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From:	Presidency
To:	CATS
No. prev. doc.:	12372/15, 14716/15
Subject:	Migration crisis : aspects of judicial cooperation and fight against xenophobia - progress report

The current document invites delegations to discuss the progress made so far on the priorities to tackle the migration crisis related to judicial cooperation and the fight against xenophobia, as endorsed by the Ministers at the Council (JHA) meeting of 9 October 2015 (doc. 12372/15).

It is mainly based on the progress report delivered to the Council in December 2015 (doc. 14716/15) and includes some updates since then.

1. Support to coordination and cooperation measures

1.1 Making best use of Eurojust's capacities: facilitating investigations, hotspots and cooperation with third countries

Eurojust's thematic group (set up in September 2015) has been focusing on different strands of work, as set out in doc. 14716/15. Since December 2015, the following actions have been taken.

- the first Eurojust tactical meeting on illegal immigrant smuggling was held on 4-5 February 2016, gathering practitioners from the Member States, Norway, Switzerland and the US, as well as representatives of the Commission, Europol, the JITs Network Secretariat, Frontex and UNODC. The meeting discussed in five different sessions the (common) obstacles, good practice and solutions that could help overcome challenges in the prosecution of this serious crime type, as well as specific judicial cooperation issues in relation thereto. The outcome report of the tactical meeting will be issued shortly.
- an analysis of selected Italian and Spanish national cases has been conducted, with a twofold aim: (1) to identify and examine key legal and practical issues faced by national competent authorities when investigating and prosecuting illegal immigrant cases, and (2) to promote best practices deriving therefrom. The outcomes of the analysis were published in March 2016 as two documents with limited distribution for the use of practitioners in the Member States.
- the Eurojust thematic group on illegal immigrant smuggling is planning to start a project to analyse national legislation on illegal immigrant smuggling and related offences with a view to developing a practical tool to assist practitioners in designing effective prosecutorial strategies in dealing with these cases. The creation of a centre of expertise in judicial cooperation in illegal immigrant smuggling cases is envisaged. An assessment is being made of the possibility to develop an online platform for practitioners to exchange experiences.
- the next JITs expert meeting will focus on illegal immigrant smuggling, to discuss how to further facilitate the use of JITs in relevant cases.

Eurojust's casework in the field of illegal immigrant smuggling increased considerably from 32 cases in 2014 to 60 in 2015. This trend has continued in 2016, as already 23 cases of illegal immigrant smuggling were referred to Eurojust for assistance until 30 April. In 2016, 2 new joint investigation teams have been set up and 6 joint investigation teams are active in illegal immigrant smuggling cases from previous years. The number of coordination meetings has also considerably increased from 10 in this crime area in 2014 to 20 in 2015. In 2016, until 30 April, Eurojust organised 5 coordination meetings in illegal immigrant smuggling cases.

Can delegations indicate whether their relevant national judicial authorities find the current support appropriate and commensurate with their needs ? Are the national authorities facing difficulties in matching this support with the appropriate national resources ?

The European Union Regional Task Force (EURTF) office in Catania, Sicily, set up to coordinate EU assistance to national authorities in the identification, registration, and return of migrants and in dismantling smuggling networks also hosts a Eurojust correspondent to ensure adequate judicial follow-up. Eurojust's contact point in the EURTF office in Catania is the Correspondent of the National Anti-mafia and Antiterrorism Directorate responsible for the district of Catania. Ad hoc working protocols to facilitate the exchange of information among the competent Italian and foreign judicial authorities have been initiated.

The College of Eurojust is still discussing the posting of liaison magistrates to third states, in particular the role of such liaison magistrate and the criteria for selecting countries, and other ways to step up cooperation with third states.

Can delegations indicate what operational needs they see for such liaison magistrates ?

1.2 Meeting of the Member States' liaison magistrates in a number of relevant countries

The list of liaison magistrates from Member States has been updated in February 2016 (doc. 6394/16). As indicated in December 2015, it was decided not to organise a meeting of liaison magistrates in Turkey, given the low number of these magistrates in Turkey.

Can delegations indicate whether they support, as an alternative, a meeting gathering national central authorities dealing with MLA and focus on the cooperation with MENA countries in matters of migrant smuggling ?

1.3. Training on tackling migrant smuggling for prosecutors and judges from Member States, but also with those of Western Balkans and MENA countries

The EJTN ad-hoc group on the Judicial Response to the Migration Challenges, created on 24 November 2015 to identify the training needs in this area, defined sub-topics per branch of law that warrant further attention from a judicial training perspective¹. The group also found that these topics must be addressed in training both at national level, notably because of links with national constitutional law provisions and country-specific procedural law aspects, and at European level, because of the intrinsic European nature of the majority of the provisions forming the migration acquis. The exchange of views on the interpretation of EU law and the exchange of knowledge on the jurisprudence of the ECtHR and the CJEU between judges of different countries promote on the one hand the consistent application of the legislation through a bottom-up harmonisation procedure and on the other hand the use of the preliminary ruling procedure by national judges and reinforce the principle of mutual trust.

