035/21](#), [5034/21](#)).

The amendments to the agreement would reduce visa fees, extend the categories of persons who can apply for multiple entry visas and simplify the documentation to be presented as proof of the purpose of the journey

Gambia visa measures

The Council today decided to temporarily suspend the application of certain provisions in the visa code to nationals of The Gambia. This decision has been taken due to The Gambia's lack of cooperation on readmission of third-country nationals illegally staying in the EU. ([11748/21](#))

Council adopts visa measures against The Gambia ([press release](#))

COVID-19: list of countries for which travel restrictions should be lifted

Following a review under the recommendation on the gradual lifting of the temporary restrictions on non-essential travel into the EU, the Council updated the list of countries, special administrative regions and other entities and territorial authorities for which travel restrictions should be lifted. In particular, Bahrain and United Arab Emirates were added to the list ([12521/21](#)).

[COVID-19: Council adds Bahrain and United Arab Emirates to the list of countries for which travel restrictions should be lifted](#)
