



Eurojust meeting on illegal immigrant smuggling

Eurojust, The Hague, 15 June 2017

OUTCOME REPORT



Introduction

The meeting on illegal immigrant smuggling (the meeting), organised and hosted by Eurojust in The Hague, took place on 15 June 2017, under the auspices of the joint Presidencies of Malta and Estonia.

The participants included practitioners from the Member States, Norway and the USA, as well as representatives of the European Commission, the European External Action Service, EUNAVFOR MED, Europol, and FRONTEX.

The principal aim and focus of the meeting was to strengthen the fight against illegal immigrant smuggling (IIS), promote the judicial dimension at an early stage of the smuggling scam, and enhance judicial cooperation at EU level. The concept of the meeting was to provide a judicial perspective, reflecting the smuggling route from countries of origin and transit towards destination countries. The **first plenary session** was devoted to the work of key EU partners in fighting IIS beyond EU borders and the challenges faced. The **second plenary session** focused on specific problems at the external borders and on the collection of data/evidence. The **third plenary session** underlined obstacles and solutions in relation to judicial cooperation, with emphasis on the specific challenges faced at national level. The **fourth plenary session** highlighted the work of Eurojust in the fight against IIS.

1. Opening session

The *Vice-President of Eurojust* and *Chair of the Thematic Group on illegal immigrant smuggling at Eurojust* highlighted the importance of the meeting as a forum to foster a common and effective judicial response to IIS.

The *Deputy to the National Member for Malta* stressed the international dimension and seriousness of the crime and referred to the [Valletta Summit](#) as a pivotal moment in Europe's fight against IIS and a way to foster effective cooperation between the relevant stakeholders.

2. Plenary sessions

2.1. *First session – From countries of origin to first contact with EU law enforcement agencies: What can be done to strengthen the judicial dimension?*

The *European External Action Service (EEAS)* pointed out difficulties in cooperation with the local authorities of countries of origin and transit, stemming mainly from the lack of incentives for them to cooperate. Irregular migration poses a threat to EU security, or at least many citizens perceive it as such. The joint investigation team (JIT) was presented as a way to bridge the gap between Member States and third States. Crisis Management could valuably take into consideration judicial components such as ensuring forensic capability and promoting criminal investigations. Cooperation with military operations and [EUROGENDFOR](#) was underlined. In this context, the civil/military overlap was mentioned as posing a number of specific challenges. Further challenges also stem from the way information is gathered at EU level and how it can be used in judicial proceedings at national level. Eurojust's role in the planning phase of Common Security and Defence Policy (CSDP) missions would be valuable. In this context, the ongoing initiative for closer cooperation between EEAS and Eurojust

should help reflect the judicial dimension in CSDP missions in the future, particularly in their planning phase.

[EUNAVFOR MED](#) noted the cooperation with other agencies, including FRONTEX, NATO, and NGOs operating in the Mediterranean. In 2016, two additional supporting tasks were assigned: capacity-building and training of the Libyan Coast Guard and Navy, and contributing to information-sharing and implementation of the UN arms embargo on the high seas off the coast of Libya. The importance of training of the Libyan Coast Guard and Navy was outlined as a way to save lives and also to allow the Libyan authorities to enforce national jurisdiction in their territorial waters and beyond over criminal activities taking place in Libya. As a consequence of the training and enforcement of jurisdiction, Libyan political stability will be strengthened. Italy is currently the only country prosecuting migrant smugglers and human traffickers coming from Libya. Therefore, cooperation with Italy is essential.

Acts performed or documents produced by non-Italian EUNAVFOR MED Units are submitted to the Italian judicial authorities and may be shown at trial under article 234 of the Italian Criminal Procedure Code if they represent facts or situations (e.g. videos, photos, audio registrations), but not if they contain assessments, because this authority rests with the police. Further, Italian warships' commanders are vested under Italian domestic law with investigative and police powers, enabling them to start criminal investigations at sea and report directly to the Public Prosecutor's Office as a best practice. Nonetheless, acts performed or documents produced by EUNAVFOR MED Units, whether Italian or not, may always pave the way or stimulate further investigations by judicial authorities. As a possible response to the new phenomenon in Libya in which migrants are subjected to systematic and targeted exploitation and violence, EUNAVFOR MED highlighted that i) sharing information between all actors involved and ii) considering crimes against migrants in Libya as crimes against humanity, thus allowing their prosecution by virtually all countries in the world under the universal jurisdiction principle, could be conducive to a sustainable and credible judicial response. Dedicated *fora* should be utilised in such a way as to attain efficiency. To this aim, EUNAVFOR MED is developing the First European Observatory on Human Traffickers and Migrant Smugglers.

