

Strasbourg, 27 August 2020

CDPC(2019)9Fin

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

COUNCIL OF EUROPE ACTION PLAN ON FOSTERING INTERNATIONAL CO-OPERATION AND INVESTIGATIVE STRATEGIES IN FIGHTING THE SMUGGLING OF MIGRANTS

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

I. INTRODUCTION

The Action Plan is addressed to the governments of all 47 member States of the Council of Europe.

The fundamental goal of the Action Plan is to help member States fostering and improving international co-operation and investigative strategies in fighting the criminal phenomena connected to the smuggling of migrants. This will be crucial to overcome the investigative, prosecutorial and judicial challenges in migrant smuggling-related cases, facilitate the information knowledge and exchange amongst relevant stakeholders and boost co-operation amongst source, transit and destination countries. The importance of complementarity and co-operation with other international actors on these matters is extremely important.

The Action Plan establishes five objectives to be covered in the period 2020-22. The action lines should be non-exhaustive, adjustable according to any evolving needs, significant developments and experience gained in the area of migrant smuggling and, where appropriate, the Plan should be reviewed and revised accordingly. The main elements identified in the Action Plan and in the overall work carried out by the CDPC as from June 2015 could also be effectively used in future Council of Europe work on the prevention and fight of the smuggling of migrants.

The promotion, implementation and follow-up of the Action Plan are overseen by the Council of Europe European Committee on Crime Problems (CDPC).

II. COUNCIL OF EUROPE BACKGROUND

- Preliminary stages

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 organized 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”.

- **The Conference on Smuggling of Migrants**

On 23 June 2017, the Council of Europe organised an [International Conference on Smuggling of Migrants](#) in the Palais de l’Europe, Strasbourg, France. The Conference brought together experts and high-level representatives from member and observer States of the Council of Europe, as well as representatives of international organisations and academic experts, to discuss best practices and concrete measures to prevent and combat the smuggling of migrants; to develop strategies for cooperation and information exchange and to protect the rights of smuggled migrants. Participants discussed the aspects of prevention of the smuggling of migrants; criminalisation of the smuggling of migrants; promotion and facilitation of international co-operation and protection of the rights of smuggled migrants. The Conference’s [final observations](#) included suggestions for Council of Europe’s further action in this field.

With regards to the promotion and facilitation of international co-operation (Session III) participants concluded, inter alia, that “migrants smuggling is a transnational criminal phenomenon and the suppression of it requires effective international co-operation”. They noted that while it is “crucial that member States make better use of the existing international instruments and mechanisms for co-operation in criminal matters [...] one possible approach could be to elaborate a comprehensive Council of Europe strategy in this field.” Moreover, they highlighted the importance of co-operating, on one hand, with the source, transit and destination countries, and, on the other hand, with other relevant international organisations, particularly in order to support on-going investigations and other criminal justice efforts.

- **The Working Group on fostering international co-operation and investigative strategies in fighting the smuggling of migrants**

To ensure follow-up to the outcome of the Conference, the CDPC decided to set up two Working Groups dealing with a) preventive measures and b) practical measures to improve international co-operation. The first meeting of the Working Group on fostering international co-operation and investigative strategies in fighting the smuggling of migrants took place in Paris, France, on 20 - 21 June 2018. The Working Group’s membership comprised highly qualified experts, including national practitioners working in the field, representatives of international organisations as well as specialists from academia and research community.

Under the Chairmanship of Mr Calogero Ferrara, at the time Magistrate Coordinator of the Trafficking and Immigration Division, member of the Special Antimafia Directorate at Public Prosecutor’s Office in Palermo, the Working Group focused on topical issues, including: data-collection and research; law enforcement, prosecutorial and judicial co-operation; co-operation with non-CoE member States and relevant international regional organizations; “new” and innovative forms of cooperation; and, knowledge sharing also through the use of business economics analysis of criminal organizations. In their [conclusive observations](#) to the first meeting, the Working Group agreed to make use of their next meeting to discuss in further details how to translate their observations in concrete Council of Europe actions.

The second meeting of the Working Group took place on 10 April 2019 in Venice, Italy. Participants and experts further discussed investigative approaches, exchange of information and gathering of evidence, including through presentation of high value cases on migrants smuggling where international co-operation was crucial to overcome investigative, prosecutorial and judicial challenges. To facilitate the participants' discussion as to identify concrete Council of Europe actions, the Secretariat and the Chair drafted a Council of Europe Action Plan aimed at identifying opportunities where the Council of Europe can play a crucial role in fostering international co-operation and investigative strategies in fighting the smuggling of migrants.

In their [conclusive observations](#) to the second meeting, the Working Group "instructed the Secretariat to elaborate further the text, also in order to include a reference to the necessity of co-operating with all relevant international and regional organisations and co-ordinating with them the activities, building on each other's work and avoiding unnecessary duplication."

