

Eurojust Meeting on Migrant Smuggling

The Hague, 8-9 November 2023

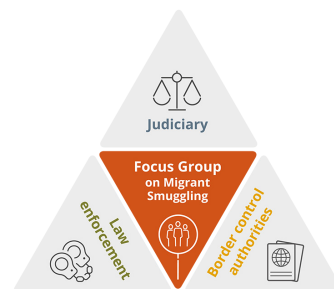
Outcome Report

Criminal justice across borders



EUROJUST

European Union Agency for
Criminal Justice Cooperation





Eurojust Meeting on Migrant Smuggling

The Hague, 8-9 November 2023

Outcome Report



Contents

Introduction.....	2
1. First session: enforcing UN sanctions in migrant smuggling investigations.....	3
2. Second session: cooperation with non-EU countries	4
3. Third session: migrant smuggling casework	5
4. Fourth session: Focus Group on Migrant Smuggling	6
5. Interactive workshops	7
6. Conclusions and way forward	8

Introduction

Eurojust hosted its annual meeting on migrant smuggling on 8 and 9 November 2023. A wide array of judicial practitioners with extensive experience in tackling migrant smuggling attended the meeting, offering a platform to identify operational challenges, exchange innovative ideas and share best practices. By way of informative presentations and interactive discussions, the meeting served to enhance cooperation between stakeholders from both EU Member States and non-EU countries in efficiently addressing this complex and continuously evolving crime type.

Attendees included practitioners from various Member States, Western Balkan countries and South Partner Countries of the EU, several Eurojust Liaison Prosecutors and representatives from the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the European Union Agency for Law Enforcement Cooperation (Europol), the United Nations and non-EU countries including Ghana and Nigeria. To maximise participation, the meeting – which was the seventh in a series that started in 2015 – took place in a hybrid format, allowing for both in person and online presence via videoconference.

This year, the participants discussed:

- current legislative initiatives combating migrant smuggling, to be proposed by the European Commission;
- how to enforce UN sanctions in migrant-smuggling investigations;
- challenges and best practices in cooperation with non-EU countries (with the participation of judicial practitioners invited through the western Balkans criminal justice project, the Euromed justice programme and the United Nations Office on Drugs and Crime /West African Network of Central Authorities and Prosecutors (WACAP));
- migrant-smuggling casework, with special focus on the protection of victims' rights in migrant-smuggling cases and contributions from Europol's European Migrant Smuggling Centre (EMSC) and Frontex;
- the work of the Focus Group on Migrant Smuggling.

The representative of the Commission outlined plans at the EU level to update the legal framework and to strengthen cooperation to fight the smuggling of migrants, triggering a discussion of the need to improve the applicable EU legal framework, in particular as it concerns criminalisation of the offence of migrant smuggling. The recent increase in migrant smuggling to, within and through the EU, coupled with the complexities resulting from its transnational nature, requires new approaches and an increase in cooperation.

The meeting's news item on Eurojust's website can be found [here](#).

1. First session: enforcing UN sanctions in migrant smuggling investigations

This session centred around the UN sanctions regime as an additional tool to target perpetrators / organised crime groups (OCGs) involved in migrant smuggling.

Representatives from the Dutch National Prosecutor's Office and the International Criminal Court provided a practical example concerning a Joint Team set up in 2018 pursuant to Article 19 of the United Nations Convention against Transnational Organized Crime (UNTOC). The team, composed of three Member States, a non-EU country and the International Criminal Court, with support from Europol's EMSC, investigates crimes committed by OCGs on the central Mediterranean route, including crimes of atrocity committed against migrants at detention facilities in Libya. While a number of related trials are ongoing, such processes are lengthy. The sanctions regime – which does not require the submission of full criminal files for imposition – is an additional tool to target perpetrators. Specific challenges were discussed, including the long diplomatic process of convincing relevant stakeholders to vote for the imposition of such sanctions. Participants also flagged as a concern the fact that the imposition of a travel ban makes arrests more challenging.

A representative from the UN Security Council Panel of Experts on Libya gave a presentation on the role of the panel in monitoring the implementation of sanctions and supporting UN member states, as mandated by Security Council Resolution 1973 (2011). The panel investigates crimes committed against migrants at detention facilities as violations of humanitarian and human rights law. It has a proactive role in sharing investigative information with relevant national and international stakeholders, within the framework of its confidentiality regime. The representative highlighted, in this context, a recent example whereby the sharing of information with a relevant stakeholder led to the arrest of a criminal network leader.

