



Council of the
European Union

Brussels, 26 January 2016
(OR. en)

5481/1/16
REV 1

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NOTE

From: Presidency
To: Delegations
Subject: Draft Council conclusions on migrant smuggling

Delegations will find in Annex the text of the above-mentioned draft Council conclusions, which will be discussed during the meeting of the Justice and Home Affairs Counsellors on 27 January 2016.

Draft Council conclusions on migrant smuggling

THE COUNCIL OF THE EUROPEAN UNION,

- **ALERTED** by the high number of casualties and migrants risking death in trying to reach Europe and considering that it is estimated that in 2015 more than 1.8 million migrants irregularly entered the EU, according to European Commission sources, which represented an increase of 546% compared to 2015, and over 3.770 migrants are estimated to have lost their lives in the Mediterranean Sea in 2015;
- **EMPHASIZING** that all forms of migrant smuggling should be addressed, and that it is a serious form of organised crime which can only be counteracted through a comprehensive, multidisciplinary and cross-border approach by Member States, including law enforcement and judiciary authorities, labour, social, health and fisheries inspectorates, border forces, immigration services, local and regional governments, tax authorities, NGOs, businesses, trade unions, employers' organisations and embassies;
- **UNDERLINING** that a coherent, credible and effective policy with regard to preventing and countering migrant smuggling, which fully respects human rights and the dignity of the persons concerned as well as the principle of *non-refoulement*, is an essential part of a comprehensive EU migration policy;
- **ACKNOWLEDGING** the need to strengthen co-operation and improve capacity of Member States and relevant EU institutions, bodies, offices and agencies, where applicable, to investigate, prosecute and sanction smuggling of migrants and related offences, including through identifying, freezing and confiscating the proceeds of crime;

- ACKNOWLEDGING that smuggling of migrants and trafficking in human beings are two distinct forms of crime, tackled by distinct legal frameworks at EU and international level, but both forms of crime can be often interlinked, and acknowledging that migrant smuggling has become an increasingly violent form of crime, often involving serious physical or psychological violence and human rights abuse;
- STRESSING the need to significantly increase and improve the collection, sharing and analysis of data and knowledge about migrant smuggling, in order to develop more effective, coordinated evidence based policies;
- EMPHASIZING that since smugglers are motivated by the criminal profits they are able to make, it is essential to follow the criminal proceeds and seize the assets of the smugglers;
- RECALLING that the importance of the fight against migrant smuggling is emphasized repeatedly in different Council conclusions, in particular the Council conclusions of November 2015 inviting Member States to set up by 1 December 2015 a network of single operational contact points on migrant smuggling;
- RECALLING the EU agenda for migration of 9 May 2015, the Council conclusions of 15 and 16 June 2015 on the renewed Internal Security Strategy 2015-2020 and the EU action plan on migrant smuggling of 27 May 2015;
- RECALLING the EU Action Plan on return of 9 September 2015 which is an essential part of the EU's comprehensive efforts to address migration and in particular to enhance return, as a deterrent for irregular migration;
- RECALLING the Council of 14 September 2015 which recognized that Turkey, being a major first reception and transit country for asylum seekers and irregular migrants, is a main partner of the EU in the management of migratory flows and in the fight against migrant smuggling;

- RECALLING the outcome of the Leaders Meeting on the Western Balkans route on 8 October 2015 and the Political Declaration and the Action Plan following the Valletta Summit on migration of 11-12 November 2015, where the EU, its Member States and third countries agreed to prevent and address irregular migration and to fight related organised crime, such as migrant smuggling;
- REITERATING that the fight against criminal networks of traffickers and smugglers remains a priority and welcomes the transition to the first step of the second phase of the EU military operation in the Southern Central Mediterranean, EUNAVFOR SOPHIA, on the high seas, as laid down in point (b)(i) of Article 2(2) of Decision (CFSP) 2015/778;
- RECALLING the launch of the European Migrant Smuggling Centre within Europol, to develop a coordinated and effective law enforcement response against the organised criminal networks behind people smuggling.

INVITES MEMBER STATES to:

- Cooperate with Eurostat in collecting and sharing reliable, updated and comparable crime statistics on migrant smuggling;
- Make optimal use of the information systems in place as well as public data and all other available instruments, platforms and partnerships with social media companies to gather, cross check and share smuggling related data and use them for predictive analytics on migrant flows and consequent smuggling activities;
- Make full use of the resources offered by the Operational Action Plan on illegal immigration under European Multidisciplinary Platform against Criminal Threats (EMPACT);
- Fully participate in the EMPACT platform on migrant smuggling, and share complete information including from social media;
- Share complete information including from financial investigations rapidly and in an operationalised way complying to the requirements with Eurojust;

