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**NOTE**

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From:	Presidency
To:	Council
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Subject:	Migration crisis : aspects of judicial cooperation and fight against xenophobia - progress report

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During the Council (JHA) on 9 October, Ministers were invited to endorse actions related to judicial cooperation and the fight against xenophobia, set out in document 12372/15, which were defined as priorities to tackle the migration crisis.

The Ministers confirmed the approach proposed by the Presidency and the defined priorities so that human and financial resources could be allocated and increased accordingly.

The current document sets out a progress report on these actions.

## **1. Support to coordination and cooperation measures**

### **1.1 Making best use of Eurojust's capacities: facilitating investigations, hotspots and cooperation with third countries**

Eurojust set up its thematic group on 29 September 2015 which will work in close cooperation with specialised prosecutors in the Member States to address the legal, judicial, operational and practical challenges faced in the investigation and prosecution of illegal immigrant smuggling and to enhance judicial cooperation, including with third States.

The thematic group is currently working on four strands:

- collecting and analysing selected national case-law on illegal immigrant smuggling to identify legal difficulties as well as gathering and sharing best practices;
- preparing a chart on the applicable legal framework at EU and international level on migrant smuggling;
- mapping the definition of illegal immigrant smuggling, and or closely related crime-types;
- organising the first Eurojust tactical meeting on illegal immigrant smuggling on 4-5 February 2016 (date to be confirmed).

The main goal of this first meeting is to promote an exchange of views amongst national prosecutors and Eurojust on obstacles, best practices and solutions that can help overcome some of the challenges faced at national level in the prosecution of this serious crime-type, as well as specific judicial cooperation issues in relation thereto.

In 2015, Eurojust's casework in the field illegal immigrant smuggling increased considerably to 51 cases so far in comparison to a total of 32 cases in 2014. So far 2 new joint investigation teams have been set up, 6 joint investigation teams are active in illegal immigrant smuggling cases from previous years. The number of coordination meetings has considerably increased by 6 so far (total 16) in comparison to a total of 10 coordination meetings in this crime area in 2014.

A Letter of Understanding was signed on 1 October 2015 between Eurojust and EUNAVFOR MED and Eurojust has been informed on the guidelines between the Italian competent national authorities in the Hotspot and EUNAVFOR MED on how to best cooperate in practice to capture and dismantle illegal immigrant smugglers and networks.

Regarding the hotspot in Italy, Eurojust supports the Operational Frontex Regional Team (OFRT) in Catania in facilitating mutual legal assistance requests and in coordinating between Member States' national authorities, also in cases involving third countries. Information related to illegal immigrant smuggling is collected by the Direzione Nazionale Antimafia e Antiterrorismo (DNAA). The DNAA Coordinator is also appointed as Eurojust's Contact Point on illegal immigrant smuggling, and is regularly present in the hotspot and channels relevant information to the Italian Desk at Eurojust for judicial follow up and coordination at EU level. On 1-2 October 2015 the President of Eurojust travelled to Rome and Catania accompanied by the Eurojust Italian representative to meet with the Italian Minister of Justice, the National Anti-Mafia and Counterterrorism Prosecutor, the Prosecutor General of the Supreme Court, the Deputy Prosecutor DNAA and the Eurojust contact point for the Hotspot in Catania, representatives of EUNAVFOR MED, representatives of the Prosecution Office of Catania, representatives of the OFRT and visited a reception centre in Syracuse.

Regarding the hotspot in Greece, two Greek prosecutors from the Court of Appeals of Piraeus have been appointed as the Eurojust's Contact Points in the hotspot and they are in close cooperation with the Greek Desk at Eurojust. By having judicial contact points present in Piraeus, Eurojust is kept informed in real time of any information which might require the use of Eurojust's operational tools, i.e. coordination meetings or centres or the setting up of a joint investigation team. The President of Eurojust and the Greek National Member are planning a mission to the Hotspot on 14-16 December 2015.

