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COVER NOTE

From:	EUROJUST
To:	General Secretariat of the Council
Subject:	Report on national legislation and Eurojust casework analysis on sham marriages - Executive summary

Delegations will find attached an executive summary of Eurojust's 'Report on national legislation and Eurojust casework analysis on sham marriages'.

Report on national legislation and Eurojust casework analysis on sham marriages

Date: 12/11/2020

Sometimes people gain unlawful access to the European Union (EU) through a marriage of convenience. Increasingly, such sham marriages are part of sophisticated fraud schemes arranged by Organised Crime Groups (OCGs). The OCGs engage in migrant smuggling and trafficking of human beings on an international scale. They make big profits by luring (mainly) women in vulnerable positions into what seems to be “easy money” but instead traps them in a web of exploitation and abuse.

Sham marriages are also a direct abuse of the fundamental right to freedom of movement within the EU and creates, for instance, unjustified access to the European labour market and social security benefits in the Member States. Since 2012, the European Union has therefore firmly stressed the importance of effective cooperation to tackle marriages of convenience.

This case analysis report, written by Eurojust, the EU Agency for Criminal Justice Cooperation, draws on the practical experiences of sham marriage investigations supported by the Agency between 2012 and 2020.

The report is intended to raise awareness of judicial practitioners on this low risk/high value criminal activity. Sham marriages often appear as isolated acts, connected only to relatively minor offences, such as document fraud or administrative violations associated with low penalties. However, a closer look most often would show a sophisticated scheme of smuggling devised by an international OCG where people in vulnerable position are exploited. The report identifies the main features of sham marriage cases (Section 3), highlights the legal challenges (Section 4) and specific obstacles (Section 5), analyses how the judicial tools and instruments are applied (Section 6) and provides an overview of best practice and main lessons learned (Section 7).

The analysis indicates that OCGs exploit the differences in national legislation in this area. In more than half of the EU Member States, sham marriages are either not criminalised or are sanctioned with a mild penalty. The OCGs exploit such legal differences by operating within the jurisdictions that provide the least punitive treatment of sham marriages (“forum shopping”).

The differences in national legislation also makes it more difficult to use EU judicial cooperation tools since most of them are based on the principle of double criminality. Other type of charges can however be pressed, such as facilitation of illegal immigration, trafficking of human beings and document fraud. The Annexes to the report contain detailed tools to help judicial practitioners more easily compare the national legal provisions on criminalisation of marriages of convenience, conditions to marry and divorce a foreigner and recognition of civil law foreign judgments.

Based on these practical insights, the report presents four recommendations how to step up the fight against sham marriages by international OCGs:

- **The lack of harmonised national legislation** governing sham marriages may hamper mutual legal assistance due to the double criminality requirements.
- **Joint Investigation Teams (JITs)** are effective to investigate sham marriage cases. JITs allow a smoother exchange of information and evidence sharing among the authorities involved. Often detection of linked serious forms of criminality can be found, which are not evident when looking at the case only from the national perspective.
- **Eurojust** can play a central role in **identifying the links among the different criminal activities** carried out by the OCGs in several jurisdictions, within or outside the EU, **facilitate** the investigations, **promote coordination** of the authorities involved to avoid the risk of *ne bis in idem* and to work out a **joint prosecutorial strategy**. This may imply a (partial) transfer of proceedings for the best protection of the victims, especially in the case of exploitative sham marriages.
- A **comprehensive approach**, involving all the relevant administrations such as civil registries, consulates, etc., fosters effective communication between the various administrative national bodies.