European Parliament

Understanding EU action against migrant smuggling

SUMMARY

Around 90 % of those who cross the external European Union (EU) borders illegally do so with the assistance of migrant smugglers. Furthermore, the facilitation of irregular migration is a highly profitable criminal activity, in particular when compared with the relatively low risks incurred. Even though detections of illegal border crossings are currently at their lowest level since 2013, the migrant smuggling business shows sustained high levels of demand.

This demand is not only due to the fact that people in severe distress – whether for economic reasons or because of a genuine fear for their lives – keep trying to reach the EU, by irregular means if necessary. Demand is also high because illegally crossing borders has become harder, due to increased external border controls and other measures put in place to prevent irregular migration. This is where migrant smuggling networks step in.

Migrant smugglers are among some of the most agile criminals. They go to great lengths in order not to get caught, quickly adapting the routes they use to smuggle migrants into the EU and their means of travel. They avoid direct contact with their victims, instead using the latest digital communication technologies and involving different intermediaries along a migrant's journey. The facilitation of irregular migration is a complex crime, interconnected with many other criminal activities, such as document fraud, trafficking in human beings or other types of illicit smuggling.

Although people willingly pay smugglers to help them cross borders, they do so at great personal risk. Too many lose their lives, or are at risk of serious harm or exploitation. Therefore, preventing and combatting migrant smuggling and related crimes is one of the key priorities of the EU's action against irregular migration and organised crime. The European Parliament has repeatedly called for more and better operational cooperation, data sharing and legal migration channels, and insisted on better implementation of relevant EU legislation.

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Introduction

Migration is a natural phenomenon that has existed since the beginning of human history. Over the last few centuries alone, European countries have seen numbers of their citizens migrate to other continents, countries or even internally. Whereas at other moments, they have attracted migratory movements themselves. Free movement is one of the main achievements of the European integration process, and 3.3 % of EU citizens of working age (2064) are currently[1] residents in an EU Member State other than that of their citizenship. When it comes to non-EU citizens, a total of 21.8 million (4.9 % of the 446.8 million people living in the EU-27) were officially living in one of the Member States on 1 January 2019.

People migrate for all sorts of reasons, but most do so because they either want to improve their quality of life or are in need of protection. The EU's relative economic prosperity and political stability are thought to exert a considerable pull effect on migrants. The European Border and Coast Guard Agency (Frontex) Risk Analysis for 2020 states that one of the biggest drivers for regular and irregular migration to the EU is the presence of a diaspora in the destination Member States. Other factors that make the EU a desirable destination for migrants are the EU's location close to several areas in crisis in the Middle East and North Africa, the lack of economic opportunities in the countries of origin (in Africa, Asia and Latin America), the existence of a smuggling infrastructure in key transit regions and the access to legalisation options for those with irregular status once in the EU. The most desired destination countries in the EU are those that at a given moment in time offer most employment possibilities, according to a Commission study on migrant smuggling.

Most non-EU immigrants come to the EU via legal channels. At the end of 2019, most residence permits in the EU were issued for family reasons (38 %), followed by other (32 %) and work-related reasons (17 %). Residence permits for educational purposes made up 4 %, whereas asylum accounted for 9 %. Many non-EU immigrants, however, try to stay in or reach the EU via irregular means, for example by overstaying their visas or by illegally crossing the external borders. It is difficult to arrive at exact figures on the irregular flows, given their hidden nature. However, it is estimated that in 2015, at the height of the 'migration crisis', more than one million irregular migrants arrived in the EU, mostly by sea but also overland. In 2019, irregular arrivals were back to normal levels and at 141 846, detections of illegal border-crossings were even at their lowest level since 2013 and down 92 % compared to 2015. In the first ten months of 2020, they dropped a further 21 % compared to the same period in 2019, according to preliminary Frontex calculations. This could turn out to be merely a temporary decrease, as the economic impact of the coronavirus pandemic in the developing world may trigger another wave of irregular migration towards the EU in the medium term.

