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"I/A" ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Draft Council conclusions on migrant smuggling
- Adoption

1. Based on the results of the Conference on promoting multi-disciplinary approach in addressing migrant smuggling, that took place in Amsterdam on 12-13 January, the Presidency tabled draft Council conclusions on the issue of migrant smuggling.
2. These draft conclusions were examined at the meetings of JHA Counsellors on 27 January as well as on 1 and 9 February.
3. The EU agencies (Cepol, EASO, Eurojust, Europol, FRA and Frontex) either participated in these meetings or were given the opportunity to comment on the above draft conclusions.
4. The COSI support group was informed of these draft conclusions at its meeting on 22 February. Subsequently, COSI examined and endorsed the draft conclusions as set out in the Annex to this Note at its meeting on 3-4 March.

5. The Permanent Representatives Committee is therefore invited to endorse these draft conclusions and submit them to the Council for adoption.

Draft Council conclusions on migrant smuggling**THE COUNCIL OF THE EUROPEAN UNION,**

- ALERTED by the high number of casualties and migrants risking death in trying to reach Europe and considering that it is estimated that in 2015 there were more than 1.8 million irregular border crossings into the EU, according to Frontex sources, which represented an increase of 546% compared to 2014, and that international organisations, such as IOM, estimate that over 3.770 migrants lost their lives in the Mediterranean Sea in 2015;
- EMPHASISING that all forms of migrant smuggling, including in countries of origin and transit, should be addressed, and that migrant smuggling is a serious form of organised crime which can only be countered through a comprehensive, multidisciplinary and cross-border approach by Member States, including law enforcement and judicial authorities, labour, social, health and fisheries inspectorates, border forces, immigration services, local and regional governments, tax and customs authorities, NGOs, businesses, trade unions, employers' organisations and embassies as well as relevant EU agencies such as Europol, Eurojust and Frontex;
- STRESSING that a coherent, credible and effective policy with regard to preventing and countering migrant smuggling, which fully respects human rights and the dignity of the smuggled migrants as well as of those providing humanitarian assistance, as well as the principle of *non-refoulement*, and the prohibition of collective expulsion laid down in Article 19 of the EU Charter of Fundamental Rights are essential parts of a comprehensive EU migration policy;
- STRESSING the need to encourage partner countries which have not yet done so to become Parties to the UN Convention on Organized Crime and the UN Protocol on Smuggling of Migrants by Land, Sea and Air and to promote the full implementation of this Protocol;

- STRESSING the fact that Article 1.2 of Council Directive 2002/90/EC, defining the facilitation of unauthorised entry, transit and residence of 28 November 2002, provides the possibility for Member States to exempt persons facilitating irregular entry or transit in order to offer humanitarian assistance to migrants from sanctions;
- ACKNOWLEDGING the need to strengthen co-operation and improve capacity of Member States and relevant EU institutions, bodies, offices and agencies, where applicable, to investigate, prosecute and sanction the smuggling of migrants and related offences;
- EMPHASISING the important role played by Europol's JOT MARE initiative and the significant value to be gained from FRONTEX debriefing intelligence in supporting law enforcement action to detect, deter and disrupt migrant smuggling rings;
- TAKING INTO ACCOUNT the launch of the European Migrant Smuggling Centre (EMSC) within Europol, to further develop a coordinated and effective law enforcement response against the organised criminal networks behind people smuggling;
- ACKNOWLEDGING that smuggling of migrants and trafficking in human beings are two distinct forms of crime, covered by distinct legal frameworks at EU and international level, and that both forms of crime can be interlinked, and acknowledging that migrant smuggling has become an increasingly violent form of crime, which may involve serious physical or psychological violence and human rights abuse, exposing women and children to particular risk;
- ACKNOWLEDGING that Europol's Serious and Organised Crime Threat assessment 2013 (SOCTA) demonstrates links between organised crime groups active in migrant smuggling, which is characterised by low risks and high profits, and other crime areas , such as illicit drugs and trafficking of Human Beings (THB);
- STRESSING the need to significantly increase and improve the collection, sharing and analysis of data and knowledge about migrant smuggling, in order to develop more effective, coordinated evidence-based policies;

