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From:	Presidency
To:	Strategic Committee on Immigration, Frontiers and Asylum
Subject:	Migrant smuggling - discussion paper

Introduction

Migrant smuggling is the process of facilitating the unauthorised entry, transit or residence of a third country national and entails the facilitation of illegal entry to or exit from the EU and secondary movements within the EU. The phenomenon of migrant smuggling has been well-known for decades, however the market for migrant smuggling services has expanded and has become increasingly complex and resilient since the height of the migratory crisis in 2015 when an estimated 1.5 million¹ asylum seekers and migrants made their way through Turkey and other routes into the EU. Facilitation of entry into the EU fluctuates in line with the changing entry routes, whereas facilitation of secondary movements and legalisation of stay is less visible but equally profitable for criminal networks. Migrant smuggling poses a major humanitarian, migration governance and security challenge for the EU since the large majority of those who enter and travel within the EU illegally are supported by migrant smugglers either during part or all of their journey.

¹ Global Initiative Against Transnational Organized Crime: Analyzing flows of people, drugs and money in the Western Balkans

Migrant smuggling networks have proven to be highly adaptable and able to quickly modify their business model and routes in response to evolving law enforcement activity, travel restrictions and logistical and environmental changes. The adaptability of the networks was once again confirmed during the Covid-19 pandemic when, after an initial slow-down in migrant-smuggling activities they quickly resumed in particular those involving secondary movements of irregular migrants already present in the EU.

Smuggling networks make use of social media, encrypted communications, and other digital services and tools.

The phenomenon of migrant smuggling goes beyond facilitating illegal movement. Criminal networks involved in migrant smuggling often provide irregular migrants with fraudulent documentation to help them abuse the asylum system and deliver specialised advice such as the recommendation to apply for international protection in transit countries. This way, migrants acquire the necessary documents enabling them to avoid return and potentially move further within the EU with the criminals' help. Such asylum applications create a burden on the Member States' authorities, potentially contributing to inefficiencies, administrative overburdening, and delays in procedures. Other forms of false or fraudulent documents present a serious challenge, including the use of fraudulent Schengen visas, false employment, marriages of convenience, false registered partnerships or false adoptions².

Irregular migrants are exposed to high fees for services that increasingly violate their physical and psychological integrity during the journey. In addition, they are vulnerable to further exploitation upon arrival. In some cases, they could even be forced by smugglers to facilitate smuggling operations (e.g. driving a boat), which can have legal consequences for the applicant concerned.

² EU Serious and Organised Crime Threat Assessment (SOCTA 2021)

In the EU, a lot of attention has been given to this phenomenon in the last couple of years. The adoption of the first EU action plan against migrant smuggling in 2015³ resulted, among other achievements, in the establishment of Europol's European Migrant Smuggling Centre in 2016. The European Council highlighted this issue in its conclusions in June 2018 and June 2021, the Commission presented its renewed EU action plan against migrant smuggling (2021-2025) this September, and the European Court of Auditors issued a report on Europol's support to fight migrant smuggling, to name just the most recent initiatives. Moreover, the fight against criminal networks involved in migrant smuggling, in particular those providing facilitation services along the main migratory routes, is an EU priority addressed in the framework of the European multi-disciplinary platform against criminal threats (EMPACT). Most of these activities are aimed at improving the tools available to the law enforcement authorities and the judiciary to better tackle the activities of migrant smugglers and to prevent the exploitation of migrants.

However, in order to be able to tackle the challenges, it is important to look at the key drivers behind the phenomenon. As long as people are ready to risk their lives to come to the EU illegally, smugglers will be able to carry out their illegal and dangerous activities. This means that along with improving the capacities and capabilities of the law enforcement authorities and the judiciary, the EU and its Member States must continue to address the key drivers for illegal migration used by smugglers in close cooperation with partner countries of origin and transit in a spirit of partnership and mutual responsibility. In addition, the narrative used by smugglers needs to be addressed and changed.

³ COM(2015) 285

The assessment of past experience shows that the EU focus on actions tackling migrant smuggling needs to be renewed, building on the successful actions already in place. In September, the Commission presented a **renewed EU action plan against migrant smuggling (2021-2025)**⁴ setting out several pillars of action, including on the reinforced cooperation with partner countries and international organisations, improving the implementation of legal frameworks and sanctioning smugglers active both inside and outside the EU, preventing the exploitation of migrants and ensuring their protection, and increasing the knowledge base on migrant smuggling.

