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Eurojust, The Hague, 12 December 2014
Conclusions

Delegations will find in the Annex the Conclusions of the meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the EU Member States held at Eurojust on 12 December 2014.

8TH MEETING OF THE CONSULTATIVE FORUM
OF PROSECUTORS GENERAL AND DIRECTORS OF PUBLIC PROSECUTIONS
OF THE MEMBER STATES OF THE EUROPEAN UNION

THE HAGUE, 12 DECEMBER 2014

CONCLUSIONS

Introduction

The 8th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (hereinafter Consultative Forum *or* Forum) was organised in The Hague on 12 December 2014 in combination with the Eurojust Strategic Seminar “*Towards Greater Cooperation in Freezing and Confiscation of the Proceeds of Crime: a Practitioners’ Approach*” that preceded it on 11 December.¹ The meeting of the Forum was convened by the Prosecutor General of Italy with the support of Eurojust.

The conclusions reached by the Consultative Forum on: (I) *Freezing and confiscation of proceeds of crime*, and (II) *THB & illegal immigrant smuggling involving migration flows through the sea*, are summarised here under.

1. Freezing and Confiscation of Proceeds of Crime: Improving Mutual Recognition

Need to promote greater coherence and simplification of the existing EU legal framework

1. Forum members express concerns about the lack of coherence and consistency among the asset recovery-related instruments adopted at EU level, as well as the lack of clarity and guidance on the interrelations among these instruments. As a result,

¹ A separate report of the Strategic Seminar including the outcome of the three workshops is available on the Eurojust website.

practitioners are confronted with a fragmented EU legal framework, which is in addition sometimes poorly implemented at national level. While the new Directive 2014/42/EU on freezing and confiscation is an important step forward, it will not provide for a consolidated legal framework in the area of asset recovery.

2. In this regard, Forum members emphasise that it is time to evaluate and consequently simplify the existing legal framework, improving the quality and not the quantity of legislative measures.
3. Forum members call upon EU institutions to prepare for a proper consolidation or codification of the EU legislation in this field. As also indicated in the Post-Stockholm Strategic Guidelines of June 2014, this would be a first essential step to overcome the problems arising from the incompleteness and imbalances of the EU Area of Criminal Justice.
4. Furthermore, there is a need for more harmonisation of the substantial and procedural criminal provisions with a view to enhancing mutual trust, a key condition for effective mutual recognition.

Challenges and best practices in judicial cooperation

5. Forum members identified a number of common challenges. These mostly stem from the complex and cross border nature of asset recovery cases, the differences in national legislation and the lack of clarity concerning the existing legal framework.
6. The difficulties in identifying assets and obtaining access to financial records are among the key challenges that hamper judicial cooperation. Best practices identified include the promotion of financial investigations alongside the criminal investigation, the early involvement of financial experts (such as specialised units composed of tax experts and auditors) and the adoption of central bank- and land registers in all Member States.
7. Further challenges in asset tracing relate to the nature of instant electronic transactions and the widespread use of anonymous companies. These challenges will increase with the wider adoption and use of virtual currencies such as Bitcoins. A greater transparency of company ownership and control is necessary.
8. Forum Members emphasise that training programmes and practical manuals for judges, prosecutors and law enforcement authorities must be a priority for Member States and the EU institutions. Some jurisdictions have opted for mandatory courses for specialised prosecutors to raise awareness, competence and confidence in asset recovery decision making.
9. It is crucial to adopt a multidisciplinary approach and promote the interaction amongst different stakeholders involved in the investigation and prosecution of asset recovery cases. Close cooperation between the judiciary, police and financial authorities is necessary and direct communication between those authorities should be fostered.
10. Forum members highlight the possibility to use confiscated property for public interest or social purposes, also as a way to enhance public confidence in the justice system.

11. Requests for the anticipated sale of property frozen, in particular of perishable or rapidly depreciating goods, at the same time as issuing a confiscation order should also be promoted to preserve the economic value of frozen goods.

Recognition and execution of non-conviction based confiscation orders

12. Forum members acknowledge that the new Directive 2014/42/EU does not address the issue of mutual recognition of conviction based or non-conviction based confiscation orders. It provides a prudent approach to non-conviction based confiscation. Accordingly, Forum members welcome the Statements issued by the Parliament and the Council upon the adoption of the Directive (Council doc. 7329/1/14 REV1 ADD1).
13. In the absence of formal harmonisation, Member States need to strive for an efficient practical cooperation between the authorities on the ground to recognise and execute non-conviction based confiscation orders received from the judicial authorities in other Member States.
14. Some Forum members indicate that the concern raised, that non-conviction based confiscation should not be subject to mutual recognition as orders may be in breach of fundamental rights protected under the European Convention on Human Rights, may need a more nuanced analysis.
15. In this regard, further legislative action could be considered at EU level to support non-conviction based asset recovery. Forum members suggest the definition of a limited non-conviction based confiscation remedy with minimum safeguards which could enjoy mutual recognition at EU level.

Eurojust's assistance to national authorities

16. Forum Members refer to the added value of Eurojust's operational tools, such as coordination meetings, as a trusted forum where practitioners can share information and where searches, seizures and arrests can be coordinated. Eurojust can also support Member States in setting up and running JITs or facilitating judicial cooperation with third States.
17. Forum members consider that best practices in Member States should be collected and shared among practitioners. Moreover, Eurojust could consider continuing research towards designing an acceptable common model with the support of the Consultative Forum.