The College of Eurojust is discussing the posting of liaison magistrates to third states, in particular the role of such liaison magistrate and the criteria for selecting countries, and other ways to step up cooperation with third states.

In relation to the MENA (Middle East and Northern Africa) region, Eurojust contact points have recently been nominated in Algeria, Jordan, Lebanon, Palestinian Authority, Saudi Arabia and Iraq, in addition to those already appointed in Egypt, Israel and Tunisia.

## **1.2 Meeting of the Member States' liaison magistrates in a number of relevant countries**

A list of liaison magistrates from Member States was drawn up and sent to the Member States (doc. 14159/15) for verification. It will be updated every 6 months. Given the low number of liaison magistrates in Turkey, it was decided not to organise a meeting of these magistrates in Turkey but alternatives are being examined, for example gathering national central authorities dealing with MLA and focus on the cooperation with MENA countries in matters of migrant smuggling.

## **1.3. Training on tackling migrant smuggling for prosecutors and judges from Member States, but also with those of Western Balkans and MENA countries**

EJTN's Programme of Activities in recent years has widened its training offer to include the fields of asylum law and trafficking of human beings and in 2016 the following 9 training activities addressing up to 400 judges and prosecutors from all EU Member States will be organised:

1. *EJTN Judicial Training on EU Asylum Law, 17-18 November 2016, Helsinki (FI)*
2. *International judicial cooperation in criminal matters in practice: EAW and MLA simulations – application in the field of THB and Smuggling of Human being, 9-11 March 2016, National School of Judges, Thessaloniki (GR)*
3. *Religious Pluralisation – A challenge in Criminal matters; 11-15 April 2016, German Judicial academy - Wustrau, (DE)*
4. *Countering migrant smuggling: towards a more comprehensive approach; 19-20 May 2016 ERA Trier (ERA)*
5. *Human trafficking and crimes related to refugees; 21 April 2016, Judicial academy Prague (CZ)*
6. *International Trafficking in Human beings, 3-6 July 2016, German Judicial academy Trier, (DE)*
7. *Trafficking in Human beings (TBC), 24-25 October 2016, SSR Utrecht (NL)*
8. *Language Training on the vocabulary Human rights EU law (module on current challenges of immigration and asylum – 1<sup>st</sup> edition), 14-18 March 2016, Lisbon (PT)*
9. *Language Training on the vocabulary Human rights EU law (module on current challenges of immigration and asylum – 2<sup>nd</sup> edition), 16-20 May 2016, (BG)*

Furthermore, EJTN cooperates with the Council of Europe on training modules related to hate crimes, as well as with the Max Plank Institute on matters relating to cultural diversity.

On 24 November 2015, EJTN created an ad-hoc group to identify the further training needs in the area of judicial response to migration challenges.

EJTN's 2016 Programme of Activities has been adopted upon the needs identified and expressed by its Members. This implies that all the funds are already allocated and that any additional activity to be foreseen for 2016 should be financed through external means.

## **1.4 Prioritising the issue of migrant smuggling at the Consultative Forum of December 2015**

The Consultative Forum to be held on 11 December 2015 will address the issue of migrant smuggling on two points: it will be informed of the latest initiatives at EU level intended to address the current migration crisis as well as of the actions taken by Eurojust in this realm and the Forum members will be invited to report mainly on challenges faced in this field at national level and the state of play in relation to the subject with a view to presenting conclusions on the topic.

## **2. Fight against hate speech, hate crime and xenophobia**

### **2.1. Improving the investigation and prosecution of hate crime**

The implementation of Framework Decision 2008/913/JHA on combating racism and xenophobia by means of criminal law by the Member States is ongoing and closely monitored by the Commission.

