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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

**2017 CONFERENCE
ON SMUGGLING OF MIGRANTS**

CONCEPT PAPER

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INTRODUCTION

The prevention and suppression of smuggling of migrants in Europe and its severe implications for human rights pose complex legal challenges. Facilitated by criminal networks, the smuggling of migrants generates huge profits for the offenders involved. The life, freedoms and safety of smuggled migrants is put at risk. While the phenomenon gains increasing attention, the various normative sources in this field remain inadequate.

BACKGROUND COUNCIL OF EUROPE

In June 2015, at the Plenary Session of the European Committee on Crime Problems (CDPC), the delegation of Malta presented its proposal entitled 'Criminality and Migration' for a new activity concerning the issue of smuggling of migrants. The CDPC decided "to include in future CDPC activities the question of the criminal law aspects related to the issue of smuggling of migrants and to add to the terms of reference of the CDPC an activity on this matter". This resulted in the inclusion of a specific task in its terms of reference for 2016-2017: "studying where the CDPC can provide added value to a criminal law response to the phenomenon of organised smuggling of migrants". Following this decision, the Secretariat instructed two experts to prepare relevant documents, including a study on "National Laws Relating to Smuggling of Migrants in Council of Europe Member States" ([CDPC \(2016\) 3](#)) and a on "Preventing and suppressing the smuggling of migrants in Council of Europe member States – 'a way forward'" ([CDPC \(2016\) 4 Rev](#)).

At their 126th Session (Ministerial Conference - Sofia, 18 May 2016), the Committee of Ministers adopted a decision where they "welcomed the preparation of adequate measures to provide member States with concrete tools to prevent and fight people smuggling". In June 2016, the CDPC noted that "the focus of future activities of the CDPC should be on practical measures to strengthen and facilitate the fight against the serious crimes of smuggling of migrants" and requested "the Secretariat to organise a conference on the topic of smuggling of migrants aimed at identifying the major challenges, best practices on this issue and possible solutions with the view to developing conclusions" for a possible future CoE instrument.

NATIONAL AND INTERNATIONAL INSTRUMENTS

The above mentioned studies highlighted that international and regional instruments regulating the smuggling of migrants differ in many aspects. Similarly, the domestic laws of the member States do not criminalise and interpret the relevant offences consistently.

At the international level, the UN Protocol against the Smuggling of Migrants by Land, Air and Sea provides a universally accepted definition of 'smuggling of migrants' and a suite of mechanisms relating to criminalisation, international cooperation, and the protection of the rights of smuggled migrants.

Although most Council of Europe (CoE) member States are Parties to the Protocol, their domestic laws frequently depart from its fundamental concepts and requirements.

At the European level, the European Union (EU)'s Council Directive 2002/90/EC 'defining the facilitation of unauthorised entry, transit and residence' and the Framework Decision 2002/946/JHA 'on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence' do not use the term 'smuggling of migrants', but provide a framework for the criminalisation and punishment of the facilitation of illegal entry, transit, and residence in EU Member States.

A comparison of the national laws adopted by CoE member States to combat the smuggling of migrants reflects the different concepts of the UN and EU frameworks and reveals further ambiguities. While member States have offences relating to smuggling of migrants in place and criminalise the minimum requirements set out in relevant international agreements, there are very grave discrepancies in the way in which smuggling of migrants is criminalised in each State. At present, there is no common understanding about what constitutes smuggling of migrants.

CONFERENCE

The Council of Europe is convening a Conference to develop strategies aimed at preventing and suppressing the smuggling of migrants and to guide and inform further developments and cooperation in this field.

Meeting at the occasion of the Conference, participants could aim at identifying how all actors in CoE member States can work together to exchange experiences, develop strategies for cooperation, and reach consensus on the strategic goals which could be implemented over the years to come to prevent and suppress the smuggling of migrants in Council of Europe Members States.

In particular, in consideration of the worrisome levels of smuggling of migrants into and within CoE Member States and the serious discrepancies between relevant domestic laws, through the Conference, participants may wish to consider the development of a new CoE convention on this subject.

The Conference (one full day) will gather around 100 participants, including high-level representatives from the ministries of CoE member States, civil society, law enforcement authorities, prosecutors and police officers and other international organisations as well as professionals and academics.