- EMPHASISING that since smugglers are motivated by the financial profits they are able to make, it is essential to follow the financial flows in migrant smuggling cases for the purpose of evidence gathering, identifying and mapping criminal organisations and connections, gathering of financial intelligence, identifying criminal assets, and freezing and confiscating the proceeds of crime of the smugglers and other facilitators involved;
- ACKNOWLEDGING the risk presented by the worrying increase in false or stolen identification documentation being used to facilitate unlawful entry into Member States and the urgent need to develop and deploy improved biometric identification capabilities;
- TAKING INTO ACCOUNT the fact that the importance of the fight against migrant smuggling is emphasised repeatedly in different Council conclusions, in particular the Council conclusions of 9 November 2015 inviting Member States, in coordination with the Commission, to set up a network of single operational contact points on migrant smuggling;
- EMPHASISING that "Facilitation of illegal immigration" is one of the EU Crime Priorities set by the Council within the framework of the EU Policy Cycle for Organised and Serious International Crime for 2014-2017;
- TAKING INTO ACCOUNT the EU Internal Security Strategy 2015-2020 as renewed by the Council Conclusions of 4 and 5 December 2014 and the Council conclusions of 15 and 16 June 2015, based on the principles of the Commission's Communication "European Agenda on Security";
- BUILDING ON the European Agenda on Migration of 9 May 2015 and the EU Action Plan against migrant smuggling 2015-2020 of 27 May 2015;
- NOTING the EU Action Plan on return of 9 September 2015, which is an essential part of the EU's comprehensive efforts to address migration and, in particular to enhance return, as a deterrent for irregular migration;

- NOTING the Council conclusions of 14 September 2015 and more specifically the EU-Turkey Joint Action Plan of 15 October 2015 and the decisions of the EU-Turkey meeting of Heads of State and Government of 29 November 2015, all of which recognise that Turkey, being a major first reception and transit country for asylum seekers and irregular migrants, is a main partner of the EU in the management of migratory flows and in the fight against migrant smuggling;
- TAKING INTO ACCOUNT the Action Plan of the Leaders Meeting on the Western Balkans migration route on 8 October 2015 and the Political Declaration and the Action Plan following the Valletta Summit on migration of 11-12 November 2015, where the EU, its Member States and third countries agreed to prevent and address irregular migration and to fight related organised crime, such as migrant smuggling;
- REITERATING that the fight against criminal networks of traffickers and smugglers remains a priority and welcoming the transition to the first step of the second phase of the EU military operation in the Southern Central Mediterranean, EUNAVFOR SOPHIA, on the high seas, as laid down in point (b)(i) of Article 2(2) of Decision (CFSP) 2015/778;
- NOTING that there is a wide range of countries of origin or transit and that there is a range of root causes for and forms of migrant smuggling, and stressing the need for multidisciplinary cooperation with third countries.

INVITES MEMBER STATES to:

- Accelerate the process of a systematic registration, including fingerprinting of illegally entering third-country nationals according to the Eurodac Regulation and to perform systematic security checks by using relevant databases, in particular SIS II, Interpol, VIS and national police databases, with the support of Frontex and Europol;

- Phase out non-biometric, non-machine readable identity documents and to update identification documents in line with ICAO recommendations to deter secondary movement within the EU;
- Cooperate with the Commission in ensuring that the collection and exchange of reliable, updated and comparable crime statistics on migrant smuggling is stepped up, notably by extending the existing Eurostat collection of crime statistics to include data on migrant smuggling, with the support of relevant EU agencies, as set out in the EU Action Plan against migrant smuggling;
- Make optimal use of the information systems in place as well as of public data, platforms and partnerships with social media companies, and all other available instruments to gather, cross check and share smuggling-related data and use these systems for the purpose of predictive analysis of migrant flows and consequent smuggling activities;
- Fully participate, in the EU Policy Cycle for Organised and Serious International Crime and especially the EU Crime Priority on the "Facilitation of illegal immigration" and to use fully the resources made available through the Operational Action Plan on "illegal immigration", under the European Multidisciplinary Platform against Criminal Threats (EMPACT), as agreed by the Standing Committee on Operational Cooperation on Internal Security (COSI), and share all relevant information including data from social media;
- Enhance cooperation with Europol, in particular by sharing reliable and updated information and intelligence on migrant smuggling and by cooperating actively with the European Migrant Smuggling Centre (EMSC);
- Fully cooperate with Eurojust in the recently established thematic group on migrant smuggling, and make full use of available instruments, such as coordination meetings and coordination centres, joint investigation teams and the funding possibilities available within Eurojust;

