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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

FOLLOW-UP TO THE COUNCIL OF EUROPE
CONFERENCE ON THE SMUGGLING OF MIGRANTS

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

I. Background

On 23 June 2017, the Council of Europe (CoE) held the Conference on the Smuggling of Migrants (the Conference) 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 (Appendix). Meeting on 23 October 2017, the Bureau of the European Committee on Crime Problems (CDPC) decided “to ask the Secretariat to prepare a concise paper for the next Plenary meeting presenting a concrete follow-up to the conclusions of the Conference: The exchange of information and the setting up of two focused subgroups on prevention measures and on international co-operation composed of practitioners should be encouraged”.

II. The focused subgroups

In light of the discussions held at the occasion of the Conference, it is possible to identify some issues that could be dealt with by the subgroups.

a) For the focused subgroup on prevention measures:

- Awareness-raising:
Prevention involves measures aimed at would-be migrants, alerting them to the real and potential dangers associated with smuggling. It further involves measures to reduce the demand for smuggling by providing accurate information about the circumstances and consequences of illegal entry and stay in transit and destination countries and by promoting safe and legal avenues of migration. Member States could be further assisted in their efforts to develop awareness-raising campaigns as part of their prevention strategies.
- Smuggling of migrants vis-à-vis legal avenues of migration:
Effective measures to prevent and combat the smuggling of migrants require accurate information and a sound understanding of the relevant policies, laws, and administrative measures in source, transit and destination countries. The opportunity to conduct a study examining the full range of prevention measures and gather data on the levels and patterns of smuggling of migrants as well as on the legal avenues of migration in member States deserves further consideration.
- Deterring smugglers:
Prevention further involves measures targeted at would-be smugglers aimed at warning them about the penalties and punishment for migrant smuggling offences. Strategic measures that turn smuggling from a “low risk, high profile activity” into a “high risk, low profit crime” should be developed.

b) For the focused subgroup on international co-operation:

- Law enforcement co-operation:
Training border officials and other relevant law enforcement entities is crucial to detect smuggling networks and to distinguish efficiently between victims and offenders. The

Council of Europe 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 heinous crimes are often first committed in source 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.

III. Functioning of the focused subgroups

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

One or two two-day meeting(s) for each subgroup could be convened already in 2018. The CDPC Bureau and the CDPC Plenary itself should be regularly informed on the subgroup's progresses and achievements.

“Prevention” and “international co-operation” are broad categories. Therefore, different meetings could be planned to deal with specific themes. In this context, with the assistance of external consultants, the Secretariat will provide background papers in order to facilitate the discussion. The focused subgroups on prevention measures and on international co-operation should present the outcome of their respective studies in a final Report to be submitted to the CDPC Plenary for discussion and final approval.

APPENDIX

CONFERENCE ON SMUGGLING OF
MIGRANTS

CONFERENCE SUR LE TRAFIC DE
MIGRANTS

23 June / 23 juin 2017
Strasbourg (France)

Palais de l'Europe (Room 5)

Final observations for Council of Europe
Further Action on
the Smuggling of Migrants

- The smuggling of migrants is a heinous criminal offence that often involves the serious exploitation of human beings and a gross disregard towards the human rights and fundamental freedoms of victims.
- Smugglers seek to obtain financial or other benefits from refugees and other migrants in vulnerable situations by taking advantage of discrepancies and gaps in national and international systems in order to avoid accountability.
- At the Council of Europe, in response to the challenges presented by the significant increase in migrant smuggling in 2015, the Maltese delegation to the European Committee on Crime Problems (CDPC), presented a proposal for new activities on the topic of 'Criminality and Migration'.
- Since then, the CDPC agreed to include criminal justice aspects related to this issue in future CDPC activities and to study where the CDPC can provide added value to a criminal justice and law enforcement response.
- In May 2016, at their 126th Ministerial Session in Sofia, Bulgaria, the Committee of Ministers embraced the proposal and welcomed the preparation of adequate measures to provide member States with concrete tools to prevent and fight the smuggling of migrants.
- In light of the remarks and presentations made during the Conference, it is possible to draw some observations and recommendations for further action of the Council of Europe.

Session I: Prevention

- Strategic measures are needed to turn smuggling from a "low risk, high profit" activity into a "high risk, low profit" crime.
- Preventing and suppressing the smuggling of migrants involves both medium- and long-term strategies based on accurate data and information regarding all aspects of this phenomenon, including the causes and conditions that drive would-be migrants into the hands of smugglers and the operations individual perpetrators and organised criminal networks.
- Prevention involves measures aimed at would-be migrants, alerting them to the real and potential dangers associated with smuggling.
- Prevention further involves measures targeted at the spectrum of persons who act as smugglers, warning them about the penalties and punishment for their criminal offences.
- Comprehensive knowledge and data on smuggling of migrants are indispensable to assist member States in their efforts to develop educational material, awareness-raising campaigns and evidence-based prevention strategies.

