

HOUSE OF LORDS

European Union Committee

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4th Report of Session 2015–16

# **EU Action Plan against migrant smuggling**

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Evidence is published online at <http://www.parliament.uk/eu-action-plan-against-migrant-smuggling> and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence

## SUMMARY

The current refugee crisis is the greatest humanitarian problem to have faced the European Union since its foundation. In response, the European Commission adopted a wide-ranging European Agenda on Migration on 13 May 2015. As part of this Agenda the Commission brought forward an EU Action Plan against Migrant Smuggling. The Action Plan sets out four priorities: enhanced police and judicial response; improved gathering and sharing of information; enhanced prevention of smuggling and assistance to vulnerable migrants; and, stronger cooperation with third countries.

The aim of this inquiry was to look at the efficacy of the Action Plan ahead of the European Commission's own review of the legislation on migrant smuggling, which will be published in 2016 along with proposed reforms.

Migrant smuggling is a serious criminal activity, but the Commission has rightly sought to place the Action Plan within the context of a broader approach to migration. The nature of migrant smuggling needs to be properly understood in order to develop an adequate and appropriate response.

Evidence suggests that a majority of those currently entering the EU as irregular migrants are '*prima facie* refugees', as defined by the UN High Commissioner for Refugees. It is, therefore, important that as much focus is placed on the humanitarian aspects of the crisis as on law enforcement.

At the same time, we support the high priority that is being given to guarding against migrant smuggling for the purpose of committing terrorist acts.

Migrant smuggling is a complex and little understood phenomenon. It can involve organised criminal gangs at one end of the spectrum, and local groups, including groups of migrants themselves, who may have humanitarian motives, at the other. The Action Plan needs to recognise this complexity.

We recommend that, as part of its review of EU legislation, the Commission should propose an EU framework that builds on the humanitarian aspects of the UN Protocol that concerns migrant smuggling. It should criminalise only acts committed for financial gain. Clauses should be added to avoid the criminalisation of individuals and organisations acting for humanitarian purposes. Inhuman and degrading treatment should be included as aggravating factors in the sentencing of smugglers.

The Action Plan sets out the correct priorities, but in developing its strategy the Commission must ensure that, in practice, the protection of vulnerable migrants is given equal priority to law enforcement.

One effective way of addressing the root causes of irregular migration, and of reducing the need for large numbers of refugees to turn to smugglers, would be to create safe and legal routes for refugees to enter the EU. Greater priority needs to be given to this.

We welcome the Commission's attempt to bring together policies on migration, security and external affairs, and its emphasis on greater cooperation with third countries, as long as this can be achieved while respecting human rights.

Priorities set out in the Action Plan will expand the responsibilities of EU Agencies such as Europol, Frontex and Eurojust, thereby challenging their

mandates, resources and current methods of working. The same expansion will raise questions over the accountability and transparency of these Agencies. It is important that the Agencies be properly resourced, that they collaborate and coordinate their work, and that they are monitored and held accountable.

The Commission should continue its efforts to coordinate the collection of intelligence by Member State authorities and EU Agencies. A single Agency, ideally Europol, should be responsible for collating and sharing intelligence. Data and intelligence collected by all Agencies should inform the development of policy at EU level.

# EU Action Plan against migrant smuggling

## CHAPTER 1: INTRODUCTION

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1. The current refugee crisis is the greatest humanitarian problem to have faced the European Union since its foundation. It is part of a greater crisis affecting a number of regions across the world: according to the United Nations High Commissioner for Refugees (UNHCR), 60 million people have been displaced from their homes,<sup>1</sup> the largest number since the Second World War.<sup>2</sup>
2. Across the world individuals are leaving their homes and taking dangerous journeys in an attempt to reach countries of greater safety or economic prosperity. More than 4,000 have died making such journeys so far in 2015, the majority of whom (over 70 per cent) died in the Mediterranean trying to reach Europe.<sup>3</sup> The dangers of the Mediterranean route became notorious when on 3 October 2013 a boat carrying some 500 migrants from Africa, mostly Eritrean and Somali nationals, caught fire and sank off the coast of Lampedusa with the loss of 366 lives. Since that time, the EU and Member States have vacillated in taking responsibility for dealing with this crisis. More tragic incidents have followed. In the first half of 2015 alone 1,700 migrants<sup>4</sup> died at sea, including roughly 800 in a single incident off the coast of Libya on 19 April 2015.