According to Europol, the EU Agency for Law Enforcement, 90 % of those who cross the EU borders irregularly do so with the assistance of migrant smugglers, either for their whole journey or for part(s) of it. In most cases, these facilitation services – ranging from transportation and accommodation to the production and selling of fraudulent documents – were offered and provided by criminal groups. This criminal activity generates high profits at relatively low risks for the smugglers, but puts those smuggled at risk of serious harm or exploitation, or even worse, of death. In 2019, 1 885 people went missing or died on the three main routes (central, western and eastern Mediterranean routes – see next section) when trying to reach Europe, according to International Organization for Migration (IOM) estimates.
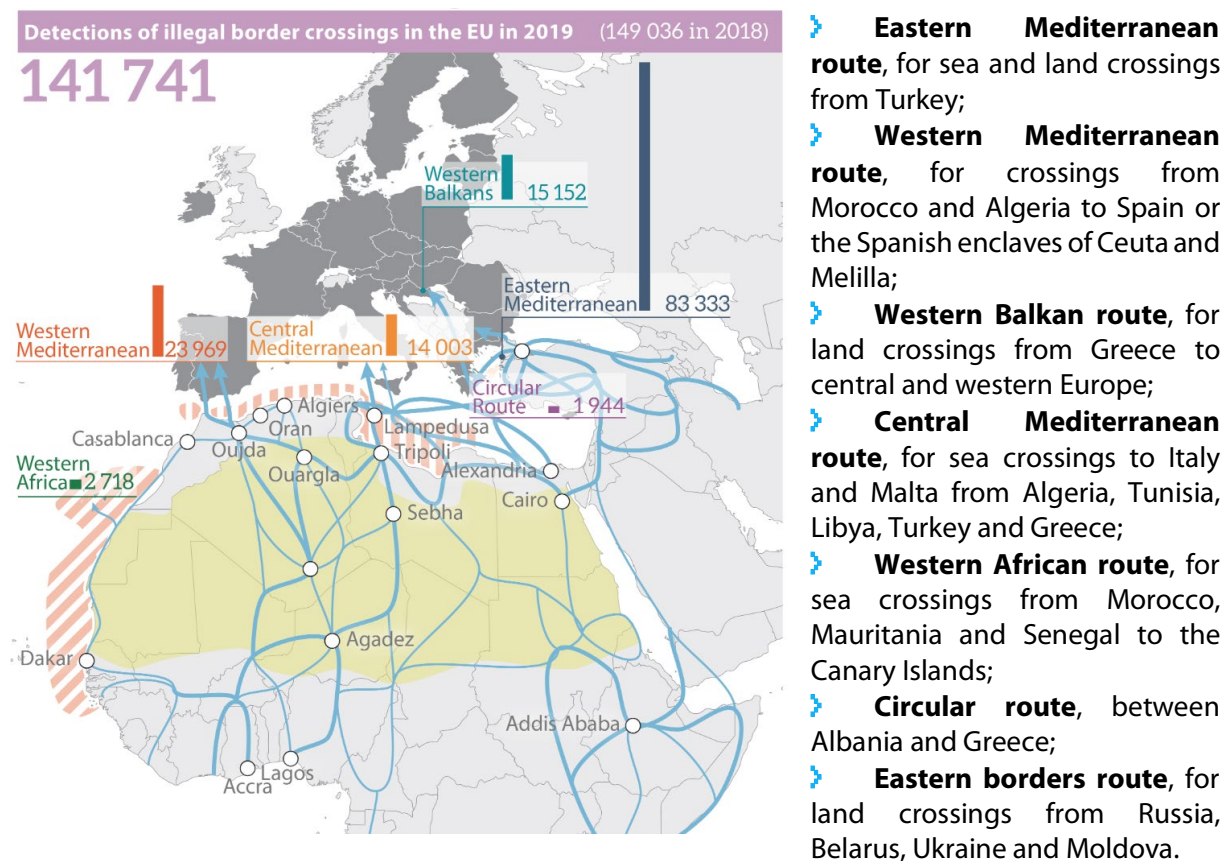
The EU as a whole also faces related challenges, including security and safety concerns as well as socio-economic or even political impacts. Irregular migration is not only linked to migrant smuggling and other types of exploitation of already vulnerable people, there is also a risk of terrorists using irregular migration routes to enter the EU clandestinely. Moreover, large influxes of irregular migrants can burden asylum or social welfare systems, pose challenges in terms of integration or even lead to anti-democratic and discriminatory behaviour.

Migrant smuggling trends

Migratory routes – State of play

There are roughly a dozen non-EU countries through which the vast majority of irregular migrants pass before being detected at an external EU border, namely Turkey, Ukraine, Belarus, Serbia, Morocco, Albania, Russia, Libya, Bosnia and Herzegovina, Tunisia, Algeria, Moldova, North Macedonia, Montenegro and Senegal. These countries are located on the main migratory routes that migrants and their smugglers use to get into the EU:

Figure 1 – Migration routes and illegal crossings to the EU

Detections of illegal border crossings in the EU in 2019   (149 036 in 2018)

141 741

Western Balkans   15 152
Eastern Mediterranean   83 333
Western Mediterranean   23 969
Central Mediterranean   14 003
Circular Route   1 944
Western Africa   2 718

> **Eastern Mediterranean route**, for sea and land crossings from Turkey;
> **Western Mediterranean route**, for crossings from Morocco and Algeria to Spain or the Spanish enclaves of Ceuta and Melilla;
> **Western Balkan route**, for land crossings from Greece to central and western Europe;
> **Central Mediterranean route**, for sea crossings to Italy and Malta from Algeria, Tunisia, Libya, Turkey and Greece;
> **Western African route**, for sea crossings from Morocco, Mauritania and Senegal to the Canary Islands;
> **Circular route**, between Albania and Greece;
> **Eastern borders route**, for land crossings from Russia, Belarus, Ukraine and Moldova.