2.2. *Second session – Front-line EU agencies: How to transfer intelligence to judicial proceedings?*

[FRONTEX](#) outlined that, as the migration influx is not close to an end, the *modus operandi* of organised criminal groups (OCGs) are constantly being adjusted. As a response, FRONTEX saw its capacity to process personal data for the purpose of detecting, preventing and prosecuting crime extended; multi-purpose operations are being set up and the ability to cooperate with Eurojust is now explicitly mentioned in the new FRONTEX Regulation, which entered into force in October 2016. The mandate also expanded to explicitly cover terrorism. These developments are expected to enhance information flows with relevant partners. From a Eurojust perspective, such developments could possibly also allow for the detection of links with current investigations and prosecutions or even suggest the initiation of an investigation in a given Member State. The process is ongoing and should lead to the signature of a Working Arrangement between Eurojust and FRONTEX. The EU Policy Cycle/EMPACT has been mentioned as the possible platform for the enhancement of collaboration between FRONTEX, Europol and Eurojust with the strong participation of Member States, as several Operational Actions and Joint Action Days involve all the actors and seek to investigate OCGs involved in IIS. A best practice was outlined in relation to the posting of Italian Liaison Officers on vessels deployed under the

auspices of Operation Triton to allow, *inter alia*, the collection of evidence and the securing of the chain of custody.

[EUROPOL](#) outlined the role of JOT MARE, established in March 2015 under the auspices of EMPACT, and which looks specifically into large-capacity vessels involved in IIS. The decision to consolidate existing mechanisms within Europol led in February 2016 to the establishment of the European Migration Smuggling Centre ([EMSC](#)), the main objective of which is to deliver quality support and assist in the coordination of cross-border anti-smuggling operations. Financial investigations remain key, and a dedicated structure to support practitioners, [FIU.net](#), has proved instrumental in this respect. Unaccompanied minors at risk of exploitation in the European Union remains an intelligence gap for Europol, as cases may still be under-detected and/or under-reported.

Another trend reported by Europol was the increased use of social media. Europol highlighted the increasing use of social media to facilitate IIS, so-called 'e-smuggling'. The majority of smuggling services advertised are contained in several key categories, with transportation into Europe and false documentation topping the list. Furthermore, increasingly sophisticated and specialist illegal services have been offered, such as the facilitation of sham marriages and comprehensive package offers claiming to be able to address education or work permits. The role that the Hotspot approach plays in the fight against illegal immigrant smuggling was outlined. Hotspots facilitate close cooperation and the exchange of information with EU agencies and actors on the ground. Challenges include a focus on individual cases rather than a network approach, the lack of information-sharing, which leads national police and judicial authorities not always being fully aware of the latest developments occurring in the field, and links with other Member States often not being effectively sought. EUROPOL acknowledged that the judicial dimension needs to be involved at the early stage of an operation. A best practice was presented, whereby via a '*sub-delega*', the Italian prosecutor entrusts the police to investigate and a sub-authorisation is granted to Europol. Eurojust was invited to actively provide support in the field through JITs, trainings and operational meetings, as well as using the momentum to establish a presence in the Hotspots.

2.3. *Third session– Examples of judicial cooperation obstacles and solutions*

The representative from Ireland introduced Operation Vantage. Irish authorities faced a huge influx of female EU citizens travelling to Ireland to get married to non-EU citizens. The primary motive for the marriages was to place the new husband in a position to claim certain EU rights, primarily that of residence. While a new amendment of the Civil Registration Act allowed the Registrars to object to such marriages and notify the Irish Naturalisation & Immigration Service (INIS), unlike many other Member States, the act of entering into a sham marriage is not a crime of itself in Ireland. As a result, only ancillary offences could have been prosecuted (such as conspiracy, deception, fraud and forgery). The amendment was an effective tool in undermining the phenomenon, but not, of itself, in prosecuting the facilitators. The Irish desk at Eurojust was consulted, ultimately leading to a series of coordination meetings at Eurojust, involving eight Member States, encompassing effective intelligence exchange with Europol. The case was emblematic of successful international cooperation, enhancing domestic investigations and effectively disrupted the OCG and the criminal phenomena itself. The operation has led to a total of 43 persons arrested with multiple charges and several convictions in Ireland to date.

