

Brussels, 10 December 2025
(OR. en)

16592/25

LIMITE

**COPEN 411
DROIPEN 162
ENFOPOL 477
MIGR 468
CRIMORG 258
FRONT 307
JAI 1881**

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council of Europe's recommendation on migrant smuggling – Commission's intention to participate in the negotiations on behalf of the Union – Note from the Commission services

Introduction

With a view to increase its counter-smuggling efforts, the Council of Europe aims to draft a recommendation on counter-smuggling. The recommendation will be a non-binding instrument (NBI) open for Union participation.

In the light of the ongoing negotiations for the Facilitation Directive¹, the Commission considers it appropriate for the Union to participate in the negotiations leading to the adoption of the recommendation. The Commission proposes that the Union will be represented by the Commission.

¹ Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA (see Commission proposal in ST 16149/23 + COR 1 + COR 2; see Council General approach in 16910/24).

In line with the applicable arrangement for non-binding instruments, the Commission has drafted a note, which is set out in the Annex.

The Presidency shares the view of the Commission that it could be in the interest of the Union to enter into the negotiations leading to the adoption of the recommendation. It seems also appropriate that the Commission represents the Union in this process.

Question for Member States

Member States are invited to indicate if they agree that the Commission should be authorised to enter, on behalf of the European Union, into the negotiations leading to the adoption of the recommendation.

If Member States agree, Coreper/Council will be invited to confirm that it is in the interest of the Union to negotiate the recommendation, and to authorise the Commission to conduct the negotiations on behalf of the Union.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Directorate C – Migration & Asylum
C.4 – Migration Management Response and Counter-Smuggling

Brussels
HOME.C.4.002/EGV

NOTE FOR THE ATTENTION OF THE COUNCIL SECRETARIAT

Subject: Commission’s intention to enter into discussions on behalf of the EU on a Council of Europe’s recommendation on migrant smuggling

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REMARKS:

Countering migrant smuggling is a key migration priority for the Commission and the EU Member States. In November 2023, the Commission launched the Global Alliance to Counter Migrant Smuggling as a platform for concrete and coordinated counter-smuggling action. At the same time, the Commission undertook to update its legal framework with a proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol’s support to preventing and combating such crimes ⁽¹⁾; and a proposal for a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union ⁽²⁾. The latter is set to replace the current Facilitators Package ⁽³⁾ and to provide the new EU criminal law framework on countering migrant smuggling.

⁽¹⁾ COM(2023) 754 final.

⁽²⁾ COM(2023) 755 final.

⁽³⁾ Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

The Council of Europe has recently undertaken to increase its counter- smuggling efforts. In 2023, it commissioned a report assessing the need for and feasibility of a possible Council of Europe instrument on migrant smuggling. In 2024, the study concluded that ‘the debate about a new instrument against the smuggling of migrants does not necessarily and immediately imply the development of a legally binding international document’. In the November 2024 Plenary Meeting, the European Committee on Crime Problems (CDPC) decided to propose to the Committee of Ministers the drafting of a recommendation, also in view of concerns about avoiding negotiations in parallel with the Commission's Proposal for a Facilitation Directive ⁽⁴⁾. Moreover, the CDPC proposed the establishment of a sub-committee/expert working group to assist in the preparation of the recommendation.

Discussions on the recommendation are set to start in January or February 2026 (date tbc) and the drafting process is expected to be completed within a period of two years. It was proposed that the criminal law aspects be postponed to better accommodate the outcomes of the negotiations on the EU Directive, and that the initial stages focus on human rights, protection issues and international cooperation. This was confirmed at the 26 June 2025 meeting of the Coordinating committee in the area of police and judicial cooperation in criminal matters (CATS).

The recommendation is a non-binding instrument open for Union participation. Having legislated on countering migrant smuggling and being a party to the UN Protocol against the Smuggling of Migrants, it is appropriate for the Union to participate in the instruments and therefore also in the negotiations leading to its adoption, where the Commission would represent the Union. Considering that the negotiations on the revision of the Facilitation Directive are ongoing, and that all EU Member States are also Council of Europe Member States, avoiding parallel negotiations is crucial. It is also very important to ensure the coherence and consistency between the recommendation and the EU *acquis* and policies. The Commission considers that the Union should engage in the initiative with the aim of ensuring as much as possible such coherence and consistency.

WAY FORWARD

For the EU to join the discussions on the recommendation, and to possibly endorse its text, prior use of the procedure of Non-Binding Instruments (NBI) is required ⁽⁵⁾. The Commission hereby informs the Council that it intends to join the initiative on behalf of the EU and to hold discussions in line with existing EU legislation and policies on counter-smuggling, and in close coordination with the European External Action Service. The recommendation will have no impact on existing policies or other legal implications, as it is considered a non-legally binding instrument (NBI). It does not entail any financial commitment from the EU's budget.

⁽⁴⁾ COM(2023) 755 final.

⁽⁵⁾ “Arrangement for Non-Binding Instruments” signed by the Secretary General of the Commission, the Secretary General of the Council, and the Secretary General of the EEAS, December 2017.