Source: EPRS; data source: Frontex Risk Analysis for 2020.

Migratory pressure on these routes fluctuates, depending on a variety of reasons, such as increased border controls, geopolitical developments, emerging or evolving conflicts, and others. According to the Frontex Risk Analysis for 2020, the overall decrease in detections in 2019 (to 141 846, down 4.9 % compared to 2018), was primarily due to fewer detections on the western and central Mediterranean routes. This reduction was mainly a result of prevention efforts by northern African countries. On the other hand, migratory pressure increased on the eastern Mediterranean and the western Balkan routes. Geographically, the biggest migratory pressure on the eastern Mediterranean route was in the eastern Aegean Sea and Cyprus. The western Balkan route continued to be the most transited by irregular migrants coming from Turkey. The decrease in detections on the Circular route is believed to be due to a reduction in cross-border movements of Albanian labour migrants. Detections on the western African route more than doubled in 2019, mainly because of a near doubling of departures from Morocco. The drop in detections on the eastern borders route is most likely a consequence of the successes in dismantling organised crime groups – often specialising in smuggling select nationalities – in this area. Overall, more than two-thirds of all border-crossings in 2019 were detected at sea in the Mediterranean (106 246 compared to 35 600 land crossings), in line with the trend of previous years. Detections of secondary

movements – travelling in an irregular manner between countries in the EU and Schengen area – also increased in 2019, up 38 % compared with 2018. The availability of and conditions in reception centres, the promise of more favourable living conditions elsewhere, and access to smuggling services determine most intra-regional movements, according to Frontex.

During the first ten months of 2020, detections of illegal border crossings kept falling (by 21 % compared to the same period last year, to 87 500), because of a continued decrease in detections on the western and eastern Mediterranean routes. However, detections on the central Mediterranean and the western Balkans routes were respectively 137 % and 122 % higher. Figures for the eestern Africa route are also soaring again. According to the IOM, over 18 000 migrants arrived in the Canary Islands in 2020, with at least 12 000 of them arriving in the months of October and November alone.

Profile of detected irregular migrants

Frontex detected a slight growth in the share of women (up 16 % to 32 987) and children (up 5.2 % to 32 554) irregular migrants in 2019, compared to the previous year, although men remain the biggest represented group (106 690) of detected irregular migrants at the EU's external borders. The number of detected unaccompanied minors decreased significantly, from 26 430 in 2018 to 4 009 in 2019, a reduction of 85 %. Over half of all arrivals came from the Middle East and southern Asia (87 500 or 62 %), which is reflected in the increased pressure on the eastern Mediterranean and western Balkan routes. The top five nationalities of irregular migrants crossing all EU external borders (sea and land) were Afghans (34 154, up 170 % compared to 2018), Syrians (24 339, up 69 %), unspecified sub-Saharan nationals (14 346, change not applicable), Moroccans (8 020, down 4.1 %) and Turks (7 880, down 6.3 %).

Migrant smuggling situation

Migrant smuggling operations follow trends in the migratory routes. In 2019, Europol's European Migrant Smuggling Centre (EMSC) detected 4 426 cases of migrant smuggling to the EU and identified 14 218 suspected migrant smugglers. Most migrant smuggling cases concerned the western Balkan region. Due to the high number of irregular migrants and asylum-seekers present in the EU as well as to increased border control measures, organised crime groups have also turned towards the facilitation of secondary movements across all types of border. High numbers of people smugglers continue to be detected inland, with the western Balkans remaining a hotspot for the facilitation of secondary movements from Greece towards other EU countries. Secondary movements by sea also grew in 2019, mostly in the North Sea, the Baltic and the Mediterranean.

In the first months of 2020, due to enhanced border controls and travel restrictions throughout the EU as a consequence of the coronavirus pandemic, the EMSC furthermore detected new shifts in smuggling activities: from air to land and sea routes, with increased arrivals in the Canary Islands and via the central Mediterranean; an increased use of small boats used to cross river borders and the English Channel; as well as concealment of irregular migrants in freight vehicles and cargo trains that continued to cross borders. Along the western Balkan route, larger groups of irregular migrants were observed, whereas potential new routes

Migrant smuggling vs trafficking in human beings

Migrant smuggling and trafficking in human beings can often be interlinked and smuggled migrants may become victims of trafficking along their journey. They are, however, two distinct forms of crime to which different legal and policy frameworks apply at EU and international level. Whereas migrant smuggling is always transnational, this is not always the case with trafficking in human beings. Persons who are being trafficked usually do not consent to this crime, unless they are being smuggled for the first part of their journey and then fall into the hands of traffickers. Moreover, traffickers' main objective is the exploitation of an individual for profit, whereas smugglers derive their profit from the transportation or facilitation of the irregular entry or stay of a person into another country.

emerged, such as the sea corridor from Albania to Italy, according to the latest Europol report on [How Covid-19 related crime infected Europe during 2020](#). Smugglers have also been forced to use less explored and riskier routes. These new routes and methods often put migrants' lives at even greater risk.