- Step up financial investigations in migrant smuggling cases and ensure that relevant knowledge, tools and expertise are made available to criminal investigators who have received specific training, so that investigations into migrant smuggling can be routinely, and at an early stage, accompanied by multidisciplinary financial investigations;
- Engage with the private sector, in particular the transport sector, and other stakeholders, according to their role and capacities, in an EU wide dialogue to explore the existing and needed best practices, codes of conduct and guidelines to prevent migrant smuggling and cope with associated risks, in cooperation with the European Commission;
- Create awareness on the risk of irregular migration and migrant smuggling among the general public, vulnerable groups and professionals that could come into contact with migrants subject to smuggling. These campaigns should be targeted at specific groups and contain a balanced message, possibly by using the diaspora;
- Increase both multidisciplinary cooperation within Member States and cross-border cooperation between Member States against migrant smuggling, including by increasing the number of parallel and joint investigations into migrant smuggling and stimulating multidisciplinary participation in those investigations, for example by border guards, and where appropriate including NGOs;
- Ensure that enough resources and a coherent mandate are provided to the single National Contact Points on migrant smuggling, called for by the EU Action Plan against migrant smuggling and requested by the Council in its conclusions of 9 November 2015, in synergy with existing structures, to support more effective coordination between and within Member States, in order to achieve swift and full implementation of the network.

INVITES THE COMMISSION to:

- Cooperate with Member States to advance on the implementation of the EU Action Plan against migrant smuggling and support Member States cooperation between all relevant migration, law enforcement and justice authorities, including projects aimed at removing practical obstacles, such as language barriers, between all relevant actors;
- Use all financial instruments at EU level and most notably the Madad trust fund in response to the Syrian crisis and the emergency trust fund for Africa to address the push and pull factors of migrant smuggling including a more pro-active role for the countries of origin and transit in gathering, exchanging and analysing information as well as conducting investigation and prosecuting migrant smugglers;
- Implement the network of national single contact points on migrant smuggling with the goal of ensuring a single entry point to facilitate cross-border cooperation and exchange of complete and accurate information between Member States, whilst stimulating Member States to strengthen their inter-service coordination at national level;
- Engage with the private sector, in particular the transport sector, and other stakeholders, according to their role, limitations and capacities, in an EU wide dialogue to explore the existing and develop the needed best practices, codes of conduct and guidelines to prevent migrant smuggling and cope with associated risks;
- Ensure that the implementation of the pilot projects on information campaigns about the risks of irregular migration in Ethiopia and Niger is sped up, and evaluate the pilot projects as soon as possible with the aim to roll-out information campaigns to other countries of origin and transit;
- Continue to develop and ensure the implementation of the information strategy and to engage in joint EU information campaigns on the risk of irregular migration and migrant smuggling with the Member States and relevant agencies;
- Ensure that a mapping exercise is executed on the ways in which social media are used for the purpose of migrant smuggling in coordination with the relevant agencies;

INVITES THE RELEVANT EU AGENCIES to:

- 1) Ensure through the European Migrant Smuggling Centre (EMSC) that all services working on migrant smuggling will coordinate their work, that the EMSC can act as the main formation hub and coordinating entity on migrant smuggling within Europol, and that migrant smuggling is taken up in existing platforms and units which are set up to fight organised crime, including financial crime; 2) ensure that EMSC deploy officers to increase support to Member States in need by the spring of 2016; and 3) support the enlargement of existing cooperation platforms with social media and internet service providers, as well as with financial institutions, to step up cooperation between law enforcement, migration authorities and private financial or social media companies (Europol);
- Ensure, in synergy with the work of the Internet Referral Unit of Europol, that migrant smuggling is included in existing platforms and partnerships with social media companies or that dedicated ones are created to address this issue and to ensure that public data on migrant activities on social media is used for predictive analysis on migrant flows and consequent smuggling activities and that the possibilities of using counter narratives on social media are explored;
- Ensure that all agencies, and in particular the European Police College (Cepol), carry out a mapping of existing trainings at EU and national level to identify needs and suitable solutions; continue to organise multidisciplinary training activities, including the development of risk profiles, on migrant smuggling that are open to all officials active in the fight against migrant smuggling such as police officers and other criminal investigators, immigration officers and border guards, in order to further a joint European approach (e.g. Cepol, Frontex, FRA, Eurojust);
- Assist Member States in pro-actively using financial investigations in all migrant smuggling cases, and share knowledge and raise awareness on financial investigation for the purpose of evidence gathering, mapping criminal organizations, gathering financial intelligence and identifying criminal assets, also in cooperation with third countries and including all relevant stakeholders such as relevant Financial Intelligence Units (FIUs), banking and related private entities (Eurojust);

- Ensure swift implementation of the Operational agreement between Frontex and Europol which was signed in December 2015 (Europol and Frontex);
 - Continue to support joint investigations (teams) of migrant smuggling by the EU Member States including through the cooperation in the hotspots (Frontex, Europol and Eurojust);
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