



Brussels, 18 September 2015
(OR. en)

11898/15

LIMITE

**JAI 646
CATS 80
ASIM 84
COPEN 241
FREMP 188
JAIEX 69**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	11782/15
Subject:	Migration crisis : aspects of judicial cooperation and fight against xenophobia - Preparation of the Council meeting (Justice Ministers)

The response to the migration crisis is multi-faceted and includes actions to be taken by the judicial authorities. This follows already from the EU Action Plan against migrant smuggling¹ and the Presidency announced in its paper to the Council of 14 September 2015 that the Justice Ministers would address issues of operational cross-border coordination between prosecution services, Eurojust contribution on migrant smuggling, judicial cooperation with third countries and the fight against hate crime and hate speech (in particular on-line)².

The current paper sets out a number of possible actions to be examined in view of the debate and endorsement by the Ministers of Justice at the Council meeting of 8-9 October.

¹ See doc. 9345/15.

² Doc. 11782/15, paragraph 53.

- Making best use of Eurojust’s capacities to facilitate investigations and prosecutions related to illegal irregular immigrant smuggling and other related crimes.

Following the request of the Consultative Forum in December 2014 and in line with one of the recommendations from the EU Action Plan against migrant smuggling 2015-2020, Eurojust is currently setting up a **thematic group on migrant smuggling**. The thematic group will have three objectives: (i) support and needs of prosecution, (ii) identifying and analysis of the obstacles regarding prosecution, (iii) improving the use of the EU legal instruments and the shortcoming of these instruments. The thematic group should be to set-up rapidly providing support to practitioners and exchange best practices. To do this properly, the appropriate additional funding should be made available in the Eurojust 2016 budget.

Member States could also be encouraged to task one or more **magistrates specialised** in coordinating and supporting the cross-border aspects of tackling migration smuggling. These experts could convene, within the framework of the Eurojust thematic group, to discuss cases but also to look at tactical and strategic issues to be resolved in this area and exchange good practices. Where relevant, the good practices could be collected and distributed more widely to other practitioners on the subject.

- Hotspots

Eurojust supports the frontline Member States by participating in the “Hotspots” and coordinates its efforts with relevant EU agencies. Currently, Eurojust participates in the Hotspots in Italy (Catania) and Greece (Piraeus) and its further participation in other Hotspots should be strengthened by helping prosecutors on the ground. In this framework, Eurojust should further support host Member States by providing for coordination with other Member States and by assisting, where appropriate, in the setting up of Joint Investigation Team (JIT).

➤ Eurojust cooperation with third countries

Eurojust could as soon as possible decide about **sending a liaison magistrate** to one or several key third countries with which cooperation needs to be improved as regards migrant smuggling. Different types of posting (short term missions, medium term posting) could be envisaged. To that end, all preparatory measures (e.g. definition of the legal status of such magistrate (i.a. powers, possibilities of information exchange) should be started as from now so that, once the decision is taken by the College of Eurojust, it can be implemented immediately. Eurojust should promptly provide the Commission with a cost estimate on the different envisaged options.

It would be also useful to start preparatory measures to enable **Eurojust to host liaison magistrates** from countries of origin (of the migrants) and/or countries of transit. For that purpose, it should be determined from which countries it would be most relevant to host such liaison magistrates so that bilateral contacts could be started with these countries.

Eurojust has already **contact points in the Western Balkan** countries, however, Eurojust needs to speed up the negotiations with Western Balkans countries to allow exchange of operational information including personal data.

Following the successful cooperation with the Western Balkan countries, it is important for Eurojust to have assigned contact points in the MENA countries concerned, i.e. Tunisia. Eurojust will organise a conference with the MENA contact points in November 2015.

➤ Operational cooperation

Eurojust main tool for cooperation and exchange of information in cases of illegal immigrant smuggling, is the Joint Investigation Team (JIT) and the funding of the JIT. A recent successful example is Operation FALCO that dismantled a large network smuggling migrants from Kosovo into the EU via Serbia and Hungary. Based on the recent successful results, judicial authorities are encouraged to set up more JITs with the full support of Eurojust. The necessary budgetary means should be made available.

Finally, Eurojust also received a request for further cooperation from **EU NAVFOR MED** in the CSDP (Common Security and Defence Policy) operation. Eurojust is encouraged to evaluate this cooperation as a matter of urgency. It will be formalised by exchange of letters.

➤ Eurojust Budget 2016

To implement properly the above measures, the hosting and assignment of liaison magistrates, training of liaison magistrates, carrying out the operations (JITs, Hotspots, EU NAVFOR MED), the appropriate additional funding should be made available in the Eurojust 2016 budget.