The draft Action Plan was presented to the CDPC for its approval at the occasion of its Plenary meeting held on 3-6 December 2019. The Committee agreed that the smuggling of migrants should be one of the priorities of its future work, welcomed the draft Action Plan and introduced some amendments in order to allow more flexibility as to the possible follow-up to be given to it. The revised Action Plan was submitted to the CDPC Bureau which approved it on 20 May 2020. This text was subsequently submitted to the CDPC Plenary, which adopted it via written procedure.

III. THE ACTION PLAN

1. ADDRESSING INVESTIGATIVE, PROSECUTORIAL AND JUDICIAL CHALLENGES IN MIGRANT SMUGGLING-RELATED CASES

Reasons: The smuggling of migrants is a transnational crime in continuous evolution. While the *modus operandi* of smugglers adapts to new contexts and regulations, international co-ordination faces a broad spectrum of old and emerging challenges, ranging from the applicable legal framework, investigative and prosecutorial powers and cultural understanding and perception of the crime. Sharing of information amongst relevant stakeholders is a key factor for fighting the smuggling of migrants. However further efforts are required in order to improve not merely the volume, but also the quality of the shared information. In particular, international co-operation would benefit from a more detailed and specialised approach in:

- the identification of all the actors in the smuggling business, including, *inter alia*: network kingpins, especially if linked with traditional criminal groups, co-ordinators of the journey, migrant recruiters, false or forged documents providers, safe house keepers, patrolling squads, money guarantors, money collectors, parking lots supervisors, truck drivers, "hawaladars";
- the sharing of information notably on *modus operandi*, migratory routes, smuggling networks' economic models, links with human trafficking and other infractions, and financial transfers;
- the analysis of different and commonly adopted investigative tools;

- the identification of existing international judicial co-operation tools and practices;
- the analysis of relevant judicial decisions.

Activity: Setting up of a Council of Europe Network of Prosecutors on Migrant Smuggling.

Working methods: Selected national prosecutors with first-hand experience on smuggling of migrants cases can enable/facilitate discussions on relevant investigative approaches, an exchange of information and the gathering of evidence. A network should be formed by setting up a mailing list, a newsletter and an IT tool allowing the members to regularly get in contact and interact. A meeting of the Network of Prosecutors could be held regularly, at least once a year, with the aim of collecting/identifying best practices on investigative, prosecutorial and judicial challenges in migrant smuggling-related cases, including through the presentation of high-profile cases, and in order to establish a common ground upon which to counter this criminal phenomenon. The cases discussed on this occasion could also be used in the dedicated web page referred to in point 5 of the Action Plan. The working modalities of the Network will be established in a dedicated document (terms of reference).

Expected Outcomes/Outputs: The Network is expected to support the building of personal and professional relationships between specialised prosecutors; to enable the exchange of experiences on the subject and provide a platform for the information sharing, also with a view to identify best practices and to spot possible gaps and areas for improvement. The work of the Network could be synthesised in guidelines, or a recommendation, as appropriate.

2. CONSIDER EVALUATING AND IMPROVING MUTUAL LEGAL ASSISTANCE MECHANISMS AND OTHER METHODS OF INTERNATIONAL CO-OPERATION

Reasons: Instruments of mutual legal assistance (MLA) have the potential to allow States to afford each other the widest measure of support with a view to gathering evidence, identifying victims, hearing witnesses, experts and prosecuted persons, etc. However, while crucial for investigations, prosecutions and judicial proceedings in the field of migrant smuggling, MLA mechanisms are sometimes too slow to be effective. Indeed, in many experiences the recourse to alternative measures of co-operation, which are more modern and flexible, has proved fruitful. This has been the case in remote testimony of witnesses; recourse to United Nations Sanctions List; employment of liaison magistrates; stipulation of *ad hoc memoranda*; creation of specialised teams operating in different countries; implementation of general legal conventions on co-operation; and the use of various forms of co-operation at prosecutorial level. Further analysis of new forms of co-operation with the potential of bringing added value to fostering international co-operation and investigative strategies in fighting the smuggling of migrants is desirable. In this context, the importance of proactive financial investigations to seize and recover criminal assets, and take action against money laundering of these profits should also be noted. Moreover, the exchange of information and co-operation with Financial Intelligence Units (FIU) and other relevant networks on financial flows in the area of migrant smuggling should be taken into consideration. At the same time, co-operation with third countries should be stepped up so as to enable the tracking and confiscation of crime proceeds in the countries of origin and of transit of migrants.

Activity: Analysis/identification of practical cases where more specific forms of MLA were successfully adopted; improvement of mutual legal assistance mechanisms used in combating the smuggling of migrants, standardising and encouraging the elaboration, adoption and implementation of innovative measures; implementation of measures of financial co-operation. This activity should be made in close co-operation with relevant bodies of the Council of Europe, the European Union, the United Nations and of other relevant international organisations.

Working methods: Experts in this field could conduct a study analysing existing practices of MLA and other methods of international co-operation specifically applied, or applicable, to migrant smuggling with a view to identify how such instruments can be used more efficiently in this particular field, to share best practices and lessons learned and to propose possible and desirable improvements. .This study could be conducted in collaboration with members of the Council of Europe’s Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), which is currently exploring ways of widening the field of application of MLA and making such mechanisms more effective in the Council of Europe legal space and beyond, including with regards to tracking financial flows and confiscating illicit assets. Depending on the conclusions and identified needs drawn from this study, appropriate follow-up should be considered, including the possibility of gathering a restricted group of experts and relevant national authorities.