### The EU's Action Plan against migrant smuggling

3. The European Commission adopted its wide-ranging European Agenda on Migration on 13 May 2015, with a view in part to addressing this crisis. The crisis is of such a great size and complexity, though, that we decided to limit the scope of our inquiry to one particular aspect of the EU's response. We chose to look at the EU Action Plan against migrant smuggling, one of many of the Agenda's immediate measures.
4. Migrant smuggling is not defined in either the Action Plan or the Agenda on Migration, but both appear to equate it to the offence of 'facilitation of unauthorised entry, transit or residence', in respect of which the EU adopted a legal framework, the so-called 'Facilitators' Package', in 2002. One part of this is Directive 2002/90/EC,<sup>5</sup> which requires Member States to impose

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1 Q 1

2 UNHCR, *Global Trend 2013 Report*, (20 July 2013): <http://unhcr.org/trends2013/> (accessed 26 October 2015)

3 Missing Migrants Project, 'Latest Global Figures': <http://missingmigrants.iom.int/en/latest-global-figures> (accessed 26 October 2015)

4 A migrant is a person who travels from one place to another. The Migration Observatory, 'Who Counts as a Migrant? Definitions and their consequences', <http://migrationobservatory.ox.ac.uk/briefings/who-counts-migrant-definitions-and-their-consequences> (accessed 26 October 2015). The term has no legal or internationally agreed definition, however. We discuss its connotations in Chapter 2.

5 The other part is Framework Decision 2002/946/JHA on strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence. The UK opted out of this Framework Decision in 2014 in accordance with Protocol 36 of the Treaty of Lisbon. Framework Decision 2002/946/JHA: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002F0946> (accessed 28 October 2015)

sanctions for such facilitation. It also establishes common definitions for two specific offences:

- (a) the intentional assistance of an individual, who is not an EU national, to enter or transit a Member State in breach of that State's laws concerning the entry or transit of aliens, and
- (b) the intentional assistance, for financial gain, of a non-EU national in residing in a Member State in breach of the State's laws on the residence of aliens.<sup>6</sup>

5. Migrant smuggling is primarily a crime against the state. It has also been a key factor contributing to the deaths at sea mentioned above, as smugglers pack migrants into unseaworthy, overcrowded boats with little or no regard for safety. It affects not only the Mediterranean, but reaches far inside the EU. On 27 August 2015 a refrigerated lorry purporting to carry chicken products was found on the side of Austria's A4 motorway. Inside, police discovered the bodies of 71 dead migrants, including one infant. The previous day the lorry had set off from Budapest in Hungary, crossed the border into Austria and been abandoned by its driver. A Syrian passport was found on one of the bodies, indicating that the owner may have been a refugee, though the origin of the other passengers is unknown. Such deaths are being replicated in other areas across the EU, and we are particularly concerned by the recent incidents at Calais.
6. It is perhaps because of such dire incidents that action to combat migrant smuggling has been specifically addressed by a distinct Action Plan within the broader Agenda on Migration. The Action Plan also emphasises the law enforcement aspect of migrant smuggling: it links itself with the European Agenda on Security,<sup>7</sup> adopted by the Commission on 28 April 2015, which specified cooperation against migrant smuggling as a priority in the fight against organised crime networks.
7. The Action Plan calls for a stronger EU-level response to migrant smuggling, involving greater cooperation within the EU as well as with third countries of origin and transit and other stakeholders. It aims to take a "multidisciplinary approach" and to cover "all phases and types of migrant smuggling." At the same time, the Action Plan expressly states that it must be "seen in the broader context of EU efforts to address the root causes of irregular migration."<sup>8</sup>
8. The Action Plan against migrant smuggling sets out a number of specific actions intended to implement its strategy. These are grouped under four priorities or objectives:
  - (1) Enhanced police and judicial response
  - (2) Improved gathering and sharing of information
  - (3) Enhanced prevention of smuggling and assistance to vulnerable migrants

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6 Both these offences are dealt with in the UK under section 25 of the Immigration Act 1971. They each carry a maximum sentence of 14 years imprisonment. Immigration Act 1971, [section 25](#)

7 Communication from the Commission: The European Agenda on Security ([COM\(2015\) 185 final](#))

8 Communication from the Commission: EU Action Plan Against Migrant Smuggling (2015–2020) ([COM\(2015\)285 Final](#))

- (4) Stronger cooperation with third countries.
- (5) We discuss these priorities in detail in Chapter 4.