Enhanced emphasis on cooperation with third countries

In this respect, the renewed EU action plan foresees the development of dedicated and tailor-made Anti-Smuggling Operational Partnerships with third countries or regions along migratory routes towards the EU. These should build on the existing cooperation frameworks and form an integral part of the EU's comprehensive migration partnerships. In addition, cooperation in this area should pursue a continuous dialogue and coordinated engagement with countries of origin and transit impacted by the State-led instrumentalisation of migration.

Actions will aim at strengthening legal, policy, operational and strategic frameworks in partner countries based on their respective needs and increasing the impact, ownership and sustainability of efforts to tackle migrant smuggling. These actions will build on the United Nations (UN) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime. Synergies and consistency with other relevant policies and actions will be promoted and ensured, including in the field of security (e.g. border security, fight against organised crime), development cooperation (e.g. education and training, community development, sustainable and inclusive economic development) and good governance (e.g. fight against corruption).

⁴ 12761/21

The building blocks of such partnerships include support for establishing and implementing solid legal frameworks and policies, supporting the operational capacity of law enforcement and the judiciary, supporting border management, information and awareness raising campaigns as well as fighting identity and document fraud. The renewed EU action plan against migrant smuggling indicates that such partnerships should be launched as a priority along the Eastern Mediterranean / Western Balkans route, based on a whole of route approach that includes the Silk Road countries as well as countries in North and West Africa.

Addressing loopholes in legal framework

Within the EU, the Facilitators package⁵ requires Member States to appropriately sanction anyone who intentionally helps a third-country national to enter or transit through an EU country or, for financial gain, to reside there. This covers both the facilitation of illegal entry to the EU and of secondary movements within the EU. The 2017 evaluation of the Facilitators package concluded that its effectiveness in reaching its objectives remains partial. In the renewed EU action plan against migrant smuggling (2021-2025), the Commission announced the intention to report on the implementation of the Facilitators package in 2023 and, if necessary, to propose a revision of the legal framework.

The two proposals revising Eurodac provide a database for irregular migration identifying those who are apprehended entering irregularly or staying illegally in the EU, something currently missing in the landscape of IT systems in the Justice and Home Affairs area. The extended scope of Eurodac will not only assist Member States with re-documenting third-country nationals for return and readmission purposes, it will make thousands of irregular migrants in Europe, including minors, visible.

⁵ Council Directive 2002/90/EC (OJ L 328, 5.12.2002, p. 17) and Council Framework Decision 2002/946/JHA (OJ L 328, 5.12.2002, p. 1).

Furthermore, the proposals for the Asylum and Migration Management Regulation and the Asylum Procedure Regulation also contain provisions which aim at limiting ‘asylum shopping’ and secondary movements of asylum applicants and beneficiaries of international protection. By removing current rules which have incentivised secondary movements, the proposals aim to put an end to irregular and dangerous movements and the business model of smugglers. See the paper on secondary movements for more details.

In order to address the challenge of fraudulent documents, security features of documents issued to EU and non-EU citizens are constantly being upgraded. Two examples: from May 2022, all visa stickers will be issued with a QR code including the data printed on the visa as an additional security feature; since August 2021 EU citizens have been receiving new ID cards with harmonised and enhanced security features. However, the Member States remain responsible for documents such as birth, marriage and death certificates that are used to support applications for identity and travel documents. The same applies to other supporting documents used to justify applications for a visa or residence permit. The security of these 'breeder documents' is a key factor in enhancing internal security and fighting organised crime, including migrant smuggling. More focus should also be placed on breeder documents issued by third countries to improve their security.

The renewed Action Plan foresees several actions aimed at strengthening the framework for preventing the exploitation of smuggled migrants. For this purpose, the Commission presented together with the renewed Action Plan an assessment of the implementation of the Employers Sanctions Directive, accompanied by a set of measures needed to reinforce its effectiveness. It also announced the launch of a study on the implementation of the Residence Permit Directive⁶.

Questions:

1. *Do you consider the proposed actions in the renewed EU action plan against migrant smuggling (2021-2025) and other proposals sufficient to address the identified shortcomings in the EU legal and operational framework? Which actions should the EU and its Member States take as a priority?*
2. *In particular, when developing anti-smuggling operational partnerships, which partners should the EU and the Member States turn to in the short to medium term and what should be the building blocks of such partnerships?*
3. *How can the issue of the abuse of the asylum system for the purpose of migrant smuggling be addressed?*

⁶ Council Directive 2004/81/EC (OJ L 261, 6.8.2004, p. 19).