2. Investigating and Prosecuting Cases of THB & Illegal Immigrant Smuggling Involving Migration Flows Through The Sea: Challenges and Best Practices

1. Forum members recognise that the phenomena of smuggling and trafficking of migrants through the sea are not only a problem for the coastal Member States, but an EU problem affecting, directly or indirectly, all Member States, which requires a joint effort at judicial level to enhance the prosecution and bring to justice smugglers and traffickers.

Challenges in the investigation and prosecution of THB and illegal immigrant smuggling

2. A number of Forum members pointed to the numerous challenges encountered by investigative and prosecuting authorities, in particular in detecting and identifying the organised crime groups and their leaders. This is mainly due to the sophisticated *modus operandi* of the criminal organisations. Most prosecutions relate to the criminal activity committed by those who provide the transport of migrants in boats, whereas only a few of them address the leaders of the organised crime groups behind this phenomenon. The limited exchange of information through Europol and the lack of coordination between Member States are seen as the main obstacles in identifying these organised crime groups.
3. Cross jurisdictional issues arise in these types of investigations; difficulties and delays are associated with finding, assessing and relying on evidence located in other Member States or in (neighbouring) third States. The execution of MLA requests addressed to third States proves to be particularly problematic.
4. According to some Forum members, destination countries face difficulties in verifying whether the migrants arrived in the EU by sea, as in many cases migrants have resided in different Member States before reaching their final destination country.
5. Forum members point to recurrent issues in considering prosecutions, in particular: the credibility of witnesses and their reluctance to cooperate; the absence of evidence of force, coercion, threats or fraud or difficulty attributing any such evidence to the suspects; establishing the age of a complainant in the case of children; the absence of independent corroborative evidence of the offence of THB in case there is no oral evidence obtained from victims or suspects; translation and interpretation problems in relation to victims from third States; and fragmented legislation.
6. Some Forum members point to problems related to the implementation of the Dublin II Regulation. In this respect, there are additional burdens for Member States of entry into the EU, due to the large amount of asylum applications that they are obliged to examine, regardless of where the applicants have lodged their asylum requests.
7. Furthermore, criminals, including smugglers and traffickers and even potential terrorists (i.e. foreign fighters in Syria that return to the EU) have been found among the migrants detected in vessels arriving in coastal Member States.

8. Alternative offences are prosecuted instead of or in addition to a human trafficking offence. A further challenge exists in establishing at first hand whether the offence committed is one of smuggling of migrants or one of human trafficking.

Best practices in investigation and prosecution of THB and illegal immigrant smuggling

9. Forum members recognise that challenges could be best addressed through cooperation and coordination between countries of origin, transit countries and destination countries. At the same time, effective legislation is considered essential to address this phenomenon and to clearly distinguish between smuggling and trafficking activities. Draft legislation is under consideration in one Member State aiming at extending law enforcement's powers to enter adjacent territorial waters when in hot pursuit of vessels suspected of trafficking.

10. Setting up joint investigation teams (JITs) where there might be identified criminality in more than one Member State is considered a best practice. The participation in coordination meetings organised by Eurojust is encouraged, including when agreeing on setting up a JIT.

11. Forum members consider the need for specialisation of prosecutors and the advantages of setting up nationwide networks of prosecutors to deal with this type of criminality.

12. The importance of supporting prosecutions by way of provision of appropriate evidence in the Member State(s) that are countries of origin of victims of human trafficking, when victims return to reside there, was also mentioned.

13. Another best practice is sharing the information collected with other Member States and channelling information at police level through Europol and Interpol.

14. A proposal is made for the initiation of and wide participation in European operations to tackle this type of criminality in the framework of the EMPACT (European Multidisciplinary Platform against Criminal Threats) on THB and illegal immigration.

15. Another proposal is to proceed with an inventory of illegal immigrants in an international database, so they could be more easily identified, their movement could be followed within the EU territory and their international protection could be better achieved, in particular in the case of unaccompanied minors.

16. Some Forum members suggest the consideration of posting Eurojust liaison magistrates in certain third countries of origin of migrants and victims of THB to reinforce judicial cooperation with such countries.

17. Sea border checks and participation in Frontex coordinated operations to intercept vessels on high seas and protect migrants have proved to be successful and should be further utilised.

The role of the Consultative Forum

18. The Consultative Forum can play an important role in exploring in further detail the key legal and practical issues identified in this field. It could be a “strong awakening voice” of the EU institutions, highlighting the difficulties and needs faced by Member States in investigation and prosecution of these offences.
19. Moreover, the Forum could share experiences, practices and relevant court decisions in the Member States. In this respect, in order to support the Forum, the latter asks Eurojust to consider the possibility of setting up an operational working group.
20. Forum members also identify the need for additional support from Eurojust, for example, in providing assistance in situations where conflicts of jurisdictions arise and coordination between Member States is needed, in assisting in information exchange, and in considering the setting up of JITs.
21. In the medium and long term perspective, given the trans-border nature of smuggling and human trafficking, consideration should be given to the need to ensure prosecution at EU level of THB and smuggling of migrants crimes, as well as the opportunity to extend the competence of the future European Public Prosecutor’s Office (EPPO) to these crimes.