➤ To organise a meeting of the Member States' liaison magistrates in a number of relevant countries

It is proposed to organise a liaison magistrates' meeting before the end of the year in Turkey, with the participation of Eurojust and the local authorities as well as the Commission. The agenda of the meeting should focus on practical issues of enhancing cooperation between Member States and Turkey³ on judicial cooperation in combating migrant smuggling. Reporting could be done to JAIEX, CATS and/or the Consultative Forum of Prosecutors General and Directors of Public Prosecutions ("Consultative Forum").

In the beginning of 2016, other such meetings in relevant countries or regions could be organised.

➤ To organise training on tackling migrant smuggling for prosecutors and judges

The European Judicial Training Network (EJTN) could undertake training activities on tackling migrant smuggling and explore which options would be most useful to practitioners in the field (traditional training events, conferences, webinars, development of material) for spreading the above-mentioned good practices and other practical advice in this area as well as for raising awareness about these issues.

³ Currently, the following Member States have a liaison magistrate in and/or accredited to Turkey:

The Commission should ensure that Western Balkans countries are also able to make full use of their possibility to participate in EJTN activities on EU migration and asylum law. For the MENA countries concerned, the Commission could explore the opportunity to extend possible participation for those countries in EJTN activities related to EU migration and asylum law.

The appropriate funding would have to be provided as the EJTN funds for 2016 are already allocated on other subjects.

The assistance and cooperation of Eurojust, Europol and CEPOL in these trainings should be sought and/or developed.

➤ To prioritise the issue of migrant smuggling at the Consultative Forum

As a follow-up to the debate on this matter at the Forum in December 2014 and given the current migration crisis, the Presidency and Eurojust have decided to devote part of the Forum's December 2015 meeting again to migrant smuggling. It will be the occasion to take stock of work done so far, in particular the functioning of the thematic group, and raise awareness for the actions to be taken at national level and for the support available. This meeting could also hear about the outcome of the liaison magistrates' meeting in Turkey as well as planned training activities.

➤ To improve the investigation and prosecution of hate crime

The Commission's expert group on hate crime (i.e. the expert group on Framework Decision 2008/913/JHA on combating racism and xenophobia by means of criminal law) should continue its work of identifying **best practices of investigating and prosecuting** hate crime, including xenophobic crime and speech. These good practices should then be distributed widely so as to increase awareness and improve action by practitioners.

Enhancing the **training** of prosecutors and judges as regards hate crime could build upon the above-mentioned work but also feed it by bringing together practitioners to discuss obstacles and the solutions found to overcome them. A specific focus could be put on the identification of bias so that the bias motives are taken into account throughout the criminal proceedings.

- To improve the reporting and recording of hate crime

To make improvements in the longer term, a better knowledge of the situation is essential and to that end, the Fundamental Rights Agency (FRA) Working Party on hate crime should focus on **improving the recording** of hate crimes by developing a methodology and indicators for recording and data collection on these matters. A compendium of Member States' promising practices in recording and reporting of hate crime could be finalised for the Working Party's meeting in April 2016.

The FRA could also be asked to include a special focus on hate crime against migrants in their next anti-discrimination **survey** in order to map the situation.

- To develop the dialogue with Internet providers, social media and platforms to fight hate speech on-line

Member States and the Commission should complement each in their dealings with Internet providers, social media and platforms to ensure that the Internet does not become a platform for xenophobic statements and other hate speech. Good practices have been developed by a number of Member States to set up task forces with the private sector and civil society in order to address this problem. The Commission could make use of these models and develop a dialogue at EU level with Internet companies to fight hate speech on line, including the participation of national authorities, private actors and civil society in order to complement and reinforce Member States efforts.

- To foster cooperation between civil society and law enforcement, prosecutors and judges as regards the assistance to victims of hate crime

The investigation and prosecution of hate crime depends heavily on proper reporting by the victims and is based on the trust that victims place in the ability and willingness of the authorities to investigate and prosecute hate crimes. Given that migrants may have even more difficulties to find the right channels to report on hate crimes against them, cooperation mechanisms between civil society, social partners and NGOs supporting migrants on the one hand and law enforcement, prosecutors and judges on the other hand can help reduce the threshold for these victims. The Commission could work on this aspect, together with the expert group on hate crime and relevant stakeholders.

- Protection of children

With a view to be able to respect Member States' obligations enshrined in EU law, including the Charter of Fundamental Rights, as well as in the UN Convention on the Rights of the Child, , and given the important number of migrants children currently arriving to the EU, judicial authorities of Member States should be prepared to put in place the necessary resources to be able to keep up the standards of child protection despite the increase of workload. In this context, Commission and Member States relevant authorities should optimise the use of EU funding to ensure that throughout the migratory and asylum chain, including any administrative and judicial proceedings, the children's rights and best interest are protected.