Migrant smugglers' modi operandi

Low risks – High profits

Migrant smuggling generates big profits and most smugglers are in the business for the money. According to Europol assessments from investigations into organised migrant smuggling and data from the countries of first disembarkation, migrant smugglers made an estimated [€190 million](#) in revenues in 2019 on the western, central and eastern Mediterranean routes alone. In 2015, at the height of the migration crisis, criminal networks involved in migrant smuggling had an estimated turnover of [between €3 and €6 billion](#). Smuggling prices vary greatly, depending on the route taken and the transport mode chosen. The western Mediterranean sea crossing was the most expensive last year – at an average of €2 500 per person – and the eastern Mediterranean land route was the cheapest, at an average of €1 500 per person. [Charges have risen](#) since the pandemic outbreak in Europe, due to the greater difficulty in travelling and the continous demand for facilitation services.

A multinational business

Migrant smuggling is a multinational business. According to Europol's [SOCTA 2017](#), smugglers from 122 countries are involved in facilitating irregular migration to the EU. Most migrant smuggling networks are composed of both EU and non-EU nationals. The United Nations Office on Drugs and Crime (UNODC) [Global study on smuggling of migrants 2018](#), adds that smugglers are often ethnically linked to the territories where they operate or share ethnic or linguistic ties with the migrants they smuggle. Such ties increase trust and are important for those in charge of the actual border crossing, as they need to have good knowledge of the territory where they operate and of the best methods to reach the destination.

According to Europol, migrant smuggling is a relatively low risk business that shows sustained high levels of demand and does not require access to significant resources ([SOCTA 2017](#)). The Organisation for Economic Co-operation and Development ([OECD](#)) notes that, contrary to other cross-border criminal activities, migrant smuggling is not dominated by mafia-like criminal organisations. Many actors intervene at different levels to facilitate the smuggling, including recruiters who advertise the business on social networks, coordinators with an overall responsibility for operations, transporters and guides who deal with the actual smuggling, service providers (accommodation, vehicles, fraudulent documents), spotters (best routes and possible border patrol checks), or cashiers (responsible for handling over the migrants' money to the smuggler on successful completion of the operation). [Corruption](#) furthermore ensures that migrant smuggling is prevalent and widespread, as it facilitates, for example, the execution of the crime by loosening immigration control and border protection activities.

Many of the organised crime groups involved in migrant smuggling are typically also active in other crime areas, most often in crimes directly linked to people smuggling, such as document fraud and trafficking in human beings, but also other cross-border crimes, such as the smuggling of firearms, drugs, stolen vehicles and other illicit goods. Criminal networks can rely on their existing knowledge of routes and infrastructure used to smuggle across the borders. In this sense, they treat irregular migrants as goods, which increases the migrants' risk of becoming victims of all kinds of exploitation. Organised crime groups specialised in migrant smuggling also often cooperate with organised crime groups active in other crime areas, or work together with individual entrepreneurs who provide ad hoc services, such as taxi and truck drivers.

Smuggling services are very diverse and can be everything between the 'full package' to what the [OECD](#) calls the 'pay-as-you-go model'. Although some characteristics are used to varying degrees

by all smugglers, organised crime groups involved in migrant smuggling have shown great versatility in the choice of routes, means of transport, concealment methods and the technologies they use. As a European Commission study on migrant smuggling states, 'smuggling is a supply and demand driven business'. The response to the coronavirus crisis is just the latest example of these networks' agility.

