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Project: Development of Reliable and Functioning Policing Systems
and Enhancing of Combating Main Criminal Activities
and Police Co-operation

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**Strengthening police capacities
against serious crime in South-eastern Europe**

**Project's benchmarks for follow-up
regarding international and
European standards and practices**

Table of contents

TOPIC: CRIME ANALYSIS ON ECONOMIC AND ORGANISED CRIME (MODULE 1- OUTPUT 1.1).....	3
TOPIC: FINANCIAL INVESTIGATIONS AND CONFISCATION (MODULE 1- OUTPUT 1.2).....	5
TOPIC: SPECIAL INVESTIGATIVE MEANS AND INTELLIGENCE (MODULE 1- OUTPUT 1.3).....	8
TOPIC: PROTECTION OF WITNESSES (MODULE 1- OUTPUT 1.4).....	11
TOPIC: INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS (OUTPUT 1.5).....	13
TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)	16
TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2).....	25

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COUNCIL OF EUROPE

Project Management Unit

Project “Development of reliable and functioning policing systems and enhancing of combating main criminal activities and police co-operation”

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This draft document is to be reviewed and further developed by participating experts during regional and in-country activities, in view of establishing benchmarks to meet European standards and practices on economic and organised crime.

This document does not necessarily reflect official views of the Council of Europe or the European Commission.

TOPIC: CRIME ANALYSIS ON ECONOMIC AND ORGANISED CRIME (MODULE 1- OUTPUT 1.1)

CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	<p>To ensure a legal framework for systematic collection, analysis and exchange of data on economic and organised crime</p> <p>To secure relevant levels confidentiality of access to data on economic and organised crime, in line with European standards on privacy and data protection</p> <p>To develop a national strategy/ plan to support crime analysis</p>	<p>To ensure that data is systematically collected and analysed</p> <p>To provide for an adequate framework for exchange of relevant information and access to relevant sources of information</p>	<p>TEU, Vienna action plan, Millennium strategy CoE Rec(2001)11</p> <p>CoE Rec(2001)11 CoE Rec (91)10</p> <p>ETS 108 CoE Rec (87)15</p>
POLICY		<p>Set up national systems of data collection and of criminal statistics which take into account the specific features of economic and organised crime</p> <p>To ensure that standard format contributions of information are mandatory by specified institutions</p> <p>To analyse, with scientific and academic communities the aspects of organised crime, trends, circumstances, groups and technologies, and publish the analysis reports on a regular basis</p> <p>To support research and institutions which carry out multidisciplinary research on economic and organised crime</p>	<p>CoE Rec(2001)11 CoE R(96)8, 98/C 408/01, Millennium strategy</p> <p>TEU BPS 4</p> <p>UNTOC, TEU 3 98/C 408/01, Millennium strategy</p> <p>TEU , Vienna action plan, Millennium strategy, 98/C 408/01, CoE Rec(2001)11, CoE Res (97)4</p> <p>TEU 30 1 d FATF</p>
INSTITUTIONAL FRAMEWORK AND TRAINING	<p>To systematically monitor the effectiveness of measures for the prevention and control of economic and organised crime</p> <p>Consider establishing crime analysis units</p> <p>To provide training on crime analysis of economic and organised crime</p>	<p>To systematically monitor the policies and actual measures to prevent and combat economic and organized crime</p> <p>To ensure crime analysts receive specialised training</p>	<p>BPS4</p> <p>BPS4</p>
INTERNATIONAL CO-OPERATION	<p>To facilitate international co-operation in this field</p>	<p>To enable legally and operationally the exchange of relevant information between the competent law enforcement authorities for the purpose of gathering and sharing information, investigations and mutual legal assistance, in conformity with relevant rules relating to data protection</p>	<p>TEU 30 1 b, ETS 141, ETS 173, ETS 174, ETS 108 and ETS 181, CoE Rec(2001)11, CoE Rec 96(8), Coe Rec (87)15</p>

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UNTOC
Council of Europe	
<i>Primary sources (legally binding)</i>	
Convention on laundering, search, seizure and confiscation of proceeds of crime	ETS 141
Criminal Law Convention on Corruption	ETS 173
Civil Law Convention on Corruption	ETS 174
Convention for the Protection of Individuals with regard to automatic processing of personal data	ETS 108
Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows	ETS 181
<i>Secondary sources (Politically binding or other)</i>	
Committee of Ministers Rec (2001) 11 concerning guiding principles on the fight against organised crime	Rec (2001) 11
Committee of Ministers Rec 96(8) on crime policy in Europe in a time of change	Rec 96(8)
Committee of Ministers Recommendation No.R(87) 15 regulating the use of personal data in the police sector (17 September 1987)	Rec R(87)5
Committee of Ministers Recommendation n° R(91)10 on the communication to third parties of personal data held by public bodies	R(91)10
Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption	Res(97)24
Council of Europe: Best practice survey n° 4 – Crime analysis (PC-S-CO (2002)2, Strasbourg 22 July 2002	BPS4
European Union	
<i>Primary sources (legally binding)</i>	
Treaty of the European Union, Title VI , (ex article K2)	TEU
<i>Secondary sources (Politically binding or other)</i>	
Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice - Text adopted by the Justice and Home Affairs Council of 3 December 1998	Vienna action plan
Council resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it	(98/C 408/01)
The Prevention and Control of Organised Crime: A European Union Strategy for the Beginning of the new Millennium	Millennium strategy
Other	
<i>Politically binding</i>	
FATF forty recommendations	FATF

TOPIC: FINANCIAL INVESTIGATIONS AND CONFISCATION (MODULE 1- OUTPUT 1.2)

CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	To adopt legislative measures for identifying, tracing, freezing, seizing and confiscating proceeds of crime	<p>To provide for an effective access to relevant sources of financial/banking information (eg. lifting bank secrecy)</p> <p>To ensure interim measures available for freezing suspected proceeds of crime</p> <p>To ensure all serious crimes are predicate for the purposes of money laundering</p> <p>To ensure that the prosecutor or court may generate of their own motion a confiscation enquiry within court proceedings.</p> <p>To consider introducing reversal of the burden of proof provided for, in ECHR proportionate circumstances, in confiscation cases</p>	<p>CoE Res(97)24</p> <p>Vienna Convention, UNTOC ETS 141, ETS 173</p> <p>UNTOC</p> <p>Practical measure, consistent with UNTOC 11(2)</p> <p>UNTOC 12(7), Vienna Convention), BPS 2 , FATF</p>
POLICY	To establish investigative strategies that target the assets of organised crime groups through integrated financial investigations into criminal investigations	<p>To ensure that the legislation and procedures on the confiscation of the proceeds of crime allow for value based confiscation</p> <p>To consider introducing an extended confiscation regime</p> <p>Criminal Investigations to be accompanied by investigations into proceeds of crime</p> <p>To systematically compile reliable statistics on all financial proceedings, demonstrating implementation of interim measures and final confiscation orders.</p>	<p>ETS 141, UNTOC Vienna Convention, FATF, ETS 173 2001/500/JHA</p> <p>FATF</p> <p>Vienna Convention</p> <p>London Statement, see Federal German Approach , consistent with Vienna Convention</p> <p>ETS 141, PACO Proceeds</p>