Challenges discussed include the fact that sanctioned individuals often use forged documentation, resulting in the circumvention of the imposed travel ban, and that assets are often held in bank accounts not related to the suspects or are in cash only, preventing the freezing of such assets. Concerning the latter issue, participants discussed the challenges faced in attempting to trace money transferred through hawala, an informal system for moving money. Moreover, the complex modus operandi of the OCGs involved in migrant smuggling makes it difficult to trace the networks back to the sanctioned individuals, who may be quickly replaced in the network chain. Participants also highlighted specific obstacles in sharing and obtaining information, such as confidentiality regimes governing collected evidence and data protection regulations, preventing the identification of sources and suspects. Another issue discussed concerned the risk of adversely affecting national investigations and prosecutions through the sharing of investigative materials with multiple stakeholders.

2. Second session: cooperation with non-EU countries

The session highlighted progress and challenges in relation to cooperation with countries of the western Balkans, the southern and eastern Mediterranean countries and in West Africa.

- The Western Balkans Criminal Justice project coordinator provided an update on the operational achievements of the past year, highlighting the objective of improving coordination at the regional level and complementing this operational component with relevant knowledge. Positive outcomes were achieved, among other ways, through the project's support of cases (coordination meetings, coordination centres and joint investigation teams (JITs)), the facilitation of contact group meetings and the fostering of practitioners' involvement in networks and focus groups. Looking ahead, reference was made to a new EU-funded 'EU4FAST' project on EU support to strengthen the fight against migrant smuggling and trafficking in human beings in the western Balkans, which was launched in June 2023 and is dedicated to fighting migrant smuggling and the trafficking of human beings in the western Balkan region.
- A German senior prosecutor and Focus Group member gave a presentation on the massive increase in illegal immigration along the Balkan route, with an accompanying increase in violence committed by OCGs. Political differences between the countries through which the route passes result in complicated and untimely legal cooperation. Increased coordination at the working level through the recently established 'Focus Group subgroup on the western Balkans, allowing prosecutors to share information in a forum of trust before sharing results on a more formal level, was proposed as possible solution for more efficient cooperation.
- The EuroMed Justice programme coordinator gave an overview of the project, informing the participants that the new project cycle (sixth phase) will cover the period from 2024 to 2028. EuroMed Justice is hosted at Eurojust and provides strategic and operational support to the criminal justice authorities of 14 Member States and nine South Partner Countries. Project activities are based on three pillars – the Prosecutor General's Forum, CrimEx (judicial experts from Euro-Mediterranean countries) and the EuroMed network of contact points to increase cross-border judicial cooperation. The project team ensures that the latter network is connected with relevant Eurojust-supported networks and focus groups, such as the two Focus Groups against migrant smuggling and trafficking in human beings (THB).
- The representative from the United Nations Support Mission in Libya (UNSMIL) gave an overview of their activities in the country and of the operational and legal challenges they face on a daily basis. UNSMIL does not conduct its own investigations but documents human rights violations by gathering information based mainly on victims' statements. One of the main challenges is that UNSMIL has not had access to detention facilities since 2017. Given that Libya is not a signatory party to the 1951 UN Refugee Convention and that any entry, stay or exit of migrants without identification documents is regarded as illegal, migrants are pushed into a cycle of violence committed either by traffickers or in detention facilities. According to a UNSMIL analysis, Libyan state actors are involved in extortion, torture and the selling of asylum seekers to traffickers.
- WACAP is a network consisting of the 15 members of the Economic Community of West African States plus Mauritania and Chad. It was launched in 2013 in order to implement the Bamako Declaration on Impunity, Justice and Human Rights of 4 December 2011 adopted by the ministers of justice of the countries involved. The network was represented by a prosecutor from Ghana.

- West and central African countries are facing many challenges in fighting transnational organised crime, especially THB and migrant smuggling, such as a lack of trust, differences in legal systems, language barriers and obsolete mutual legal assistance laws. In order to overcome such challenges, WACAP is providing its members with legislative assistance, organising capacity-building activities, sharing experience and arranging study visits (including two to Eurojust in 2023), along with joint operations and actions. Examples of successful operational cooperation with European countries were presented. In order to strengthen the cooperation with Eurojust, the WACAP representative suggested:
 - appointing more contact points and posting a WACAP liaison officer at Eurojust;
 - organising operational meetings between EU judicial authorities and authorities from WACAP countries; and
 - facilitating WACAP countries' participation in JITs, benefiting from Eurojust's legal, technical and financial support.