- The Council of Europe is in a prime position to gather and disseminate research and data collection relevant to all member States. Further studies on the levels and characteristics of smuggling, on the countermeasures adopted by member States, and on international law and best practices can serve to inform the development of criminal justice aspects of legislation and policies.
- Technical experts' meetings can be convened in order to exchange experiences, develop strategies and recommendations on the priorities in the prevention field. Their findings can inform the further work of the CDPC.

Session II: Aspects of criminalisation of the smuggling of migrants

- Legal instruments and policies to counter the smuggling of migrants and prosecute criminal offenders are already available. However, they do not always prove to be as effective as desired.
- The criminalisation of migrant smuggling varies at the international, regional and national levels. The lack of a harmonised system works to the advantage of migrant smugglers, who can exploit existing loopholes to avoid criminalisation.
- Member States can further improve the legal response to the smuggling of migrants by developing common criminal law standards.
- The Council of Europe has already conducted studies identifying some of the greatest challenges in this field. However, further efforts could be put in place in order to approach a general consensus on the identification of attainable and effective short- and long-term solutions.
- As a first step, member States could consider the possibility of setting up a database containing country profiles of national legislation and policies concerning the criminalisation of migrant smuggling.
- Such a database has proven useful in the field of counter-terrorism. Similarly, the Council of Europe could, through the CDPC, facilitate the exchange of information, e.g. by regularly publishing country profiles on migrant smuggling-related legislation and policies of member and Observer States.

Session III: Promotion and facilitation of international co-operation

- Migrants smuggling is a transnational criminal phenomenon and the suppression of it requires effective international co-operation.
- It is crucial that member States make better use of the existing international instruments and mechanisms for co-operation in criminal matters to hinder the activities of smugglers.
- One possible approach could be to elaborate a comprehensive Council of Europe strategy in this field.
- It is just as crucial that co-operation strategies are implemented with the participation of source, transit and destination countries. To this end, alternative forms of co-operation can prove successful, such as specific co-operation agreements for single cases or specific memorandum of understanding for focused co-operation issues, as appropriate.
- Furthermore, co-operation with other international organisations, such as the International Criminal Court among others, operating in countries of origin or countries of transit could prove fruitful, particularly where such co-operation could support ongoing investigations and other criminal justice efforts.
- The Council of Europe could examine the opportunity of setting up a network to facilitate information exchange and to provide member States with a framework for liaising among them as well as with relevant sectors of the organisation.
- As an example, the network could collate and disseminate relevant statistics, reports and other documents, and identify areas for further research and development. Participation in the network could be extended to certain non-member States, especially those concerned by the phenomenon of migrant smuggling.
- It is also necessary to further improve border security and the capacity of all member States to effectively handle a large influx of illegal migrants in a manner fully compatible with international legal obligations.
- To this end, the Council of Europe could work in close co-operation with other global and regional intergovernmental and supranational organisations, in the provision of training for border officials and other relevant law enforcement entities, thereby aiming at enhancing available expertise to detect smuggling networks and efficiently distinguishing between victims and offenders.

Session IV: Protection of the rights of smuggled migrants

- Smuggling of migrants exposes them to human rights violations and abuses, notably their right to life, freedom from inhuman and degrading treatment, the rights of the child, the right to be protected from trafficking and sexual exploitation. Smuggling exposes children, in particular unaccompanied minors, to sexual abuse, violence and human rights abuses.
- Smuggling, being a criminal activity, is a security risk for European societies; it threatens not only migrants' rights but also it can potentially have a negative impact on our human rights.
- Smugglers benefit from the failure of States to ensure effective protection of migrants' rights, for example the right to seek asylum, or the right to family reunification as well as failure to have in place safe and legal pathways for people seeking international protection from Council of Europe member states.
- Smugglers benefit from migrants' lack of access to information about how to claim protection from the State or how to legally access channels of migration.
- States have an obligation to protect smuggled migrants under their jurisdiction from human rights violations committed by State actors and other private individuals in compliance with the ECHR.
- Criminal justice measures in response to smuggling must ensure that the human rights of smuggled migrants are protected at all times while present in Council of Europe member States and during their return to countries of origin or transit countries, in compliance with Articles 2, 3, 5, 8, 13 of the ECHR and Article 4 of Protocol 4 of the ECHR.
- Criminal justice measures must avoid any collateral effects on the human rights of migrants. For example while states must continue to save the lives of smuggled migrants whenever they are at risk, states should not punish as smugglers the rescuers or those providing humanitarian assistance.
- The Council of Europe is sufficiently equipped with standards which guarantee the human rights of smuggled migrants. In order to help member States' authorities to comply with their obligations, it can be envisaged that border police officers, migration and asylum officials, prosecutors and judges receive continuous training on relevant Council of Europe standards.
- The Council of Europe mechanisms against human trafficking (GRETA), violence against women (GREVIO) and the sexual exploitation of children (the Lanzarote Committee) should continue to be supported and strengthened in order to ensure the protection of the rights of smuggled migrants. Also, GRECO should continue to be supported in its activities to construe a link between smuggling and corruption.