Types of travel

Migrant smugglers' modi operandi depend on the type of travel used, whereas the type of travel is linked to the destination, the route and the price that the migrant is willing to pay. Europol states that most irregular migrants arrive in the EU by sea, via the Mediterranean routes. **Sea crossings** primarily take place using rubber boats, toy boats, or small fishing boats, with very basic lifesaving and rescue equipment. Moreover, most boats currently reach the EU without the presence of a smuggler. Smugglers have connections in source, transit and destination countries, whereas a majority of the smugglers themselves stay in the last country of departure. The EMSC observes that smugglers are becoming more ruthless and taking more risks, at the peril of migrants' lives. When it comes to **land crossings** – which mainly pass through the western Balkans – all kinds of vehicles can be used or people simply walk, in particular when travelling over rough terrain. According to the EMSC, irregular migrants travelling overland – including for secondary movements – are frequently locked in dark and airtight cargo compartments, in crowded, inhumane or even life-threatening conditions. Migrants who cannot afford smuggling services, tend to share and use online and offline maps with detailed information on hiding places and the safest border-crossing points. A new phenomenon in 2019, were convoys or 'caravans of hope' – groups of migrants challenging border regimes by crossing the EU's external borders in large numbers. **Air travel** is the least used method, mainly because it is more expensive, as the risks are higher because of stricter controls in airports. Most migrants make use of fraudulent or forged documents or misuse transit visas to enter the EU by applying for asylum at the transit airport. Other migrants fly legally to a third country neighbouring the EU, from which they then try to reach the EU with the help of smugglers. Due to the restrictions on the freedom of movement to contain the coronavirus pandemic, migrant smuggling by air has become rare.

Document fraud

Document fraud is a key facilitator of organised crime and is used in several different crimes, including migrant smuggling. Fraudulent documents allow irregular migrants to enter and move within the EU and/or to change from irregular to legalised residence status. Document forgers produce or manipulate all kinds of identity, travel and administrative documents, either by altering genuine documents or by imitating them. According to Frontex, 6 667 people were detected in 2019 in possession of fraudulent documents on entry at the external EU borders. Seven out of ten detections were reported on air routes, with Casablanca (Morocco) and Yeni Havalimani in Istanbul (Turkey) being the two most reported last departure airports. The most commonly detected types of fraudulent documents in 2019 were passports, followed by visas and identity cards. Detections of fraudulent documents on secondary movements, increased by 33 % and reached an all-time high. These forged documents are mostly offered and sold through the internet, including the dark web and social media. The sustained increase in demand for fraudulent documents has led to a better quality of fraudulent documents, making it more difficult for law enforcement agencies to detect them. The quality of the documents furthermore influences how irregular migrants choose to cross the border, as those with poor quality documents will try to avoid contact with border authorities. In addition, many migrants also travel without any type of document, allowing them to stay in the EU at least for the duration of the verification process under the *non-refoulement* principle. Some use this time to move on to their intended destination or to obtain forged documents.

Concealment methods

Migrant smugglers use all kinds of concealment methods to avoid law enforcement authority detection. They expose themselves as little as possible, making use of different intermediaries. The EMSC describes how migrant smugglers make full use of the internet, social media and other modern communication technologies that offer a high degree of anonymity. They increasingly use digital messaging services that offer encrypted communication and allow for real-time information exchange (Telegram, WhatsApp, Viber, Signal, and others), continually change phones and subscriber identity module (SIM) cards or use special mobile phones that provide encrypted communication on a secure private international network. Another challenge for EU law enforcement agencies is smugglers' use of 'virtual numbers' and 'burner applications' (e.g. iPlum, 2Call, OpenPhone, Hushed), which make it virtually impossible to trace the actual phone number or to link it to a specific member of the smuggling network. Nearly all services are offered and take place online, including by using false social media profiles. Smuggling networks sometimes go as far as to set up online travel agencies that facilitate irregular migration, either specifically set up for criminal purposes, or legitimate travel agencies with one or more corrupt employees. This shows how the distinction between legal and illegal activities is increasingly blurred. The European Migration Network (EMN) furthermore recalls that migrants use the internet and social media in particular at pre-departure stage and during their journey, for example to make informed decisions about smugglers and routes, as well as to plan their journeys and help guide themselves and others across borders. They also share experiences online. Digital evidence has thus become ever more important in criminal investigations of migrant smuggling cases. During the actual smuggling operation, smugglers use different vehicles and means of transport when travelling across the borders; use different border-crossings and vary accommodation for the people to be smuggled; rent vehicles from different rental companies; use cash or pre-paid bank cards; and transfer money through money service businesses from different countries or through hawala, an underground banking system based on trust.