An *Italian* representative presented a complex investigation by the Prosecution Office of Como into an OCG involved in IIS. The Italian investigation uncovered a significant number of Syrian citizens

residing in the District of Como, using *passeurs* of various nationalities to transport migrants (who would pay up to EUR 500 to be illegally transported to the destination countries) from Italy across Hungary to Austria and Germany. Cross-border investigation raised issues such as establishing the jurisdiction to prosecute and the principle of *ne bis in idem*. The assistance by Eurojust and Europol was instrumental. Eurojust facilitated effective judicial cooperation, exchange of information and enforcement of the Letters of Requests and European Arrest Warrants. Europol ensured police assistance and analytical support. The investigations led to 18 arrests in four Member States and to criminal action against 21 individuals, with 19 of them already serving their sentences.

The *Maltese* representative outlined issues Malta is facing, mainly with abuse of the asylum system. He emphasised the need for controls at external borders of the Schengen countries and the importance of information sharing via the Schengen Information System. The representative highlighted the main challenges in investigating and prosecuting illegal immigrant smuggling cases. Technology has changed the face of migration. The speed and effectiveness of today's communication channels, with the accessibility and availability of internet and social media, has transformed the nature of smuggling networks and thereby has facilitated migration. The investigating authorities need to take this aspect into account and adjust their strategy. Two cases were presented, highlighting the key challenges faced in prosecution of smugglers, including gathering and preservation of evidence and jurisdiction issues.

Representatives of the *French Ministry of Justice* and the Douai Court of Appeal jointly presented the situation in France and the steps taken as a response to the fight against IIS. The representative of the French Ministry of Justice noted the structures of OCGs engaged in IIS and highlighted the high rate of judicial response to acts of IIS. Links between IIS and other types of criminality, such as THB, drug trafficking and ordinary criminality, were also mentioned. Examples of reinforced international cooperation were given, among which were the establishment of joint investigation teams (JITs), support to the Task Force of the North Sea, and the publication in 2015 of a ministerial instruction outlining a prosecutorial strategy. The objective of the ministerial instruction is to encourage prosecutors to provide a global and holistic judicial response to IIS. Finally, the role of a UK liaison magistrate specialised in IIS and human trafficking, whose role is to reinforce coordination and judicial cooperation with the UK on specific cases, was described as very positive.

The representative of the Douai Court of Appeal focused on the initiatives taken on national and international levels in northern France. Although the dismantling of the Calais camp reduced the number of migrants in that area, it brought about a new challenge, namely the deportation of smugglers, which made the control and investigation of the OCGs more difficult. Regional and international mechanisms were highlighted as means of cooperation among judicial authorities. At international level, the strengthening of judicial cooperation with other Member States and EU agencies was noted. Of particular interest, the Task Force on IIS in the North Sea region (the Task Force) was presented as a successful way to cooperate. The Task Force is composed of judges, prosecutors and investigators from France, Belgium, the UK and the Netherlands. The main goals are to detect as early as possible the cases that can be investigated at international level and to agree on a common prosecutorial strategy using the expertise of Eurojust and Europol at an early stage. The presentation concluded by indicating some of the main objectives for the judiciary: i) to identify at an early stage IIS cases that should be investigated at international level, ii) to approach Eurojust and Europol at an early stage of the investigations, iii) to address legal issues, and (iv) to better coordinate the operational focus in different countries, such as EAWs or financial investigations.