TOPIC: FINANCIAL INVESTIGATIONS AND CONFISCATION (MODULE 1- OUTPUT 1.2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
POLICY	To strengthen inter-agency co-operation	<p>To ensure a “task force” approach in investigating complex cases</p> <p>To ensure operational information exchange between police, prosecutors, FIUs, customs and tax authorities and other relevant institutions</p> <p>To ensure international and bilateral cooperation and exchange of information in financial investigations, allowing institution to institution cooperation</p>	ETS 141, UNTOC, Vienna Convention, ETS 173, ETS 174
INSTITUTIONAL FRAMEWORK, HUMAN RESSOURCES AND TRAINING	To ensure specialisation of persons or bodies (eg. relevant law enforcement authorities and prosecutors) in financial investigations	To provide for appropriate means and comprehensive sustainable training programmes in financial investigations	TEU 30 1 c CoE Res(97)24
INTERNATIONAL CO-OPERATION	To develop to the widest extent possible international co-operation in this field	<p>To ensure effective access of law enforcement authorities and prosecutors to adequate human resources having financial expertise</p> <p>To process with the same priority as is given in domestic proceedings requests of mutual assistance which relate to asset identification, tracing, freezing, or seizing and confiscation</p> <p>To introduce provisions in domestic law or in bilateral or multilateral agreements to enable asset sharing among those countries involved in the tracing, freezing, seizure and confiscation or forfeiture of assets originating from organised crime activities</p> <p>To ensure that FIUs meet Egmont Group standards and co-operate to assemble, analyse, and investigate relevant information as well as to exchange relevant information, spontaneously or on request, within the limits of the applicable national law.</p>	2001/500/JHA CoE Res(97)24 Rec(2001)11 2000/642/JHA FATF, Hague Principles

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UNTOC
United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances	Vienna Convention
Council of Europe	
<i>Primary sources (legally binding)</i>	
Convention on laundering, search, seizure and confiscation of proceeds from crime (Strasbourg Convention)	ETS 141
Criminal Law Convention on corruption	ETS 173
Civil Law Convention on corruption	ETS 174
ECHR Case-law	
Non-exhaustive list: YILDIRIM v. Italy, no. 38602/02, decision of 10 April 2003, BUTLER v. the United Kingdom, no. 41661/98, decision of 27 June 2002, BOSPHORUS HAVA YOLLARI TURIZM VE TICARET AS v. Ireland, no. 45036/98, decision of 13 September 2001, C.M. v. France, no. 28078/95, decision of 26 June 2001, RIELA v. Italy, no. 52439/99, decision of 4 September 2001, ROCCO ARCURI and others, no. 52024/99, decision of 5 July 2001, HONECKER v. Germany, no. 53991/00, AXEN, TEUBNER and JOSSIFOV v. Germany, no. 54999/00, decision of 4 September 2001, PHILLIPS v. the United Kingdom, no. 41087/98, judgment of 4 July 2001, SCHMELZER v. Germany, no. 45176/99, decision of 12 December 2000, RAIMONDO v. Italy, judgment of 22 February 1994, AIR CANADA v. the United Kingdom, judgment of 5 May 1995, AGOSI v. the United Kingdom, judgment of 24 October 1986,	
<i>Secondary sources (Politically binding or other)</i>	
Committee of Ministers Rec (2001) 11 concerning guiding principles on the fight against organised crime	Rec (2001) 11
Committee of Ministers Recommendation No. R96(8) Crime policy in Europe in a time of change	Rec(96)8
Committee of Ministers Resolution (97)24 on the twenty guiding principles for the fight against corruption	CoE Res(97)24
PACO Confiscation of Proceeds from Crime in South Eastern Europe (Final Project Report 2001)	PACO proceeds
COE Best Practice Survey no.2 Reversal of the burden of proof in confiscation cases	BPS 2
European Union	
<i>Primary sources (legally binding)</i>	
Treaty of the European Union, Title VI , (ex article K2)	TEU
Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime	2001/500/JHA
Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information	2000/642/JHA
Other	
<i>Secondary sources (Politically binding or other)</i>	
The London Statement defeating organised crime in South-eastern Europe	London Statement
FATF forty recommendations	FATF
Principles for information exchange between FIUS for money laundering cases	Hague Principles

TOPIC: SPECIAL INVESTIGATIVE MEANS AND INTELLIGENCE (MODULE 1- OUTPUT 1.3)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	To provide for a legal basis in domestic law for regarding the use of special investigative means, with due respect of the principles enshrined in the ECHR	<p>To adopt a comprehensive legal framework for the use of technical and non technical special investigative means, which is accessible to the persons concerned and whose effects are foreseeable</p> <p>To introduce a detailed regulatory framework for the use and application of SIMs with ECHR proportionate use (i.e. tiered authority for use, related to gravity of offence), and level of SIM (the regulations to be in legally binding form, publicly available, provide a definition of those subject to surveillance, the type of offence that may attract surveillance, including all serious offences, the permitted duration of surveillance, the scope and manner of surveillance, the handling and destruction of material and personal data obtained through the use of SIMs, accountability over authorisation and use of surveillance and its review and supervision).</p> <p>To ensure court supervision over the process of ordering and implementing most intrusive SIMs</p> <p>To ensure, allowing for ECHR safeguards, the court admissibility of SIMs generated evidence.</p>	<p>UNTOC</p> <p>ETS 173, ETS 030 & 182</p> <p>ECHR</p> <p>Council Framework Decision of 13 June 2002 on joint investigation teams, 96/C 329/01</p> <p>CoE Rec 96(8), R(87)15</p> <p>CoE BPS 3</p> <p>PACO SIMs</p> <p>PC-TI (2003)11</p>
POLICY	<p>Formulate and publish guidelines for law enforcement bodies involved in the use of SIMs</p> <p>To create a national reporting system on the use of SIMs</p> <p>Identify best practices with respect to the role of the judicial and law enforcement authorities involved in the use of SIMs and its control</p>	<p>Such guidelines to describe in clear language the ethical standards, authorisation procedures, record-keeping rules, complaints procedures and other guiding principles that law enforcement should apply while using such methods and their results</p> <p>To ensure the elaboration by an independent high authority and publication of annual reports on the use of such methods</p>	

TOPIC: SPECIAL INVESTIGATIVE MEANS AND INTELLIGENCE (MODULE 1- OUTPUT 1.3)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
INSTITUTIONAL FRAMEWORK	Establish specialised units for the implementation of different types of SIMs within law enforcement authorities		UNTOC ETS 173, ETS 030 & 182 ECHR EU convention, Council Framework Decision of 13 June 2002 on joint investigation teams, 96/C 329/01 CoE Rec 96(8), R(87)15 CoE BPS 3 PACO SIMs PC-TI (2003)11
	To introduce effective and independent oversight mechanisms, exercising an extensive a priori and ex post facto control regarding the authorisation and control of the use of SIMs	Ensure an internal oversight mechanism for the application of SIMs either through administrative or prosecutorial supervision Ensure an external oversight mechanisms for the application of SIMs either through special judicial surveillance panels or special parliamentary committee or Ombudsman	
INTERAGENCY CO-OPERATION	Set up an institutional framework for effective operational criminal intelligence supporting pro-active policing To ensure close cooperation between prosecutors, and police in the process of application and implementation of SIMs		
TRAINING AND HUMAN RESSOURCES	Institutionalise and promote a permanent vocational training regarding special investigative means and intelligence	Institutionalise a comprehensive general training on SIMs for the relevant officials involved in the use of SIMs and in their control Institutionalise specific training of undercover agents.	
	To improve international co-operation in relation with the use of SIMs	Optimise the use of the possibilities offered by existing international instruments in relation with the use of SIMs, in particular the European Convention on mutual assistance in criminal matters and its protocols Improve the use of joint investigation teams and cross-border operations in relation with SIMs, including the possibility of exchange of undercover agents	