EU action to prevent and combat migrant smuggling

Policy framework

Dismantling smuggling networks and undermining their business models, while avoiding the criminalisation of those who provide assistance to migrants in distress, is a key priority when it comes to preventing irregular migration and combating crime in the EU. Action undertaken against migrant smuggling was one of the key immediate responses to the 2015 migration crisis and the tragedies taking place in the Mediterranean Sea. Because of its cross-cutting nature between migration, security and external relations policies, the EU adopted a specific EU action plan against migrant smuggling (2015-2020) in May 2015. This action plan was envisaged in the European Agenda on Migration, which identified migrant smuggling as a priority, and was linked to the European Agenda on Security. The European Agenda on Migration sets out four pillars to effectively manage migration: reducing the incentives and root causes for irregular immigration; enhancing border controls through 'smarter borders'; rethinking and better implementing the common European asylum policy; and improving opportunities for legal immigration. The European Agenda on Security aims at adding EU value to the fight against complex crimes with growing cross-border and interconnectivity dimensions, including migrant smuggling. Importantly, it also recognises the need to act against other crimes, such as corruption, fraud, and counterfeiting documents, to deprive smugglers of their profit. The EU action plan against migrant smuggling puts the commitments made in both agendas into operation, by means of a comprehensive and multidisciplinary response that includes enhanced information gathering and sharing, as well as reinforced operational and judicial cooperation. Even though the numbers of illegal border crossings are back to pre-crisis levels, smuggling networks have proved to be resilient. The new 2020-2025 EU Security Union Strategy and the New Pact on Migration and Asylum – adopted in July and September 2020 respectively – therefore continue to ensure consistent efforts to disrupt these

networks in the years to come. Operational details will be set out in the forthcoming EU action plan against migrant smuggling for 2021-2025.

Legal framework

The EU has set up a comprehensive legal framework to prevent irregular migration and combat migrant smuggling, as well as interconnected crimes. The creation, in 1997, of an area of freedom, security and justice (AFSJ) under the Treaty of Amsterdam, provided in particular for the possibility to approximate criminal legislation (former Articles 29 and 31(e) of the Treaty on European Union, TEU), whereas Article 34 introduced framework decisions as an instrument for aligning national laws in the AFSJ. The main legal instruments to prevent, detect and prosecute migrant smuggling were adopted in 2002 and are known as the 'facilitators' package': Council Directive 2002/90 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. The package provides for a common definition of smuggling humans and the harmonisation of national penal frameworks. Directive 2002/90 defines the intentional facilitation of irregular entry and transit of a migrant on

> ### The facilitators' package
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> The facilitators' package has been widely criticised for failing to provide legal certainty, and consequently for its uneven implementation across the different Member States. Many academics, international and regional human rights bodies, the European Parliament and the EU Agency for Fundamental Rights FRA have drawn attention to and provided evidence for the fact that the overly broad definition of migrant smuggling is resulting in the investigation and prosecution of innocent people, whether smuggled migrants or individuals providing assistance to irregular migrants on humanitarian grounds. A 2016 European Parliament study (updated in 2018), recommended reform of the EU legal framework to comply with the United Nations Protocol against smuggling. In light of these concerns, the European Commission conducted an evaluation under the Regulatory Fitness and Performance Programme (Refit) in 2017. In the absence of a follow-up by the Commission, however, Parliament called for guidance and adequate monitoring systems on the application of the facilitators' package in its 5 July 2018 resolution and a 27 September 2018 hearing. In September 2020, the von der Leyen Commission published guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence.

the territory of a Member State as a crime, as well as facilitation of irregular stay when there is the intention of financial gain (Article 1). The directive nonetheless contains a clause allowing Member States to exempt individuals providing humanitarian assistance when facilitating entry and transit, without covering stay, from criminalisation (Article 1(2)). Framework Decision 2002/946/JHA further complements the directive by setting the minimum penalties and compelling national authorities to apply effective, proportionate and dissuasive sanctions. In order to disrupt big smuggling networks and to protect migrants, penalties can be aggravated when entry and transit are facilitated for financial gain; are committed by an organised crime group; or the lives of migrants were endangered (Article 1(3)). In this context, it also provides some safeguards for refugees and asylum seekers' rights to international protection,[2] particularly the principle of *non-refoulement*, which must not be undermined in view of their being objects of smuggling (Article 6). Council Directive 2001/51 concerning the carrier's liability furthermore provides for sanctions against those who transport undocumented migrants into the EU, whereas Directive 2008/115 ('Returns Directive'), sets out common EU standards and procedures for returning irregularly resident third-country nationals.

The Lisbon Treaty, which entered into force in 2009, provides for the development of a common immigration policy based on the balance between regular migration management and the prevention and combatting of irregular migration under Article 79. Article 83(1) allows the European Parliament and the Council to establish, by means of directives, minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-

border dimension. Even though the list of crimes does not specifically mention migrant smuggling, the Council, after obtaining Parliament's consent, can identify other areas of crime that meet the criteria mentioned in Article 83(1). No new directives that specifically tackle migrant smuggling have been adopted since then, but several others that aim to combat interconnected crimes include: Directive 2015/849 on money laundering, Directive 2011/36 on trafficking in human beings, Directive 2011/93 on sexual exploitation of children, Directive 2009/52 on employer's sanctions, as well as anti-corruption provisions incorporated in other sectoral legislation. With the Lisbon Treaty, the Charter of Fundamental Rights of the EU acquired legally binding character through Article 6(1) TEU. Correct application and interpretation of European legislation is ensured by the Court of Justice of the EU. All legislation must therefore be read consistently with the Charter, but also with other human rights instruments, such as the European Convention on Human Rights, the UN Universal Declaration of Human Rights, refugee laws, the international law of the sea, and others.