3. Third session: migrant smuggling casework

- A Spanish prosecutor at the Spanish National Desk, Focus Group member and member of Eurojust's Victims' Rights Working Group explained the agency's role in victim protection, emphasising the need to take this dimension into consideration from the early stages of an investigation. Eurojust can provide assistance and guidance on:
 - identifying and protecting victims;
 - minimising the risk of secondary victimisation;
 - managing a large number of victims; and
 - including the victims' rights dimension in all operational work.

Various challenges identified by the working group were presented and debated. In particular, the discussion related to the deviating legal status of migrants as witnesses/suspects/victims in judicial proceedings and the possible ramifications of a migrant becoming a victim of any sort of crime.

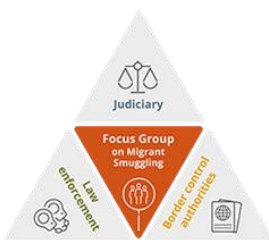
Eurojust published a [report in February 2022](#) on this topic. Based on Eurojust casework, and using case examples, the report identifies challenges faced by practitioners and presents solutions and best practices to overcome them.

- **Europol's EMSC** provided an overview of the latest developments and trends in migrant smuggling. Arising threats include the increased use of violence and dangerous modi operandi, the increased demand for facilitation services (whole-of-route approach) and the online environment becoming an integral part of migrant smuggling. In 2023, Europol coordinated more than 300 cross-border investigations, resulting in the identification of 12 000 migrant smugglers. These numbers illustrate the immense workload of the centre. In addition, the EMSC increased the deployment of Europol staff to affected countries working closely with national authorities. The EMSC representative requested the support of the judiciary in relation to promoting giving permission for data transmission to Europol in flagship investigations.

- **Frontex** presented the current operational trends and responses at the EU’s external borders, noting that nearly all migrant smuggling activities are organised by OCGs. This leads to huge earnings by these criminal groups. It was also noted that OCGs are becoming more skilful and violent, taking full advantage of technological advancements. Joint Action Days coordinated by Frontex in 2022 resulted in the apprehension of 449 migrant smugglers.
- Reflecting on national experiences in migrant smuggling cases, a Belgian prosecutor and Focus Group member presented a recent ‘small-boat case involving Belgium and France, which resulted in the conviction of 20 suspects in October 2023. She stressed the need for prosecutors to be involved in the investigation from an early stage, thus securing, among other things, the admissibility of evidence in court. This would also be of importance when an Operational Task Force has been set up, as Eurojust, and not only Europol, should be involved from the very beginning.
- In addition to the Belgian experience, a French prosecutor and Focus Group member presented some lessons learned in three cases, where migrants lost their lives trying to reach the United Kingdom via the English Channel. She informed participants about a legislative change criminalising assistance in migrant smuggling. Moreover, the French representative recommended referring cases such as the ones presented to Eurojust for swift support and setting up a JIT for complex cross-border operations.

During the subsequent discussion, several participants, including from non-EU countries and the United Nations Office on Drugs and Crime, contributed experiences from their own investigations/analyses and provided suggestions for future collaboration.

4. Fourth session: Focus Group on Migrant Smuggling



The fourth and last session was entirely dedicated to the Focus Group. At the beginning of the session, Eurojust presented the activities and achievements of the Focus Group in 2023. For the second time, the group was represented externally by two members at a conference in Sarajevo, Bosnia and Herzegovina. In addition, an informal workshop was held in a virtual format, quarterly newsletters were sent out and the group provided valuable input into new Eurojust publications on migrant smuggling.

As a major development in 2023, and following up on suggestions coming from the Focus Group itself, Eurojust launched a new Focus Group subgroup on the western Balkans in July 2023. The members of this subgroup include some Member States and nearly all western Balkan countries. The aim is to create mutual trust, enhance cooperation and cultivate personal contacts in each participating country.

Subsequently, a plenary discussion on future working methods within the Focus Group and potential workshop topics for 2024 took place. The participants exchanged views on the future of the Focus Group and proposed topics of relevance to practitioners working on migrant smuggling cases.

Suggestions included, among others:

- explaining and promoting the complementarity of JITs and Operational Task Forces, including for judicial practitioners;

- creating a case study on cases of sham marriages / marriages of convenience and best practices in how to investigate and prosecute this phenomenon;
- exploring further potential synergies and cooperation options with the Council of Europe Network of Prosecutors on Migrant Smuggling.