Sources and abbreviations

United Nations	
Primary sources (<i>legally binding</i>)	
UN Convention against Transnational Organized Crime (2000)	UNTOC
Council of Europe	
Primary sources (<i>legally binding</i>)	
European Convention on Human Rights and Fundamental Freedoms	ECHR
Criminal Law Convention on Corruption	ETS 173
Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime	ETS 141
Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	ETS 108
Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters	ETS 182
Case law of the ECHR	
Key principles: the principle of lawfulness, the principle of exceptional circumstances (which includes the sub-principles of subsidiarity, proportionality and specificity)	
Article 6(Right to fair hearing), article 8 (reasonable expectation of privacy to be balanced with interference “necessary in a democratic society” and” in accordance with the law” as reflected in ECHR case law), article 13 (wherever SIMs constitute interference in guaranteed rights, they must be subject to effective control bodies independent of the persons who implement them). Non exhaustive list: <i>Klass v Germany</i> (1979-80) 2 EHRR 213, <i>Malone v United Kingdom</i> (1985) 7 EHRR 14, <i>Halford v United Kingdom</i> (1997) 24 EHRR 523, <i>Huvig v France</i> (1990) 12 EHRR 528, <i>Kruslin v France</i> (1990) 12 EHRR 547, <i>Valenzuela Contreras v Spain</i> (1999) 28 EHRR 483, <i>PG v United Kingdom</i> [2002] EHLRLR 262, <i>Taylor-Sabori v United Kingdom</i> [2001] EHLRLR 94, <i>Khan v United Kingdom</i> (2001) 31 EHRR 45, <i>PG v United Kingdom</i> [2002] EHLRLR 262, <i>Govell v United Kingdom</i> [1999] EHLRLR 121, <i>A v Germany</i> decision 15 th October 1987 app no 12127/86, <i>Ludi v Switzerland</i> (1993) 15 EHRR 173, <i>Teixeira de Castro v Portugal</i> (1999) 28 EHRR 101, <i>Rademarcher and Pfeiffer v Germany</i> 13 th May 1991 application number 12811/87, <i>Shahzad v United Kingdom</i> [1998] EHLRLR 210, <i>Ebbinge v the Netherlands</i> ECHR 14 March 2000, <i>Rotaru v Romania</i> 4 May 2000	
Secondary sources (Politically binding or other)	
Committee of Ministers Recommendation No. R (87)15 regulating the use of personal data in the police sector	R (87)15
Committee of Ministers Recommendation No. R96(8) Crime policy in Europe in a time of change article 26	R96(8)
Committee of Ministers Recommendation No. R (2001)11 concerning guiding principles on the fight against organised crime	R (2001)11
Report on the PACO SIMS project	
Report on Interception of Communication and Intrusive Surveillance (PS-S-CO (2000)3 – BPS 3	
Final report on special investigation techniques in relation to acts of terrorism (PC-TI (2003)11)	
European Union	
Primary sources (<i>legally binding</i>)	
Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union	
Council Framework Decision of 13 June 2002 on joint investigation teams	2002/465/JHA
Secondary sources (<i>Politically binding or other</i>)	
Council Resolution of 17 January 1995 on the lawful interception of telecommunications	96/C 329/01

TOPIC: PROTECTION OF WITNESSES (MODULE 1- OUTPUT 1.4)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	To adopt a legal framework for procedural and non procedural measures for witness protection	<p>To introduce a range of procedural measures for witness protection during criminal proceedings</p> <p>To introduce a range of non-procedural measures for the protection of witnesses before, during and after criminal proceedings, including witness relocation/change of identity</p> <p>To ensure the use of modern communication technology for witness testimony</p> <p>To ensure efficient investigation and prosecution of all forms of direct and indirect witness threat, pressure or intimidation</p> <p>To ensure protection of collaborators of justice</p>	<p>UNTOC Art 24, CoE Rec (97) 13, BPS 1</p> <p>CoE Rec (97) 13 BPS 1</p> <p>ETS 182, CoE Rec (97) 13, 2001/220/JHA, BPS 1</p> <p>CoE Rec (97) 13 95/C327/04</p> <p>CoE Rec (97) 13, 95/C327/04, 97/C 10/01</p>
POLICY	To adopt a comprehensive national strategy/ programme for witness protection including international and bilateral cooperation in witness protection	To ensure to special protected witnesses, and especially vulnerable victims, safety, shelter, medical assistance, and access to legal advice	UNTOC , Palermo protocol Rec 97(13) BPS 1
INSTITUTIONAL FRAMEWORK AND TRAINING	To set up specialised witness protection units		BPS 1
	To make available adequate training for the personnel of all relevant institutions involved in the protection of witnesses		CoE Rec (97) 13 UNTOC
INTERNATIONAL CO-OPERATION	To foster international co-operation in this field	To facilitate the examination of witnesses and allow witness protection programmes to be implemented across borders, by considering the use of modern means of telecommunications, assistance in the relocation and protection of witnesses abroad, exchange of information, etc	95/C327/04 CoE Rec (97) 13 UNTOC 25(1) ETS 182
		To enter into bilateral or multilateral agreements providing that domestic witness protection schemes/programmes are available to foreign witnesses	CoE Rec(2001)11

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UNTOC
UN Trafficking Protocol 2000	Palermo protocol
Council of Europe	
<i>Legally binding</i>	
Convention for the protection of Human Rights and Fundamental Freedoms	ETS 005
Criminal Law Convention on corruption	ETS 173
2 nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	ETS 182
<i>Secondary sources (Politically binding or other)</i>	
Committee of Ministers R(97)13 concerning the intimidation of witnesses and the rights of the defence	R(97)13
Committee of Ministers Recommendation No. R96(8) Crime policy in Europe in a time of change article 26	R96(8)
Committee of Ministers Recommendation No. R (2001)11 concerning guiding principles on the fight against organised crime	R (2001)11
Report on witness protection (best practice survey) PC-CO(1999)8	BPS 1
European Union	
<i>Primary sources (legally binding)</i>	
Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01)	
Council Framework Decision on the standing of victims in criminal proceedings (2001)	2001/220/JHA
<i>Secondary sources (Politically binding or other)</i>	
Council Resolution of 23 December 1995 on the Protection of Witnesses in the fight against international organised crime; OJC 327 of 7 December 1995	95/C327/04
Council Resolution of 20 December 1996 on Individuals who Co-operate with the Judicial Process in the Fight against International Organized Crime	97/C 10/01