Member States are also bound by anti-smuggling legislation at the international level, the most important one being the UN Protocol against the Smuggling of Migrants by Land, Sea and Air. Adopted in 2000, the protocol supplements the UN Convention against Transnational Organized Crime. The protocol was signed and ratified bilaterally by all EU Member States, with the exception of Ireland, and the European Union as a whole in 2006. The Council of Europe's European Committee on Crime Problems (CDPC) is currently considering the preparation and adoption of its own legally binding instrument on migrant smuggling.

Operational cooperation

Operational activities to combat migrant smuggling are the responsibility of the Member States. However, the EU assists them in fighting serious and organised crime effectively to the maximum of its remit, ranging from crime prevention efforts to police and judicial cooperation, which is crucial, given the cross-border and multinational nature of migrant smuggling. Through the EU policy cycle for organised and serious international crime (EMPACT), Member States coordinate common priorities and operational action to address the most important criminal threats affecting the EU. Migrant smuggling is one such threat. In 2019, EMPACT's operational action plan on facilitated illegal migration led to the arrest of 2 601 individuals, the identification and dismantling of 86 organised crime groups, and the seizure of 2 874 documents and €1.2 million.

Over the last decade, there has been a growing involvement of specialised EU agencies supporting law enforcement, border and judicial authorities in their fight against migrant smuggling. The agencies also cooperate directly with each other, for example in relation to external border management or information exchange. When it comes to migrant smuggling, those that are most involved include Europol, Frontex and Eurojust, as well as the EU Agency for Fundamental Rights (FRA), the European Asylum Support Office (EASO) and the European Maritime Safety Agency (EMSA). Europol assists national police forces in criminal investigations with the exchange of real-time information and expertise on criminal analyses and threat assessments of cross-border investigations and operations. Based on EMPACT's priorities, the agency set up the European Serious Organised Crime Centre (ESOCC), which incorporated the European Migrant Smuggling Centre (EMSC) in 2016. The EMSC monitors the online presence of smugglers, provides operational and strategic analytical support to Member States and coordinates the collective response of law enforcement in the dismantling of organised criminal networks involved in migrant smuggling and document fraud. Europol's Joint Operational Team (JOT) Mare, the intelligence-led maritime centre dedicated to tackling migrant smugglers in the Mediterranean, is an essential part of the EMSC. Frontex is responsible for European border management and monitoring. Besides risk analysis support, Frontex provides technical and operational assistance to Member States through joint operations and rapid border interventions, as well as technical and operational assistance to reinforce their capacity to fulfil their obligations with regard to the control of the external borders and combatting cross-border crime.[3] Finally, Eurojust facilitates judicial cooperation in relation to cross-border crimes encompassing more than one judicial system, such as human smuggling.

Collecting evidence, in particular digital evidence, and identifying the members of a smuggling network in order to prove that a criminal act was committed, convict smugglers, achieve justice for the victims and disrupt smuggling networks, is a big challenge. In 2019, Eurojust provided support in 187 cases of migrant smuggling along all major smuggling routes into the EU. A focus group on migrant smuggling was created during the coronavirus pandemic, composed of expert prosecutors and investigative judges and supported by Eurojust's Anti-Trafficking Team and judicial cooperation specialists.

To reduce the number of illegal crossings, under the EU's Common Security and Defence Policy, several operational patrols were set up in the Mediterranean to rescue migrants at risk and fight migrant smuggling, including Operations Themis, Poseidon, Indalo and Sophia.

International cooperation

Combating migrant smuggling requires cooperation and coordination at international level. The EU works closely with migrants' countries of origin and transit, based on a wide range of tools such as building dialogue and partnerships that create a stronger link between development and migration policy. By providing financial and technical assistance to third countries to support them in tackling migrant smuggling, and by generating long-term growth and development, the EU aims to reduce irregular migration – and therefore migrant smuggling – as well as to facilitate readmissions and returns of irregular migrants. As part of the Partnership Framework to better manage migration in cooperation with third countries, the EU is developing dedicated 'cooperation platforms' on migrant smuggling. These networks facilitate information sharing and joint work between EU and Member State delegates, host country authorities, international organisations and immigration liaison officers (ILO). The EU has also deployed European Migration Liaison Officers (EMLO) to ease cooperation between international actors and local and national authorities. The EU furthermore cooperates with international organisations, both intergovernmental and non-governmental.