- Intensify financial investigations in migrant smuggling cases for the purpose of gathering evidence, mapping criminal organisations, identifying freezing and confiscating the proceeds of crime of the smugglers and other facilitators involved and to ensure that relevant knowledge, tools and expertise are made available to criminal investigators and judicial authorities who have received specific training, so that investigations into appropriate cases of migrant smuggling can be routinely, and at an early stage, accompanied by multidisciplinary financial investigations;
- Engage with the private sector, in particular the transport sector, and other stakeholders, depending on their respective roles and capacities, in an EU-wide dialogue to explore existing and develop new best practices, codes of conduct and guidelines in order to prevent migrant smuggling and cope with associated risks, in cooperation with the European Commission;
- Enhance effective and sustainable return of migrants who are not entitled to international protection in line with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, and in close collaboration with the Commission and all relevant stakeholders, including through stepping up cooperation with third countries of origin and transit, to maintain the credibility of EU migration policy and to deter migrant smuggling;
- Increase awareness on the risk of irregular migration and migrant smuggling among the general public, vulnerable groups and professionals that could come into contact with smuggled migrants, by for instance, developing a counter-narrative in the media and to share best practice. These campaigns should be targeted at specific groups and contain a balanced message, possibly involving the diaspora community;
- Significantly increase multidisciplinary cooperation within Member States, cross-border cooperation between Member States and EU agencies, and cooperation with third countries against migrant smuggling, more specifically with Turkey and the Western Balkans, by increasing, for instance, the exchange of information, the number of parallel and joint investigations into migrant smuggling and stimulating multidisciplinary participation in those investigations, for example through the involvement of border guard personnel;

- Advance cooperation with countries of origin and transit, including through cooperation platforms and high level dialogues on migration, and in cooperation with the competent authorities of the third countries involved. In particular, promote initiatives and capacity building projects with the aim of fighting migrant smuggling;
- Ensure that enough resources and a coherent mandate are provided to the single contact points to foster operational cooperation on migrant smuggling, called for by the EU Action Plan against migrant smuggling and requested by the Council in its conclusions of 9 November 2015. This needs to be in line, with existing structures with a view to promoting more effective coordination between and within Member States, in order to achieve swift and full implementation of the network of single operational contact points.

INVITES THE COMMISSION to:

- Cooperate with Member States to ensure the effective implementation of the EU Action Plan against migrant smuggling and support Member States cooperation between all relevant migration, law enforcement and justice authorities, including projects aimed at removing practical obstacles, such as language barriers, between all relevant actors;
- Use relevant financial instruments at EU level, and most notably the Madad Trust Fund set up as a response to the Syrian crisis, the emergency Trust Fund for Africa and the Turkey Refugee Facility, to address the push and pull factors of migrant smuggling, for instance, by supporting a more pro-active role for the countries of origin and transit through the gathering, exchange and analysis of information and through the investigation and prosecution of migrant smugglers;