TOPIC: INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS (OUTPUT 1.5)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	<p>To ratify and fully implement international legal instruments aiming at fostering police and judicial co-operation</p> <p>To afford to one another the widest measures of mutual legal assistance in investigations, prosecutions and judicial proceedings</p>	<p>To improve and approximate when necessary the legislative framework governing international co-operation in criminal matters, to ensure the effective implementation of these instruments</p> <p>To provide full mutual legal assistance in the investigation and prosecution of economic and organised crime</p> <p>To ensure that a response is promptly given to all requests for mutual legal assistance related to offences committed by organised crime groups</p>	<p>CoE relevant conventions CoE R(96)8 CoE Rec (2001)11 PACO Networking</p> <p>CoE relevant conventions CoE Rec (2001)11</p> <p>CoE relevant conventions CoE Rec (2001)11</p>
POLICY	<p>To take measures to ensure an effective and rapid execution of extradition requests</p> <p>To develop a national plan/strategy to support police and judicial co-operation</p> <p>To develop and share good practices in the field of international co-operation in criminal matters against economic and organised crime</p> <p>To undertake an evaluation on an annual basis of police and judicial co-operation in this field</p>		<p>CoE relevant conventions Millennium strategy ETS 024</p> <p>CoE relevant conventions Schengen Catalogue</p> <p>CoE relevant conventions London statement PACO Networking</p> <p>Schengen Catalogue</p>
INSTITUTIONAL FRAMEWORK, HUMAN RESSOURCES AND TRAINING	<p>Ensure that contact points are identified and established for judicial and police co-operation purposes</p>	<p>To designate central authorities responsible for international judicial co-operation</p> <p>To designate a central authority responsible for international police co-operation</p>	<p>CoE relevant conventions CoE Rec (2001)11 PACO Networking</p> <p>CoE relevant conventions Schengen Catalogue</p>

TOPIC: INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS(OUTPUT 1.5)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
INSTITUTIONAL FRAMEWORK, HUMAN RESOURCES AND TRAINING	Set up an efficient national co-operation system	To ensure effective police and judicial co-operation, exchange of information and coordination at national level To ensure that joint police and law enforcement operations may be carried out with foreign liaison officers and magistrates and consider posting liaison officers and magistrates in other states	TEU, CoE relevant conventions CoE Rec (2001)11 London statement Schengen Catalogue
	To institutionalise a comprehensive training programme for practitioners involved in police and judicial co-operation		UNTOC, CoE relevant conventions, CoE R(96)8 Schengen Catalogue, PACO Networking
INTERNATIONAL CO-OPERATION	To seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of co-operation in criminal matters		UNTOC, CoE relevant conventions, CoE Rec (2001)11 Schengen Catalogue PACO Networking
	To foster co-operation between central authorities	Establish and promote operational networks between designated central authorities and their counterparts in other countries and develop practical modalities of their co-operation To establish channels and methods of direct and swift international co-operation and information and intelligence exchange	CoE relevant conventions, London statement, Schengen Catalogue CoE relevant conventions, CoE Rec (2001)11

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UNTOC
Council of Europe	
<i>Primary sources (legally binding)</i>	
European Convention on Extradition	ETS 024
Additional Protocol to the European Convention on Extradition	ETS 086
Second Additional Protocol to the European Convention on Extradition	ETS 098
European Convention on Mutual Assistance in Criminal Matters	ETS 030
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	ETS 099
Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters	ETS 182
Convention on the Transfer of Sentenced Persons	ETS 112
Additional Protocol to the Convention on the Transfer of Sentenced Persons	ETS 167
Convention on the Laundering, search, Seizure, and Confiscation of the Proceeds from Crime	ETS 141
European Convention on the International Validity of Criminal Judgments	ETS 070
European Convention on the Transfer of Proceedings in Criminal Matters	ETS 073
Agreement on illicit traffic by Sea implementing article 17 of the UN Vienna Convention	ETS 156
<i>Secondary sources (politically binding or other)</i>	
Committee of Ministers Recommendation No. R96(8) Crime policy in Europe in a time of change	Rec(96)8
Committee of Ministers Recommendation No. R (2001)11 concerning guiding principles on the fight against organised crime	R (2001)11
PACO Networking- Judicial networking against corruption and organised Crime in South-eastern Europe (April 2002)	PACO Networking
European Union	
<i>Primary sources (legally binding)</i>	
Consolidated version of the Treaty on European Union, modified by the Treaty of Amsterdam Title I (Articles 1-7); Title V (Articles 18-19); Title VI (Articles 29-42)	TEU
Convention of 19 June 1990	Schengen convention implementing
<i>Secondary sources (politically binding or other)</i>	
EU Schengen catalogue – Police cooperation, vol.4 – recommendations and best practices (June 2003)	Schengen catalogue

TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK ¹	Introduce or amend legal provisions to criminalise and prosecute trafficking in human beings	<p>Criminalise all forms of trafficking in human beings, including instigation, aiding, abetting, attempting, organizing or directing other persons to commit trafficking</p> <p>Establish that investigations and prosecution shall not depend upon victim's report or accusation</p> <p>Establish effective, proportionate and dissuasive criminal penalties for trafficking and provide for more severe penalties in case of certain aggravating circumstances (e.g. when the offence was committed against a particularly vulnerable victim)</p> <p>Establish liability (criminal, civil or administrative) of and sanctions on legal persons</p> <p>Establish jurisdiction over trafficking committed within a state's territory and, under certain circumstances, abroad</p> <p>Facilitate confidential and proactive financial investigations and allow for seizure and confiscation of objects used and proceeds derived from trafficking</p> <p>Establish liability (criminal, civil or administrative) of and sanctions on legal persons</p> <p>Establish jurisdiction over trafficking committed within a state's territory and, under certain circumstances, abroad</p> <p>Allow for seizure and confiscation of objects used and proceeds derived from trafficking</p> <p>Create legal basis for special investigative techniques -</p> <p>Permit denial of entry or revocation of visas of traffickers</p>	<p>Art. 3, 5 TP, Art. 1, 2 FWD 2002/629/JHA, Art. 3/2 CRC OP</p> <p>Art. 7/1 FWD 2002/629/JHA</p> <p>Art. 11 TOC, Art. 3 FWD 2002/629/JHA</p> <p>Art. 10 TOC, Art. 4, 5 FWD 2002/629/JHA, Art. 3/4 CRC OP</p> <p>Art. 15 TOC, Art. 6 FWD 2002/629/JHA, Art. 4 CRC OP</p> <p>Art. 12 TOC, Art. 7 CRC OP</p> <p>Art. 16 Brussels Decl.</p> <p>Art. 10 TOC, Art. 4, 5 FWD 2002/629/JHA, Art. 3/4 CRC OP</p> <p>Art. 15 TOC, Art. 6 FWD 2002/629/JHA, Art. 4 CRC OP</p> <p>Art. 12 TOC,</p> <p>Art. 7 CRC OP</p> <p>Art. 20 TOC</p> <p>Art. 11/5 TP</p>

¹ The assessment if a country has fulfilled its international obligation requires not only an analysis of the legal framework, but also how this framework has been implemented in practice. However, in order to keep the matrix brief, it does not include a separate benchmark on the implementation of these legal provisions.

TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)		
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS
LEGAL FRAMEWORK	Introduce or amend legal provisions to assist and protect trafficked persons in the countries of transit and/or destination	<p>Establish a residence status regime (temporary or permanent residence permit; asylum) for trafficked persons in countries of destination and transit</p> <p>Art. 7, 14 TP, Art. 7 CCPR, Geneva Ref. Conv, Art. 3 ECHR, Residence Dir., Qualification Dir., Art. 14 Brussels Decl. OSCE Porto Decl. SPTF Tirana Commitment</p> <p>Establish the legal basis to protect the victim's physical safety, including the development of risk assessment mechanisms and procedures</p> <p>Art. 6/5, 8/2, 14 TP, UNHCHR Rec. Guideline nos. 4.10, 6.6 Art. 2 ECHR, Residence Dir., Art. 16 Brussels Decl. SPTF Sofia Commitment</p> <p>Establish the legal basis to give victims access to shelter, food, medical, psychological, material assistance, information about their rights, legal counselling</p> <p>Art. 6/2, 6/4, 14 TP, Art. 11, 12 CESC, UNHCHR Rec. Guideline no. 6, Art. 14, 15 Decl. of BP, Art. 26 CoE R (2000) 11, Residence Dir</p> <p>Establish the legal basis to allow victims access to labour market, vocational training, education</p> <p>Art. 6/3, 14 TP, Art. 6 CESC, Residence Dir.</p> <p>Exempt victims from liability for criminal offences resulting from being trafficked</p> <p>UNHCHR Rec. Principle no. 7, Guideline no. 4.5 Ch. III § 1.8 OSCE AP</p>

TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)		
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS
LEGAL FRAMEWORK	Introduce or amend legal provisions protecting the rights of victims participating in legal proceedings	SOURCE Art. 6/5, 14 TP, Art. 24, 25/1 TOC, UNHCHR Rec. Guideline no. 5.8, 6.6, Art. 8 EU FWD 2001/220/JHA, Residence Dir., Art. 13, 14 Brussels Decl., Art. 2, 3 ECHR, CoE R (97) 13, Art. 15 CoE R (85) 11, SPTF Sofia Commitment
		Protect the victim's physical safety (in-court, out-of court), based on appropriate risk assessment
		Provide the victim with relevant information and legal assistance
		Art 6/2-6/4, 14 TP, UNHCHR Rec. Guideline no. 9.2, Art. 4, 6 EU FWD 2001/220/JHA, Art. 2, 3, 6, 9 CoE R (85) 11, SPTF Sofia Commitment
		Enable the victim to present and have considered her/his views and concerns in court
		Art. 6/1 (b) TP, Art. 25/3 TOC, Art. 2, 3 EU FWD 2001/220/JHA
		Protect the victim's privacy
Art. 6/1, 14 TP, UNHCHR Rec. Guideline no. 6.6, Art. 8 EU FWD 2001/220/JHA, Art. 8 ECHR, Art. 15 CoE R (85) 11		
Provide the victim with access to compensation (from trafficker and/or state) and use confiscated assets to finance victim compensation funds		
Art. 6/6, 14 TP, Art. 25/2 TOC, Art. 9/4 CRC OP, UNHCHR Rec. Guideline no. 4.4, Art. 9 EU FWD 2001/220/JHA, CETS No. 116, Art. 9-14 CoE R (85) 11, Ch. III §1.8 OSCE AP, SPTF Sofia Commitment		
Protect the specific rights and interests of child victims during all stages of proceedings		
Art. 6/4 TP, Art. 8 CRC OP, UNHCHR Rec. Guideline no. 8, Art. 7/2 EU FWD 2002/629/JHA, EU FWD 2001/220/JHA, SPTF Sofia Commitment		

TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
INSTITUTIONAL FRAMEWORK	Create specialised anti-trafficking institutions	Create institutions such as: National Coordinators, National Task Forces, National Rapporteurs, specific Work Groups on child trafficking	UNHCHR Rec. Guideline no. 1.7, Council Res. 2003/C260/03, Art. III 1.4. Hague Decl., Art. 50-52 CoE R (2000) 11, Ch. VI § 2 OSCE AP SPTF Palermo Declaration, SPTF Sofia Commitment.
		Establish anti-trafficking police units specially trained on investigating sexual assault and offences against children	UNHCHR Rec. Guideline no. 5.4, Art. 17 Brussels Decl., Ch.III § 2.2 OSCE AP
LAW ENFORCEMENT	Exchange information among authorities at the national and international level	Designate liaison officers as national contact points for law enforcement issues as part of a regional Information Exchange Mechanism	SPTF Zagreb Commitment
		Exchange information on persons who cross borders without or with false travel documents and who are potential perpetrators or victims of trafficking, as well as on means, methods and routes used by traffickers	Art. 10/1, 10/3, 12, 13 TP
		Regulate and monitor bridal, employment, tourist, escort au-pair or adoption agencies in order to and identify and investigate those agencies that are engaged in trafficking	Art. 11 Brussels Decl.
	Undertake administrative controls	Strengthen border controls to prevent and detect trafficking	Art. 11/1 TP
		Strengthen cooperation among border control agencies	Art. 11/6 TP
		Counteract trafficking committed by commercial carriers (<i>legal and other measures</i>)	Art. 11/2-11/4 TP, Ch.III §§ 2.2, 2.3 OSCE AP
		Improve quality of travel and identity documents to prevent misuse	Art. 12 TP
	Implement safeguard clauses	Upon request by other states, verify legitimacy and validity of travel and identity documents	Art. 13 TP
		Apply all measures without prejudice to the rights of trafficked persons under international refugee law or human rights law	Art. 14 TP, CRC, CEDAW, CCPR, CESC, ECHR
	Explore alternative evidence collection methods	Explore alternative investigation techniques so that investigations and prosecutions do not exclusively rely upon victims' testimonies	UNHCHR Rec. Guideline no. 5.3, Art. 18 Brussels Decl. Ch. III §2.7 OSCE AP