5. Interactive workshops

In addition to presentations and discussions on various topics, workshops were conducted, allowing for a more informal platform for sharing experiences and challenges. The outcomes captured from the various workshops include the following (the information below does not reflect the official views of Eurojust):

- Information sharing between judicial authorities needs to be increased, even if it is spontaneous or based on Article 21 of the [Eurojust regulation](#), to effectively investigate OCGs. This will facilitate an increase in the number of JITs. However, current data protection regulations are often perceived as a significant hindrance in the operational data-sharing process.
- Financial investigations should be conducted more frequently and accurately. Payments made by traffickers through underground banking or hawala, or using cryptocurrencies, make it significantly challenging to investigate the matter, if not impossible.
- Due to limited resources and the number of migrant-smuggling cases at the national level, many investigations only focus on lower-level actors, such as drivers, facilitators, etc., instead of focusing on the organisers and OCG heads, residing in and operating from countries it is difficult to cooperate with (Iran, Libya, Pakistan, Syria, Türkiye, etc.).
- Cooperation with some non-EU countries is complicated due to a lack of willingness to cooperate, a lack of replies to mutual legal assistance requests, a lack of migrant smuggling legislation or the application of such legislation, a lack of contact points in some countries and differences in the criminalisation of the offence of migrant smuggling in some countries.
- The usefulness and the importance of informal networks such as the Focus Group were repeatedly mentioned. Only by building mutual trust among practitioners will judicial cooperation be possible and successful. The participants encouraged EU legislators to provide more funding for more such events, networks and focus groups. Existing networks should expand to non-EU countries due to the great importance of these countries in successful migrant smuggling investigations.
- More cases should be referred to Eurojust due to its role as an essential partner in many cross-border investigations. For some regions, projects such as the western Balkans criminal justice project and the project on EU support to strengthen the fight against migrant smuggling and trafficking in human beings in the western Balkans might be helpful in supporting judicial proceedings. In addition, expanding the number of Liaison Prosecutors at Eurojust and at the bilateral level should be explored, for example the Nigerian Liaison Prosecutor in Italy. Experience has shown that such a deployment significantly boosts the quality and quantity of judicial cooperation.
- Member States should harmonise their legislation with regard to the criminalisation and definition of the offence of migrant smuggling.

- Language barriers remain a key obstacle to achieving proper judicial collaboration in many cases.
- Europol's EMSC advocated for increased data transfer to that agency in order to be able to support better national investigations. For this, the approval from judicial authorities would be welcome in more cases.
- Judicial cooperation with countries facing allegations of human rights violations (e.g. Libya) should be closely assessed.
- The judiciary must also think creatively when considering cooperation with non-EU countries. Possible solutions include leveraging UN sanctions through the UN Security Council Panel of Experts, exploring the option of creating a Joint Team based on Article 19 of the United Nations Convention against Transnational Organized Crime and using diplomatic channels, such as embassies and other representations, when appropriate.
- Specialised prosecution offices and judicial chambers should be created for migrant smuggling and THB cases.
- Due to the relatively low number of cross-border migrant smuggling cases in Member States, useful experience and best practices are not sufficiently shared. This could be improved by encouraging Member States to set up specialised offices.

6. Conclusions and way forward

- The meeting once again showed that cooperation requires mutual trust that can be best established and fostered by meeting in person, as the outcome of this annual meeting clearly shows. This was stressed repeatedly by several participants and confirmed by the very low number of requests for online participation.
- Participants called for further in-person meetings, including with regard to the newly created subgroup, as online meetings/workshops can only complement, not replace, the personal contacts between prosecutors and investigative judges in complex and sensitive migrant smuggling cross-border investigations.
- The exchanges showed that while OCGs are very flexible and are exploiting every possibility to pursue their criminal paths, law enforcement and judicial authorities face operational, legal and factual barriers in cooperating at the international level to bring perpetrators to justice. Participants highlighted the importance of international judicial coordination and cooperation in the fight against migrant smuggling. Tools to support judicial authorities were presented at the meeting, showing how practitioners could overcome these issues to have a global response to a global problem.
- Early involvement of judicial authorities is encouraged in order to build a successful case.
- Alignment of activities / cooperation between the Focus Group supported by Eurojust and the Council of Europe Network of Prosecutors on Migrant Smuggling should be further explored to avoid the duplication of work and resources.
- Interactive workshops provided a wealth of insights into the challenges, but also the best practices, of concrete judicial cooperation between EU and non-EU judicial authorities in migrant smuggling cases (see Section 6 above for further details).



Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
www.eurojust.europa.eu • info@eurojust.europa.eu • +31 70 412 5000
Follow Eurojust on X, LinkedIn and YouTube @Eurojust

Catalogue number: QP-09-24-099-EN-N • ISBN: 978-92-9404-228-6 • DOI: 10.2812/788806



Eurojust is an agency of the European Union