The representative of the *Western District Prosecutor's Office in Estonia* explained that Estonia is mostly a transit country for migrants. The presentation showed the routes used by illegal immigrants and outlined the increase in the number of illegal border crossings since 2008. The approach to prosecuting illegal immigrant smugglers has changed; prosecutors are now trying to prosecute under THB due to most suspects being part of an OCG arranging the illegal transfer of the migrants. Challenges in the investigation of illegal immigrant smuggling cases such as identifying victims, the preservation of evidence, identifying the entire chain in the OCGs, the seizure of the proceeds of crime, as well as issues related to jurisdiction were underlined by the speaker. One challenge is that a change in domestic legislation in one Member State may have negative repercussions in other Member States. Such change in legislation may be conducive, for example, to engaging in forum shopping.

The representative of the *Court of First Instance, Heraklion, Crete, Greece*, provided an overview of the current migratory situation in Greece. The *modus operandi* of the OCGs was explained. In the framework of a case in Heraklion, specific challenges were noted. They include difficulties faced by the judicial investigations, including difficulties in interception at sea, insufficient cooperation between European countries and third States, delays in exchange of evidence even between authorities of the Member States, difficulties in identifying the leaders of OCGs (by means of fingerprints or images), telephone interception, particularly in the Hotspots, as well as lack of official translators and the use of 'Hawala' banking, which makes financial investigations more difficult. The key is to enhance cooperation between Member States and EU agencies, and promote the constant exchange of information at judicial level.

2.4. *Fourth session – Role of Eurojust in the fight against IIS*

[EUROJUST](#) noted a sharp increase in the number of cases referred to Eurojust in 2015 and 2016, with a total of 60 and 65 such cases, respectively, as opposed to an average of 30 in the three preceding years. The first half of 2017 shows a decrease in numbers. These figures, however, are not commensurate with the migration crisis and the number of cases of facilitation of illegal entry associated with it. In this context, Eurojust emphasised the importance of early international cooperation, parallel financial investigations and seizure and confiscation of the proceeds of the OCGs, and reiterated the list of existing tools available to support practitioners, notably the organisation of coordination meetings and the setting up of JITs. In this respect, the Secretary of the JITs Network Secretariat noted two practical challenges encountered in establishing a JIT: the lack of a timely investigation and the difficulty in hosting a JIT with a large number of Member States. A possible solution was suggested: the development of practical guidelines for practitioners highlighting issues specific to IIS to enhance JITs in this crime area as a method of increasing the volume of JITs to tackle IIS.

3. Conclusions

At the close of the meeting, participants agreed on the following points:

1. emphasising that fighting IIS is a priority of the EU policies in the JHA area;
2. recognising that IIS affects all Member States in different degrees and forms, and that it requires a cross-border response due to its cross-border nature;

3. stressing the need for an efficient and effective judicial response, especially to dismantle the OCGs behind IIS; and
4. recognising the present relatively low number of IIS cases referred to Eurojust by national authorities.

Participants further agreed that, to increase the operational response, special attention should be devoted to:

1. recognising the special challenges of prosecuting IIS and the need for special prosecutorial strategies;
2. emphasising the need to **dismantle and prosecute the entire OCG** as opposed to only prosecuting at national level;
3. recognising the cross-border nature of IIS; participants highlighted the need for **cooperation between Member States and third States**. Here, the cooperation with the EEAS should be enhanced;
4. some of the **challenges in investigating and prosecuting IIS**, including identifying the structure and individuals in the OCGs, gathering and preservation of evidence, *ne bis in idem* and establishing the jurisdiction to prosecute, preventing **forum shopping**, and minimising the risk of abuse of legal means to get undue benefits, e.g. sham marriages and misusing asylum procedure;
5. **the need for early information/intelligence-gathering and raising awareness** of the specific requirements in the context of CSDP operations and beyond, with particular emphasis on the **collection, preservation and admissibility of information/evidence**;
6. promoting appropriate **information exchange** between EU actors operating in sensitive areas and countries at risk and national authorities to help identify possible **links** to existing cases in other Member States and at Eurojust, allowing Eurojust to facilitate further judicial cooperation;
7. promoting **enhanced cooperation with EUNAVFOR MED, Europol and specifically the EMSC and FRONTEX**, particularly to improve the early identification/triggering hits on relevant cross-border investigations or cases, and to provide effective assistance and analytical support;
8. further developing, within the limits of its mandate, its external relations with third States and international organisations; and
9. supplementing the existing JIT model agreement with specific guidelines to facilitate the use of **JITs in the fight against IIS**.



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