- Support the Member States in setting up a network of single contact points to foster operational cooperation on migrant smuggling in order to ensure a single entry point and to facilitate cross-border cooperation and exchange of complete and accurate information between Member States, and ensure that Member States strengthen their inter-service coordination at national level;
- Engage in an EU-wide dialogue with Member States and the private sector, in particular the transport sector, and other stakeholders, depending on their respective roles, limitations and capacities, in order to develop, explore and share best practices, codes of conduct and guidelines to prevent migrant smuggling and cope with associated risks;
- Ensure that the implementation of the pilot projects on information campaigns in Ethiopia and Niger, regarding the risks of irregular migration, is intensified, and review the results of the pilot projects together with the relevant Member States and Agencies as soon as possible with the aim of rolling out information campaigns in other countries of origin and transit;
- Continue to develop and ensure the implementation of the information strategy as defined by the Migrants' Information strategy Task Force and to foster, in its framework, cooperation with EU public media operating on international scale, and in particular with those already providing news and information services in national languages in third countries of origin and transit of migrants, and in particular in North Africa and Middle East;
- Ensure that a mapping exercise is carried out with the cooperation of relevant agencies, on the ways in which social media is used for the purpose of migrant smuggling;
- Support cooperation platforms in third countries in line with the Action Plan against migrant smuggling, in particular in connection with the deployment of European Migration Liaison Officers, as well as support financially through the available Commission funding programmes law enforcement and judicial cooperation in third countries of origin and transit.

INVITES THE RELEVANT EU AGENCIES to:

- Enhance inter-agency cooperation focusing mainly on the synergy of activities of all agencies involved and on information exchange, through the use of the EU Contact Group of Agencies on migrant smuggling (in particular Europol, Eurojust, Frontex, FRA, Cefpol and EASO);
- 1) Ensure that the European Migrant Smuggling Centre (EMSC) can act as the main information hub and coordinating entity on migrant smuggling within Europol, and that migrant smuggling is taken up in existing platforms and units which are set up to fight organised crime, including financial crime; 2) ensure that EMSC deploys officers to increase support to Member States in need thereof by late spring of 2016; 3) ensure that Europol in cooperation with Member States develops and implements a guest officers concept to the hotspots in support of the screening process, in particular by reinforcing secondary security controls,; and 4) ensure that the EMSC in cooperation with the Internet Referral Unit, in addition to the current activities of other actors, supports the enlargement of existing and future cooperation platforms with social media and internet service providers, as well as with financial institutions (Europol);
- Ensure that the recently established Eurojust thematic group on migrant smuggling aims at (i) supporting the needs of prosecution including by sharing appropriate information, such as ongoing investigations, investigative guidelines, landmark case-law, in a timely manner, (ii) identifying and analysing the obstacles regarding prosecution and judicial cooperation - such as obstacles related to the assertion of jurisdiction especially on the high sea, the differences between the Member States as regards the definition of "illegal immigrant smuggling", the scope of the "humanitarian exception", and the gathering, storing and sharing of appropriate information and evidence and the admissibility thereof - and (iii) improving the use of the EU and international legal instruments, also with a view to identifying the possible legal and practical shortcomings of these instruments (Eurojust);

- Ensure, in cooperation with the Commission, that a mapping is carried out as regards existing training opportunities in the field of countering migrant smuggling, at EU level to identify needs and suitable solutions (Cepol, FRA , Europol, Frontex, Eurojust);
- Ensure that all agencies continue to organise multidisciplinary training activities, including activities relating to fundamental rights issues and the development of risk profiles, on migrant smuggling and that such activities are open to all officials active in the fight against migrant smuggling including police officers and other criminal investigators, immigration officers and border guards, in order to promote a joint European approach (Europol, Cepol, Frontex, FRA, Eurojust);
- Assist Member States in pro-actively using financial investigations in migrant smuggling cases, sharing knowledge and raising awareness on financial investigation for the purpose of evidence gathering, mapping criminal organisations, gathering financial intelligence and identifying criminal assets, freezing and confiscating the proceeds of crime of the smugglers and other facilitators involved, also in cooperation with third countries and including all relevant stakeholders such as relevant Financial Intelligence Units (FIUs), banking and related private entities (Europol, Eurojust);
- Ensure the swift implementation of the operational agreement between Frontex and Europol, which was signed in December 2015, in order to enhance information exchange on migrant smuggling (Europol, Frontex);
- Enhance cooperation with third countries, and notably with Turkey and the Western Balkans, in order to, where necessary, assist operational cooperation of Member States such as joint investigations or border control operations.