European Parliament position

The European Parliament has expressed its position on migrant smuggling on many occasions. In the wake of the migrant crisis, the European Parliament resolution of 29 April 2015, called upon Member States to step up operational cooperation, data collection and sharing with Europol, Frontex, EASO and Eurojust and to prioritise financial investigations to disrupt criminal networks' profits. Since 2015, the Parliament also reiterated that the fight against human smuggling groups needs to be part of a holistic EU approach to migration alongside the military and naval operations. In this context, it has called for more safe and lawful routes for migrants, asylum-seekers and refugees to enter and stay in Europe, notably by stepping up resettlement and implementing EU humanitarian visas. Parliament has also repeatedly urged that the implementation of the EU legal framework on human smuggling must not criminalise migrants and those helping them on humanitarian grounds.[4]

Challenges and possible ways forward

Coronavirus pandemic

The EMSC expects the current decrease in border crossings to be temporary, as the economic impact of the coronavirus pandemic in the developing world and the sustained lack of opportunities in some African economies in particular may trigger another wave of irregular migration towards the EU in the medium-term. In the short-term, weak health systems in poorer states may also force people to migrate, according to the Global Initiative against Transnational Organized Crime. Europol warns that, as migrant smuggling generates significant profits, smuggling networks are likely to increase their activities in the medium to longer term. The Agency furthermore warns that a weakening economy in the EU itself may increase demand for cheap labour. It remains to be seen whether that will lead to a hardening in attitudes against migrants, or to a more positive sentiment

towards migration. The Global Initiative against Transnational Organized Crime does expect migrants and refugees' human rights to suffer in the long-term. Moreover, a European University Institute policy brief on the impacts of Covid-19, fears that tougher immigration enforcement and controls could encourage the criminalisation of irregular migrants, asylum-seekers and refugees, their families and communities, and force those unable to access legal migration channels onto more dangerous and potentially lethal paths.

International protection and legal migration channels

The unequal access to safe and legal paths for migration drives demand for smuggling services. Creating more legal channels for labour migrants is therefore indispensable to the EU's comprehensive approach to migration and goes hand in hand with the fight against irregular flows. People in need of international protection should be able to reach the EU without having to resort to smugglers, but the numbers admitted through the existing schemes remain low in comparison with the needs, and a large majority of those granted international protection still reach the EU through irregular means. Furthermore, deficiencies in the common European asylum system (CEAS) mean that asylum-seekers are not treated uniformly, and recognition rates vary across EU countries. That just a few EU countries, based on their geographical situation, are responsible for the vast majority of asylum claims submitted within the EU, could encourage human smuggling and lead to secondary movements. The Commission's New Pact on Migration and Asylum intends to address these gaps and barriers, also evidenced in the Commission's 2019 Legal migration fitness check. In September 2020, the Commission presented a proposal for a regulation on asylum and migration management, an amended proposal for a regulation establishing a common procedure for international protection in the Union, a recommendation on legal pathways to protection in the EU, and announced a new EU action plan against migrant smuggling for 2021-2025 for the second quarter of 2021.

Geopolitical developments

The New Pact on Migration and Asylum furthermore highlights the importance of deepening cooperation on migration through partnerships with key countries of origin and transit, as working with them has a direct impact on the effectiveness of policies inside the EU. The Commission intends to step up cooperation not only by developing orderly channels for legal migration, but also by supporting other countries hosting refugees and host communities; creating economic opportunities close to home; improving return and readmission; and of course by fighting migrant smuggling together. The new 2021-2025 EU action plan on migrant smuggling will stimulate cooperation through tailor-made counter-smuggling partnerships that include, for example, support for law enforcement, operational capacity and information exchange in partner countries, and information campaigns on the risks of irregular migration and on legal alternatives. Good relations with third countries depend to a large extent on geopolitical developments in the countries and regions where migratory movements originate and transit. Frontex warns for example that geopolitical interests, such as competition for natural resources such as offshore gas in the Mediterranean, may well result in the use or threat of the use of migration as a bargaining chip in the geopolitics of the area. A European Parliament study on structural risks facing the EU post-coronavirus adds that the unstable situation in the so called 'Arc of crisis' region, stretching from the Sahel to Central Asia, will continue to threaten EU security and its interests, as long as so many states continue to fail in providing economic and social security. Demographic growth, climate change and associated land degradation, as well as a serious threat of famine, are also major risk factors for irregular migration. Frontex predicts that the United Kingdom's withdrawal from the EU may become another example of a geopolitical challenge, as new border and customs controls will influence the development of cross-border crime.

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ENDNOTES

[1]   Eurostat data for 2019.

[2]   In compliance with the 1951 Refugee Convention and New York Protocol of 1967, and other international human rights instruments.

[3]   Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

[4]   European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)); European Parliament resolution of 18 April 2018 on progress on the UN global compacts for safe, orderly and regular migration and on refugees (2018/2642(RSP)); European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised (2018/2769(RSP)); European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI)).

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