TOPIC: TRAFFICKING IN HUMAN BEINGS (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
HUMAN RESOURCES	Training of law enforcement, judiciary and other relevant officials	Provide or strengthen training in prevention, prosecution and victim protection	Art. 29 TOC, Art. 10/2 TP, Art. 8/4 OP CRC, UNHCHR Rec. Guideline no. 2.2, 5.1, 5.2, 5.7, Art. 2 CEDAW/ Gen. Rec. No. 19, Art. 16 Decl. of BP, Art. 14 EU FWD 2001/220/JHA, Art. 9 Brussels Decl., Art. 24 CoE R (97) 13, Art. 1 CoE R (85) 11, Art. 19-22 CoE R (2000) 11
MATERIAL RESOURCES	Offer technical and financial assistance	Offer technical and financial assistance to states and civil society in the fight against trafficking, including the development and implementation of human rights based anti-trafficking standards Adequately fund victim assistance and protection facilities, including shelters Cooperation in criminal matters - FOR DETAILS SEE SPECIFIC MATRIX	Art. 30 TOC, UNHCHR Rec. Guideline no. 11.2 Art. 13 Brussels Decl. Art. 13, 16-19, 27-30 TOC, Art. 6, 10 CRC OP, CETS No. 5, 25, 98, Art. 16 Brussels Decl. SPTF Zagreb Commitment Art. 18 Brussels Decl. Art. 11/6 TP
INTERNATIONAL COOPERATION	Cooperate on bi- multilateral, regional and international level in the combat, protection and prevention of trafficking	Set up an effective regional Information Exchange Mechanism Explore and develop the use of international joint investigative teams Strengthen cooperation among border control agencies by i.a. establishing and maintaining direct channels of communication Undertake cooperation in order to improve victim assistance and protection, for example by enacting readmission and witness relocation agreements	Art. 8/3, 8/4 TP, Art. 24/3 TOC, Art. 12 EU FWD 2001/220/JHA, Art. 4 Brussels Decl., Art. 30, 38f CoE R (97) 13 SPTF Sofia Commitment
		Undertake bilateral and multilateral cooperation to alleviate root causes of trafficking, such as poverty, underdevelopment, lack of equal opportunity	Art. 9/4 TP UNHCHR Rec. Guideline no. 11.1

TOPIC: TRAFFICKING IN HUMAN BEINGS(MODULE 2)		
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS
OTHER	Design and implement victim support systems	<p>Art. 6 (d) Council Concl. 2003/C137/01, Art. 13 Brussels Decl., Ch. V § 3 OSCE AP, OSCE NRM Handbook</p> <p>UNHCHR Guideline no. 4.8, Ch. III §4.5 OSCE AP</p> <p>Art. 6/4 TP, UNHCHR Rec. Principle no. 10, Guideline no.8, Ch. V § 10 OSCE AP</p> <p>Art. 14 TP</p>
	Establish a National Referral Mechanism to assist and protect trafficked persons by creating a cooperative framework of all relevant actors (governmental, non-governmental, international organizations)	Art. 6/3 TP, Art. 13 FWD 2001/220/JHA, Art. 6 (d) Council Concl. 2003/C137/01, Art. 21, 36 CoE R (2000) 11, Ch. VI § 2 OSCE AP, OSCE Porto Decl., SPTF Sofia Commitment
	Provide legal counselling to victims when they are in the process of deciding whether to testify	Art. 2, 15 FWD 2001/220/JHA, Chapter IV CoE R (97) 11, Art. 8 CoE R (85) 11, Ch. III §4.2 OSCE AP, SPTF Sofia Commitment
	Take into account age, gender and special needs of victims when designing and implementing victim support systems	UNHCHR Rec. Guideline no. 5.3, Ch. III §2.7 OSCE AP
	Apply anti-trafficking measures in a way that is not affecting the human rights of trafficked persons and consistent with internationally recognized principles of non-discrimination	Art. 8, 14 TP, UNHCHR Rec. Principle no. 11, Guideline no. 11.11, Art. 38, 39 CoE R (2000) 11, Art. 14 Brussels Decl., Art. 6/2, 6/3, 6/4, 14 TP, Art. 9/3 CRC OP, Art. 6, 11, 12 CESC R, Art. 40, 41 CoE R (2000) 11
	Promote, support and cooperate with victim support organisations	Art. 15 Brussels Decl.
	Create conditions to prevent secondary victimisation of trafficked persons	
	Explore alternative investigation techniques so that investigations and prosecutions do not exclusively rely upon victims' testimonies	
	Assist and facilitate safe return of trafficked persons	
	Provide reintegration assistance to victims	

TOPIC: TRAFFICKING IN HUMAN BEINGS(MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
OTHER	Undertake preventive measures	Collect data on the scale of trafficking and undertake research, e.g. on root causes for trafficking, the methods used by traffickers, the problem of trafficking in children	Art. 9/2 TP, UNHCHR Rec. Guideline no. 3, Art. 8-10 CoE R (2000) 11 Art. 8 Brussels Decl. Ch.IV §1 OSCE AP OSCE Porto Decl.
		Undertake information and media campaigns to increase public awareness	Art. 9/2, 9/5 TP, Art. 9/2 CRC OP, Art. 11-14 CoE R (2000) 11 Art. 10 Brussels Decl., Ch.IV §4 OSCE AP OSCE Porto Decl.
		Undertake social and economic initiatives and measures to alleviate root causes of trafficking, such as poverty, underdevelopment, lack of equal opportunity (<i>legal and non-legal measures</i>)	Art. 9/4 TP, Art. 9/1 CRC OP, CRC, CEDAW, CESCR Art. 7 Brussels Decl. Ch.IV § 3.1 OSCE AP
		Cooperate with NGOs in the field of preventive measures	Art. 9/3 TP, UNHCHR Rec. Guideline no. 2.3, Ch. IV §4.1 OSCE AP, OSCE Porto Decl.

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UN TOC
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing UN Convention against Transnational Organized Crime (2000)	UN TP
International Covenant on Civil and Political Rights (1966)	CCPR
International Covenant on Economic, Social and Cultural Rights (1966)	CESCR
UN Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW
UN Convention on the Rights of the Child (1990)	CRC.
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2000)	CRC OP
Convention on the Status of Refugees of 28 July 1951 as amended by the Protocol on the Status of Refugees of 16 December 1966	Geneva Ref. Conv.
<i>Secondary sources (politically binding or other)</i>	
UN High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, 20 May 2002	UNHCHR Rec.
CEDAW Committee, General Recommendation No. 19 on violence against women, 11 th session, 1992 ²	Gen. Rec. No. 19
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985	Decl. of BP
Council of Europe	
<i>Primary sources (legally binding)</i>	
European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, ETS No. 5	ECHR
European Convention on Extradition, 1957, ETS No. 24	ETS No. 24
Additional Protocol to the European Convention on Extradition, 1975, ETS no. 86	ETS no. 86
Second Additional Protocol to the European Convention on Extradition, 1978, ETS no. 98	ETS No. 98
European Convention on the Compensation of Victims of Violent Crimes, 1983, ETS No. 116	ETS No. 116
<i>Secondary sources (politically binding or other)</i>	
Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985	CoE R (85) 11
Council of Europe Recommendation No. R (97) 13 of the Committee of Ministers to Member States Concerning Intimidation of Witnesses and the Rights of the Defence, 1997	CoE R (97) 13
Council of Europe Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation, 2000	CoE R (2000) 11

² General Recommendations of the UN Human Rights Treaty Bodies are not legally binding as such. However, they provide an authoritative interpretation of the respective treaty provisions, which are legally binding.