Expected Outcomes/Outputs: Experts could identify best practices, elaborate guidelines, or adopt recommendations, on means to improve concrete international co-operation on smuggling of migrants, including the possibility to initiate parallel/mirror investigations.

3. FOSTERING CO-OPERATION AMONGST SOURCE, TRANSIT AND DESTINATION COUNTRIES

Reasons: Co-operation mechanisms with third countries exist but they are not equally developed and/or effective. Co-operation could be strengthened through exchange of information, joint training and possible access to collection, sharing and analysis of data on migrant smuggling between countries of origin, transit and destination. The transfer of skills and resources could prove crucial in enhancing the capacities of individual countries.

Activity: identification of common issues with relevant authorities and expert dealing with migrant smuggling from source, transit and destination countries, including the organisation of workshop, meeting or training session, as appropriate.

Working methods: Gathering together relevant authorities and experts from source, transit and destination countries to share their knowledge and expertise on effective forms of transnational assistance and to work on the development of strategies and tools to reinforce police and criminal justice responses, including the financial aspects. The activity could provide the opportunity to discuss the setting up of training sessions to be held under the auspices of the Council of Europe. The implementation of this activity could be facilitated by the use of extra-budgetary funds made available for the implementation of specific co-operation projects, including notably with the European Union. Ideally, relevant community stakeholders should also take an active part, with a view to analysing the social context in which the

decision to depart is taken in order to raise awareness and to cut the need to turn to / demand for criminal organisations.

Expected Outcomes/Outputs: Increased co-operation between key actors operating at both CoE and non-CoE State level. Better knowledge and understanding of migrant smuggling's international legal framework and the risks linked to this crime.

4. FACILITATING INFORMATION EXCHANGE BETWEEN LAW ENFORCEMENT AUTHORITIES

Reasons: It is often the case that co-operation is hampered by weak law enforcement capacities. To fight the smuggling of migrants, law enforcement authorities should be able to exchange available relevant information concerning migrant smugglers and smuggled migrants through secure and fast channels. Their efforts could be facilitated by a simple, lightweight and cost-effective mechanism enabling the exchange of information on a 24-hour, seven-days-a-week basis amongst relevant counterparts. Without duplicating other efforts, both within the Council of Europe and at other international levels, a list of existing and/or newly designated contact points could be compiled to this end, giving the opportunity to also designate contact points to relevant non-CoE member States.

Activity: Examine the possibility of listing 24/7 points of contact to facilitate first alert contact between law enforcement authorities dealing with migrant smuggling, taking into account the national legislation and existing relevant instruments.

Working methods: The Council of Europe could convene the first meeting of national representatives of law enforcement services to discuss the opportunity of setting up 24/7 points of contact serving as a first alert mechanism. The meeting could further facilitate contacts between competent authorities and enable discussions on issues concerning the operational aspects of the timely exchange of information on the smuggling of migrants. Participants should discuss the necessary features of a tool capable of enhancing their response capacity and improve co-operation and co-ordination between them. On this occasion, representatives of law enforcement authorities could analyse how to foster their early warning mechanisms and response capacity through the listing of 24/7 points of contact and discuss how it should be implemented in accordance with domestic legislation and international obligations. Other items on the agenda could include the discussion of the type of information to be shared, the responsibility of the contact points, the competences and role of the Council of Europe and the possibility of convening regular meetings.

Expected Outcomes/Outputs: The outcome of the first meeting will serve as a basis for considering the setting up of a list of 24/7 points of contact to facilitate the expeditious exchange of information between relevant law enforcement authorities.

5. ENSURING INFORMATION KNOWLEDGE IN THE FIELD OF MIGRANT SMUGGLING

Reasons: The work conducted by the Council of Europe revealed major discrepancies in the way in which smuggling of migrants is defined and criminalised among Council of Europe member States and the lack of consistency regarding aggravations, penalties and the steps taken at national level to counter this crime. Knowledge and information about migrant smuggling are sporadic and often hard to find. A compilation of country-specific judicial and legislative information on migrant smuggling could prove useful to step up the information knowledge in this subject matter. A dedicated page on the CDPC website containing a country profile for Council of Europe member States where such information is easily available could be a convenient tool.

Activity: Setting up of a dedicated webpage on the CDPC website facilitating knowledge sharing.

Working methods: Creation of a webpage containing a country profiles for Council of Europe member States providing judicial and legislative information on migrant smuggling. The page should work as a living instrument to which data is added progressively and modified when appropriate. The scope of the page should be to provide a clear picture of the state-of-play regarding the fight against migrant smuggling in each country and serve as a useful tool to facilitate co-operation.

Expected Outcomes/Outputs: A compilation of relevant information and data by country, including legislation, case law where possible, and contact details of the relevant authorities, specifically relating to the fight against the smuggling of migrants.