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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

WORKING GROUP ON FOSTERING INTERNATIONAL COOPERATION AND INVESTIGATIVE STRATEGIES IN FIGHTING THE SMUGGLING OF MIGRANTS

Concept paper

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I. Background

On 23 June 2017, the Council of Europe (CoE) held the Conference on the Smuggling of Migrants in Strasbourg. Participants discussed best practices and concrete measures to prevent and combat the smuggling of migrants; strategies for more efficient co-operation and information exchange. The final observations include suggestions for the CoE further action on the smuggling of migrants. The European Committee on Crime Problems (CDPC) decided “to set up two focused working groups composed of experts dealing with a) preventive measures and b) practical measures to improve international co-operation”.

II. Focus of the Working Group on fostering international cooperation and investigative strategies in fighting the smuggling of migrants

Human smuggling and trafficking are comprehensively considered a vast enterprise, estimated to be the world’s largest illegal business activity (People smugglers make \$35 billions a year on migrant crisis according to IOM Report, 2017). Truly global in scope, millions of people are moved across borders, or within borders, each year. From a policing and judicial perspectives, disrupting this illegal trade requires a detailed understanding of how the criminal networks operate and interact.

In the context of mixed migration flows, migrants are particularly vulnerable to both smuggling of migrants. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation. Such coexistence (along the same routes and within the same means of transportation) of migrants with different profiles and motivations has become increasingly characteristic of migration flows in the whole CoE area and beyond.

The criminal organisations involved from the hubs operating in a few regions in Africa and Asia, to transit countries and all the way to the destination countries, have a refined and worldwide logistical and financial infrastructure. The organisations operate in a network structure, with cells and facilitators in numerous different countries, communicating and cooperating to handle the transport, control and money flows of hundreds of thousands of migrants.

Investigations and reports show that the basic structure of networks includes:

- leaders who loosely coordinate activities;
- organisers who manage activities locally through personal contacts;
- opportunistic low level facilitators;
- focal points for handling the financial aspects of the illegal activities.

A phenomenon of “*oligopolisation*” of the smuggling market is taking place, meaning that, in places where the criminal activities are largely concentrated, larger criminal networks will gradually attempt take over smaller opportunistic network. This analysis is supported by the findings in criminal investigations, from which has become clear that the top of the organisations seems to be in the hands of only a few well-known kingpins.

The purpose of the Working Group is to propose a comprehensive investigative strategy that relies on international judicial co-operation and on a new proactive approach that could be

based on some common general factors of *modus operandi* of the various criminal organisations active on the different migration routes.

Indeed, migrants smuggling is a transnational criminal phenomenon *in se* and its effective contrast requires an operative international cooperation, not only enhancing and promoting the use of the existing international instruments and mechanisms for cooperation in criminal matters but also through the adoption of alternative and unusual forms of cooperation and exchange, already experienced in some specific cases that have proved to be fruitful and rewarding.

Moreover, a proactive investigative approach could be more efficient if it is based on a preliminary analysis of demand factor for the journey, of the structure, costs and revenues of the criminal organisations and of the relationship between them, in term of competing or cooperating rings.

This kind of assessment can help to identify key factors that can be used as a basis for a common investigating and knowledge sharing strategy between different CoE member States and with not member States as well. The results of the analysis can form the basis for the production of reports, recommendations and best practices to be shared by different judicial and apolitical authorities as a common platform for fighting transnational smuggling organization.

Some of the key issues to be explored include, but are not limited to:

Data-collection and research:

An extensive analysis of investigative proceedings against criminal organisation involved in migrants smuggling is essential to understand the “business model” of the criminal organisation and identify both the demand and supply factors that can be used to discover potential flaws in the criminal organisation structure that can play a mayor role in the development of an effective and successful investigative strategy at transnational level.

The analysis should also be based on quantitative data that are already collected by Law Enforcement Agencies on the arrivals figures and on qualitative data that can be collected using ad hoc interviews with migrants after their arrival or using the outcome of judicial cases. Finally, data analysis can be crucial to identify demand drivers, supply side features and relationship between different organisations.

Law enforcement co-operation:

Training border officials and other relevant law enforcement entities is essential to detect smuggling networks and to distinguish efficiently between victims and offenders. The CoE can provide further assistance to member States, especially non-EU, in their efforts to increase available expertise by working in closer co-operation with other global and regional organisations, and without duplicating the activities already carried out.

Prosecutorial and judicial co-operation:

The CoE has already conducted studies identifying some of the greatest challenges in this field. There are already legal instruments and policies available to coordinate the member States’ legal response to the smuggling of migrants. However, they do not always prove to be successful and further measures could be put in place in order to identify short- and long-term solutions to guarantee an effective legal response. Such solutions should address, but not be

limited to, extradition, mutual legal assistance, transfer of proceedings and transfer of sentenced persons.

Co-operation with non-CoE member States:

Such co-operation, especially with those non-member States concerned by the phenomenon of migrant smuggling, should not be overlooked. Indeed, the most merciless crimes are often committed in origin and transit countries where they provide the input for additional abuses deploying their effects in Europe. In this sense, atypical and targeted forms of co-operation could be further addressed.

Knowledge sharing:

The investigative proceedings, the data collected and the results of the analysis should be available to all CoE member States involved, both at investigative and judicial level in order to foster knowledge and experience. The aim of the work should be to propose some best practices for the sharing of knowledge on smuggling rings and their relationship to improve the efficiency of investigative and judicial process on the matter.

Conclusively, differences and analogies between CoE member States (and whereas possible of non-CoE member States too) investigative approach and strategies and judicial proceedings should be analysed to propose adequate measures to improve the cooperation at all the mentioned level. Recommendations for improvement and empowerment of cooperative process should be proposed on the basis of the analysis conducted by experienced practitioners, professional and academics.

III. Composition and Working procedure of the Working Group

The Working Group's membership comprises highly qualified experts, including practitioners working in the field, as well as specialists from academia and research community. The Group will be composed by 15 experts. At least one member of the CDPC Bureau should take part in the Working Group. The Group's mandate should last two years, renewable if necessary.

In the initial phase the group has to produce a working plan with a timeline after an initial assessment of the relevance of the proposed themes, of the specific knowledge and capability of each expert involved and of the desired final product of the work. The working groups will present the outcome of their respective studies in a final Report to be submitted to the CDPC Plenary for discussion and final approval.

IV. First Working Group Meeting, Paris, 20-21 June 2018

The first meeting of the Working Group will take place in Paris, France on 20 and 21 June 2018. It serves to identify and outline the issues related to judicial cooperation and investigative approach and to decide the working plan and the agenda.

Background papers and the full agenda for the June meeting will be made available to participants approximately 8 to 6 weeks prior to the meeting.