European Union		
<i>Primary sources (legally binding)</i>		
Council Framework Decision of 19 July 2002 on the Combat of Trafficking in Human Beings (2002/629/JHA)		EU FWD 2002/629/JHA
Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA)		EU FWD 2001/220/JHA
Council Directive of 29 April 2004 on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities		Residence Dir.
Council Directive of 30 April 2004 on a common definition of who is a refugee or otherwise requires international protection and the rights and benefits which attach to each status		Qualification Dir.
<i>Secondary sources (politically binding or other)</i>		
The Hague Ministerial Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997		Hague Decl.
Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 20 September 2002		Brussels Decl.
Council Conclusions of 8 May 2003, 2003/C137/01		Council Concl. 2003/C137/01
Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women, 2003/C260/03		Council Res. 2003/C260/03
Organization for Security and Cooperation in Europe (OSCE)		
<i>Secondary sources (politically binding or other)</i>		
OSCE Action Plan to Combat Trafficking in Human Beings, Permanent Council Decision No. 557, 24 July 2003, endorsed by Ministerial Council Decision No. 2/03 Combating Trafficking in Human Beings, Maastricht, 2 December 2003		OSCE AP
OSCE Ministerial Council Declaration on Trafficking in Human Beings, Porto, 7 December 2002		OSCE Porto Decl.
OSCE ODIHR, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, 2004		OSCE NRM Handbook
Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings		
<i>Secondary sources (politically binding or other)</i>		
4 th Regional Ministerial Forum, Sofia, 10 December 2003, Statement of Commitments On Victim/Witness Protection and Trafficking in Children		SPTF Sofia Commitment
3 rd Regional Ministerial Forum, Tirana, 11 December 2002, Statement of Commitments On Legalisation of the Status of Trafficked Persons		SPTF Tirana Commitment
2 nd Regional Ministerial Forum, Zagreb, 27 November 2001, Statement of Commitments On Information Exchange Mechanism Concerning Trafficking in Human Beings in South Eastern Europe		SPTF Zagreb Commitment
Anti-Trafficking Declaration of SEE, Palermo, 13 December 2000		SPTF Palermo Declaration

TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2)		
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS
LEGAL FRAMEWORK³	Introduce or amend legal provisions to criminalise and prosecute smuggling in migrants	<p>Art. 3, 6 SP, Art. 1, 2 Council Dir. 2002/90/EC</p> <p>Art. 11 TOC, Art. 6/3 SP, Art. 3 Council Dir. 2002/90/EC, Art. 1/2-1/4 EU FWD 2002/946/JHA</p> <p>Art. 10 TOC, Art. 2, 3 EU FWD 2002/946/JHA</p> <p>Art. 15 TOC, Art. 4, 5 FWD 2002/946/JHA</p> <p>Art. 12 TOC, Art. 1/2 EU FWD 2002/946/JHA</p> <p>Art. 11 TOC, Art. 6/3 SP, Art. 3 Council Dir. 2002/90/EC, Art. 1/2-1/4 EU FWD 2002/946/JHA</p> <p>Art. 10 TOC, Art. 2, 3 EU FWD 2002/946/JHA</p> <p>Art. 15 TOC, Art. 4, 5 FWD 2002/946/JHA</p> <p>Art. 12 TOC, Art. 1/2 EU FWD 2002/946/JHA</p> <p>Art. 20 TOC</p> <p>Art. 11/5 SP</p>
		<p>Criminalise smuggling as well as attempting, participating in organizing or directing other persons to commit smuggling</p> <p>Establish effective, proportionate and dissuasive criminal penalties for smuggling and provide for more severe penalties in case of certain aggravating circumstances (e.g. when the smuggled person's life was endangered or when the offence was committed by a criminal organization)</p> <p>Establish liability (criminal, civil or administrative) of and sanctions on legal persons for smuggling</p> <p>Establish jurisdiction over smuggling committed within a state's territory and, under certain circumstances, abroad</p> <p>Allow for seizure and confiscation of objects used and proceeds derived from smuggling</p> <p>Establish effective, proportionate and dissuasive criminal penalties for smuggling and provide for more severe penalties in case of certain aggravating circumstances (e.g. when the smuggled person's life was endangered or when the offence was committed by a criminal organization)</p> <p>Establish liability (criminal, civil or administrative) of and sanctions on legal persons for smuggling</p> <p>Establish jurisdiction over smuggling committed within a state's territory and, under certain circumstances, abroad</p> <p>Allow for seizure and confiscation of objects used and proceeds derived from smuggling</p> <p>Create legal basis for special investigative techniques</p> <p>Permit denial of entry or revocation of visas of smugglers</p>

³ The assessment if a country has fulfilled its international obligation requires not only an analysis of the legal framework, but also how this framework has been implemented in practice. However, in order to keep the matrix brief, it does not include a separate benchmarks on the implementation of these legal provisions.

TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK	Introduce or amend legal provisions to assist and protect smuggled migrants in countries of destination and/or transit	Establish a residence status regime (temporary or permanent residence permit; asylum) for smuggled migrants who cooperate with the authorities, for the duration of legal proceedings	EU Residence Dir. (optional) ⁴
		Establish the legal basis to protect the physical safety of smuggled migrants (for both, cooperating and non-cooperating migrants)	Art. 24 TOC, Art. 6, 7 CCPR, EU Residence Dir. (optional), Art. 2, 3 ECHR, CoE R (97) 13,
		Establish the legal basis to give smuggled migrants who cooperate with the authorities access to shelter, food, medical, psychological, material assistance, information about their rights, legal counselling, for the duration of legal proceedings	Art. 11, 12 CESC, EU Residence Dir. (optional)
		Establish the legal basis to allow smuggled migrants who cooperate with the authorities access to labour market, vocational training, education , for the duration of legal proceedings	Art. 6 CESC, EU Residence Dir. (optional)
		Protect the victim's physical safety (in-court, out-of court)	Art. 24, 25/1 TOC, Art. 8 EU FWD 2001/220/JHA, Residence Dir., Art. 2, 3 ECHR, CoE R (97) 13, Art. 15 CoE R (85) 11
	Introduce or amend legal provisions protecting the rights of smuggled migrants in criminal proceedings who are victims of crime ⁵ (general victim's rights standards)	Provide the victim with relevant information	Art. 4, 6 EU FWD 2001/220/JHA, Art. 2, 3, 6, 9 CoE R (85) 11

⁴ The Residence Directive primarily applies to trafficked persons. However, EU member states may also opt to apply its provisions to smuggled migrants. If they do so, the same safeguards are applicable to trafficked persons and smuggled migrants who cooperate as witnesses, for the duration of legal proceedings.

⁵ The crime of smuggling is primarily directed against interests of a state, in particular the integrity of its borders, and not against an individual (the smuggled person). Therefore, it does not seem appropriate to regard smuggled persons, who have not suffered any harm at the hands of the offenders, as *victims of a crime* and to award them with legal protection according to international victim's rights standards (such as the right not to be re-traumatized or to compensation). This approach is also applied by the UN Smuggling Protocol, which refers to smuggled persons as "objects", and not as victims, of smuggling (see e.g. Art. 4 SP). These standards are however relevant in cases where the smuggled person has been subjected to rights violations, such as transport under dangerous or inhumane conditions. Nevertheless, general witness protection standards are relevant for all smuggled persons, no matter if any harm has occurred to them in the hands of the smugglers, if they testify against the smugglers and thus have the status as *witnesses* (see benchmark 2).

TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
LEGAL FRAMEWORK		Enable the victim to present and have considered her/his views and concerns in court	Art. 25/3 TOC, Art. 2, 3 EU FWD 2001/220/JHA
		Protect the privacy of the victim	Art. 8 EU FWD 2001/220/JHA, Art. 8 ECHR, Art. 15 CoE R (85)
		Provide the victim with access to compensation (from perpetrator and/or state)	Art. 25/2 TOC, Art. 9 EU FWD 2001/220/JHA, CETS No. 116, Art. 9-14 CoE R (85) 11
INSTITUTIONAL FRAMEWORK	Create specialised institutions	Designate an authority to receive and respond to international requests relating to the combat of smuggling of migrants by sea	Art. 8/6 SP
	Undertake border measures	Strengthen border controls to prevent and detect smuggling	Art. 11/1 SP
LAW ENFORCEMENT		Counteract smuggling committed by commercial carriers (<i>legal and other measures</i>)	Art. 11/2-11/4 SP
	Check travel or identity documents	Improve quality of documents to prevent misuse	Art. 12 SP
	Implement safeguard clauses	Upon request by other states, verify legitimacy and validity of documents	Art. 13 SP
		Apply all measures without prejudice to the rights of smuggled migrants under international refugee law or human rights law	Art. 19 SP, CCPR, CESCR, ECHR, Art. 6 EU FWD 2002/946/JHA
HUMAN RESOURCES	Training of relevant officials	Provide or strengthen training of immigration and other relevant officials in preventing, combating and eradicating smuggling and protecting the rights of smuggled migrants in cooperation with other states parties, IOs and NGOs	Art. 14/1, 14/2 SP
		Cooperate by joint trainings and regular meetings of persons responsible for training on matters relating to return of illegal migrants, on the following topics: legal issues, adequate treatment of returnees, management of incidents, intercultural understanding, negotiation techniques	§§ 30, 32 Council Return AP

TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2)			
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE
MATERIAL RESOURCES	Provide technical assistance	Provide technical assistance and necessary resources to countries of origin or transit	Art. 14/3 SP, § 24 Tampere Concl.
INTERNATIONAL COOPERATION	Cooperate on the bi- multilateral, regional and international levels in the combat and prevention of smuggling/illegal immigration and the protection of the rights of smuggled persons/illegal migrants	Cooperate in criminal matters (e.g. extradition, mutual legal assistance) - <i>FOR DETAILS SEE SPECIFIC MATRIX</i> Cooperate and assist each other in the prevention and combat of smuggling of migrants by sea Strengthen cooperation among border control agencies, e.g. by establishing and maintaining direct channels of communication Exchange information on means, methods and routes used by smugglers, relevant legislation, useful scientific and technological information, visa-issuing practices, trends in document forgery Introduce legislation, cooperate and exchange information to allow for the recognition of expulsion orders issued by other member states Improve cooperation on identification of illegal migrants and with regard to obtaining travel documents for the purpose of return Organise joint return operations, coordinate and exchange information in this respect Assist countries of transit and destination in order to promote voluntary return Cooperate in the field of public information in order to prevent potential migrants from becoming smuggled Promote or strengthen development cooperation in order to combat the root causes of smuggling, such as poverty and underdevelopment Cooperate in order to improve protection of and assistance to smuggled migrants	Art. 13, 16-19, 27-30 TOC, CETTS No. 5, 25, 98 Art. 7, 8/1-8/5, 8/7 SP Art. 11/6 SP Art. 10 SP Art. 30 Council Plan 2002/C142/02 Art. 4, 6, 8/1 Council Dir. 2001/40/EC Art. 18/4 SP, Council Return AP §§ 26, 27 Council Return AP §§ 36, 38 § 26 Tampere Concl. Art. 15/2 SP Art. 15/3 SP Art. 18/3, 18/4, 18/6 SP, Art. 24/3 TOC

TOPIC: SMUGGLING AND ILLEGAL MIGRATION (MODULE 2)				
CATEGORY	MAIN BENCHMARKS/ STANDARDS:	SUB-BENCHMARKS	SOURCE	
OTHER	Undertake measures to assist and protect the rights of smuggled migrants	Ensure the safety and human treatment of all persons on board of vessels suspected of being engaged in smuggling when taking measures against such vessels	Art. 9/1, 16/1 SP	
		Protect smuggled persons against violence and assist in case their lives or safety are endangered	Art. 16/1-16/3 SP	
		Provide smuggled migrants with basic means of subsistence during their stay in the country of destination/transit (notwithstanding their readiness to testify)	Art. 11, 12 CESC	
		Take into account the special needs of women and children when applying assistance and protection measures	Art. 16/1, 16/4 SP	
		Assist and facilitate safe return of smuggled persons	Art. 18/1, 18/2 SP	
		Carry out returns in an orderly manner and with due regard for the person's safety and dignity	Art. 18/5 SP	
		Undertake preventive measures	Take into account the special needs of women and children when applying assistance and protection measures	Art. 16/1, 16/4 SP
			Assist and facilitate safe return of smuggled persons	Art. 18/1, 18/2 SP
			Carry out returns in an orderly manner and with due regard for the person's safety and dignity	Art. 18/5 SP
			Provide or strengthen public awareness programmes	Art. 15/1 SP
			Promote or strengthen development cooperation in order to combat the root causes of smuggling, such as poverty and underdevelopment	Art. 15/3 SP, CESC

Sources and abbreviations

United Nations	
<i>Primary sources (legally binding)</i>	
UN Convention against Transnational Organized Crime (2000)	UN TOC
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing UN Convention against Transnational Organized Crime (2000)	UN SP
International Covenant on Civil and Political Rights (1966)	CCPR
International Covenant on Economic, Social and Cultural Rights (1966)	CESCR
<i>Secondary sources (politically binding or other)</i>	
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985	Decl. of BP
Council of Europe	
<i>Primary sources (legally binding)</i>	
European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, ETS No. 5	ECHR
European Convention on Extradition, 1957, ETS No. 24	ETS No. 24
Additional Protocol to the European Convention on Extradition, 1975, ETS no. 86	ETS no. 86
Second Additional Protocol to the European Convention on Extradition, 1978, ETS no. 98	ETS No. 98
European Convention on the Compensation of Victims of Violent Crimes, 1983, ETS No. 116	ETS No. 116
<i>Secondary sources (politically binding or other)</i>	
Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985	CoE R (85) 11
Council of Europe Recommendation No. R (97) 13 of the Committee of Ministers to Member States Concerning Intimidation of Witnesses and the Rights of the Defence, 1997	CoE R (97) 13
European Union	
<i>Primary sources (legally binding)</i>	
Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence	Council Dir. 2002/90/EC
Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA)	EU FWD 2002/946/JHA
Council Directive of 29 April 2004 on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities	EU Residence Dir.
Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)	EU FWD 2001/220/JHA
Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals	Council Dir. 2001/40/EC
<i>Secondary sources (politically binding or other)</i>	
Tampere European Council 15 and 16 October 1999, Presidency Conclusions	Tampere Concl.
Council Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union, 28 February 2002	CouncilPlan 2002/C142/02
Council Return Action Programme, 28 November 2002 (in the version of the Proposal by the Danish Presidency, 25 November 2002)	Council Return AP