In the conclusions of the Annual Colloquium on Fundamental Rights - “Tolerance and Respect: Preventing and Combating anti-Semitic and anti-Muslim Hatred in Europe” (1-2. October 2015), the Commission announced several actions, including making available to Member States targeted funding for projects aimed at better implementing legislation on racism and xenophobia, in particular through training of judges, prosecutors and police, as well as a compilation of best practice guidance for Member States contributing to the effective implementation of EU legislation on combating hate crime at national level. The latter will build on the work done by the Commission since 2010 within the Expert Group on the implementation of Framework Decision 2008/913/JHA on combating racism and xenophobia by means of criminal law, with a focus on best practices in investigation, prosecution and related issues, including combating online hate speech. The compilation of best practice guidance will be finalised within the new High Level Group on Racism, Xenophobia and other forms of Intolerance, which the Commission is setting up as a follow-up to the Colloquium.

The last meeting of the above-mentioned Commission Expert Group was held on 16 November 2015.

Furthermore, as an immediate follow-up of the Colloquium, on 27 November the Commission published a call for proposals under the Rights, Equality and Citizenship Programme. It will award €5.4 million to projects on: training and capacity building to strengthen criminal responses to hate crime and hate speech; exchanging best practices to prevent and combat all forms of intolerance; empowering and supporting victims of hate crime and hate speech<sup>1</sup>.

## **2.2. Improving the reporting and recording of hate crime and developing a methodology and indicators for recording and data collections in these matters**

The third meeting of the Working Party on Improving Reporting and Recording of hate crime in the EU, organized by the FRA was held on 23-24 November 2015, focusing on the compendium of "Member States' promising practices in the area of recording and reporting of hate crime." Such compendium is intended to be finalised at the next Working Party meeting taking place on 28-29 April 2016 in Amsterdam, where a methodology for data collection and recording will also be discussed.

## **2.3. Developing the dialogue with Internet providers, social media and platform to ensure that the Internet does not become a public support for xenophobia statements and hate speech**

During October and November the Commission initiated discussions with the main Internet Companies about problems definition, data and work strands to achieve progress on countering hate speech online.

The 9th meeting of the Commission's Expert Group on Framework Decision 2008/913/JHA on combating racism and xenophobia by means of criminal law on 16 November 2015 focused on online hate speech legislation and on the key role played by civil society.

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<sup>1</sup> [http://ec.europa.eu/justice/grants1/calls/2015\\_action\\_grants/just\\_2015\\_rrac\\_ag\\_en.htm](http://ec.europa.eu/justice/grants1/calls/2015_action_grants/just_2015_rrac_ag_en.htm). As a result of last year's call for proposals, financial support has been awarded to a number of projects including "Research, Report, Remove" and "eMORE", which both focus on monitoring, mapping and the removal of online hate speech.

On 23 November 2015 COM organised a high-level coordination meeting with Member States to exchange experiences from national dialogues with industry and to establish common goals and define the scope for the EU level dialogue on tackling illegal hate speech online, in full compliance with the right to freedom of expression.

COM also informed that the hate speech specific dialogue will use the umbrella of the EU Internet Forum, when appropriate, to maximize synergies and join efforts, develop mutual learning and avoid any overlap. Full use should be made of the Radicalization Network sub-group, RAN @.

On 15-16 December 2015, Austria together with FRA will organise a workshop entitled "Developing a Toolbox for Communication Strategies", in Vienna. This workshop aims to contribute to ongoing efforts at EU and national level to develop communication strategies in order to foster inclusion, respect and tolerance."

#### **2.4. Fostering cooperation as regards the assistance to victims of hate crime and ensure the protection of children and vulnerable groups.**

In order to ensure an effective implementation of the new Victims Directive 2012/29/EU, which entered into application on 16 November 2015, the Commission will provide for supporting measures such as expert meetings and exchange of good practices, including project funding. The Directive takes an individual approach, requiring competent authorities to assess each victim's individual protection needs, and also a clear child-sensitive approach in all dealings with child victims.

With a view to fostering coordination and ensuring the protection of children in migration, on 9 November 2015 an informal meeting took place between the Commission and key International Organisations (UNHCR, UNICEF, IOM, ICRC) and NGOs to discuss child protection needs and identify priority actions. The Commission intends to convene such operational meetings with civil society regularly and involve the Member States in concrete follow-up actions, where relevant.