The relevant training activities in this context, as foreseen by the EJTN's 2016 Programme of Activities, are set out in doc. 14716/15. Four out of the nine training activities have already been organised.

Can delegations indicate whether this reflects the national operational needs ?

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- ¹ - Migration Law stricto sensu: Rules about entry and residence conditions for migrants; procedures for issuing long-term visas, work and residence permits and the rights of migrants living legally in an EU country;
- Family Law: Family reunification directive and relevant requirements and procedures;
 - Asylum Law: Special protection granted to people fleeing persecution or serious harm in their own country, ongoing revision of the Dublin system for asylum, EU return directive
 - Criminal Law: Human trafficking, hate speech, irregular migration/migrant smuggling, including the prosecution and handling of smugglers and cooperation between Member States
 - Labor law: revision of the Blue Card system relating to migrant labour
 - Cultural and/or Religious diversity in judiciary practice
 - Protection of fundamental rights
 - Case-management and related soft skills

1.4 Prioritising the issue of migrant smuggling at the Consultative Forum of December 2015

The Consultative Forum held on 11 December 2015 addressed the issue of migrant smuggling and highlighted in particular² the importance of cooperation with key third States, the difficulties in collecting evidence and in finding reliable translators, the importance of parallel financial investigations, the specific challenges posed by smuggling illegal immigrants by the sea, the importance of Eurojust's support and the cooperation with and between other agencies and the need for a common EU approach.

The Consultative Forum to be held on 3 June 2016 will continue to address the issue of illegal immigrant smuggling, in particular in identifying the challenges and best practice in the cooperation with relevant third States.

2. Fight against hate speech, hate crime and xenophobia

2.1. Improving the investigation and prosecution of hate crime

The new High Level Group on Combating Racism, Xenophobia and other forms of Intolerance, which the Commission set up as a follow-up to its 2015 Annual Colloquium on Fundamental Rights, will meet for the first time on 14 June 2016. This group will be tasked, among others, with discussing best practice guidance on investigation, prosecution and related issues on hate crime, as well as tools and practices to counter hate speech, including online and will furthermore include horizontal issues common to the fight against hate speech and hate crime; seeking to develop concrete practices and tools and to build capacity to improve responses to racism, xenophobia and other forms of intolerance in Member States. This will contribute to address the challenges in relation to better unmasking bias motives; ensuring effective investigation and prosecution, ensuring appropriate sentencing, protecting victims and strengthening their trust in the authorities, refraining from racial, ethnic and other biased form of profiling by Member State's police forces.

² Conclusions set out in doc. 5930/16.

2.2. Improving the reporting and recording of hate crime and developing a methodology and indicators for recording and data collections in these matters

During the meeting of the Working Party on Improving Reporting and Recording of hate crime in the EU on 28-29 April 2016 in Amsterdam, which was organized by the Fundamental Rights Agency in cooperation with the Netherlands Presidency, FRA launched its report on "Access to Justice for victims of hate crimes: the views of practitioners"³. The report presents professionals' views on how victims of hate crime access justice and what prevents them from doing so. It reveals promising developments from across the EU but also highlights challenges in providing justice for victims. These include (1) difficulties hate crime victims face in reporting to the police; (2) difficulties the police face in identifying and recording hate crime; (3) a lack of confidence in the police's ability to deal with victims without discrimination; (4) different policing cultures and styles impacting on trust in the police; (5) the lack of visibility in court of the motivations behind hate crimes.

Furthermore a compendium of best practices⁴ for reporting and recording on hate crime was launched at this meeting. The compendium can assist Member States in improving their efforts in addressing the issue of underreporting and improving recording of hate crimes.

Also building on the work done within this Working Party, the FRA will coordinate a results-oriented sub-group of the High Level Group on Combating Racism, Xenophobia and other forms of Intolerance, working towards the development of a common methodology for data collection and recording of hate crimes. Progress in this area will give an important contribution to Member States and Union policy action on combating hate crime.

2.3. Developing the dialogue with Internet providers, social media and platform to ensure that the Internet does not become a public support for xenophobia statements and hate speech

Following the outcome of the Commission's First Annual Fundamental Rights Colloquium of 1-2 October 2015 and the Justice Ministers' discussion in the Council of 9 October 2015, the Commission continued its dialogue with the main Internet Companies on online hate speech.

³ <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

⁴ <http://fra.europa.eu/en/theme/hate-crime/compendium-practices>

The Joint Statement issued by the extraordinary meeting of Justice and Home Affairs Ministers of 24 March 2016 on the terrorist attacks in Brussels underlines that "the Commission will intensify work with IT companies, notably in the EU Internet Forum, to counter terrorist propaganda and to develop by June 2016 a code of conduct against hate speech online."

2.4. Fostering cooperation as regards the assistance to victims of hate crime and ensure the protection of children and vulnerable groups.

With a view to supporting notably the effective implementation of the new Victims Directive 2012/29/EU, the Presidency organised a meeting of Member States' victims support service on 19 February 2016 in Amsterdam. The Presidency also submitted a proposal for Council conclusions setting up a European Network on Victims' Rights, to be adopted by the Council (JHA) in June.