### The Committee's inquiry

9. We launched our inquiry shortly after the Agenda on Migration was published in May 2015. As mentioned above, our intention was not to look at the EU's response to the refugee crisis as a whole, but to look at one particular aspect of it. Law enforcement action against migrant smuggling is regarded as a priority by many Member States, including the UK. As we stated in the call for evidence,<sup>9</sup> the aims of our inquiry were:
  - to assess how the Action Plan against migrant smuggling contributes to the stated objectives of the EU's Agenda on Migration;
  - to establish whether or not its four objectives and the actions contained therein are the right ones to achieve the EU's stated goal of rendering migrant smuggling a "high risk, low return" undertaking;
  - to identify whether the Action Plan strikes the right balance between security considerations and the protection of migrants' human rights; and
  - to identify gaps and deficiencies in the current EU response to migrant smuggling in order to make recommendations for planned legislative reform.
10. The European Commission is due to undertake a review of EU legislation on migrant smuggling, which will be published in 2016 along with proposed reforms. It was our intention therefore to scrutinise this policy area ahead of that review.
11. Since our inquiry began, the situation has continued to change rapidly. In July 2015, the number of non-EU nationals reaching the EU rose to over 100,000 in one month for the first time.<sup>10</sup> There has been a corresponding significant increase in so-called 'secondary movement'—that is, migration within the EU from one Member State to another. The Commission has responded by putting forward schemes to resettle more refugees directly from third countries to the EU, and to relocate asylum seekers who have reached the EU, via the overburdened states of Italy and Greece, to other Member States to have their claims processed.
12. Smuggling remains a serious criminal activity, as demonstrated by the incident in Austria mentioned above, and it was our aim throughout our inquiry to shed some light on this specific aspect of the EU's response to the refugee crisis. At the same time, we were conscious that the Action Plan could not be looked at in isolation and without reference to the wider context. In this report we therefore first examine a number of key concepts and consider how the Action Plan fits within the wider context of the EU's response to the refugee crisis, before looking more closely at the content of the Action Plan and how it will work in practice.

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<sup>9</sup> Published on 8 July 2015 (see Appendix 3)

<sup>10</sup> Frontex, 'Number of migrants in one month above 100,000 for first time' (18 August 2015): <http://frontex.europa.eu/news/number-of-migrants-in-one-month-above-100-000-for-first-time-I9MIIo> (accessed 28 October 2015)

13. The Action Plan includes several measures intended to enhance cooperation with third countries. The inquiry was conducted by the EU Home Affairs Sub-Committee, and we have focused on immigration, policing and internal security aspects of the Action Plan, rather than on broader questions of the EU's external relations.
14. We received written and oral evidence from a number of witnesses from June to September. We heard from the European Commission, which was responsible for producing the Action Plan, as well as some of the EU Agencies responsible for implementing it. We heard from the UK's National Crime Agency (NCA), which is responsible for acting against organised criminals and cooperating with EU counterparts as part of the Action Plan. Mr James Brokenshire MP, the Minister of State for Immigration at the Home Office, also contributed evidence about the Government's response to the crisis and the Action Plan. Finally, we heard from a number of academics, NGOs and intergovernmental organisations, including the Office of the United Nations High Commissioner for Refugees (UNHCR). We are grateful to all our witnesses for their assistance in the course of our inquiry.
15. **We make this report to the House for debate.**

## CHAPTER 2: MIGRANTS AND MIGRANT SMUGGLERS

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### Introduction

16. The way in which people are defined can have a great impact on how they are perceived and how they are treated. This is particularly problematic in the context of an emotive topic such as the current refugee crisis, in which words are loaded with political meaning. As Franck Düvell, Associate Professor and Senior Researcher, COMPAS, University of Oxford, told us, “There is so much rhetoric and there are so many narratives. The use of certain words tells me that the writer would rather narrate a particular story than look at the complexity of the issues.”<sup>11</sup> Our aim in this report therefore is to be as clear and precise as possible in our use of words.
17. The aim of this Chapter, in particular, is to:
  - investigate the different categories of people involved in migrant smuggling, both the smugglers and those who use their services;
  - analyse some of the narratives put forward by different parties;
  - examine a number of underlying issues and concepts that underpin the Action Plan; and
  - provide a clear analysis of policy against migrant smuggling, both with regard to the immediate crisis, and in respect of the longer term.

### Migrants, asylum seekers and refugees

18. The distinction between the terms migrant, asylum seeker and refugee has often proved elusive. It is, however, crucial to determining the policy approach that should be taken in order to address the current increase in the number of non-EU citizens being smuggled into the EU.
19. The term ‘migrant’ generally refers to anyone who moves from one place to another, though it often has economic connotations. One dictionary defines migrant as “A person who moves from one place to another in order to find work or better living conditions”,<sup>12</sup> and a UN Convention defines it as a “person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”<sup>13</sup>
20. Against this background, the title of the EU Action Plan against migrant smuggling could be taken to indicate that the Plan applies only to those individuals who seek to enter the EU for reasons of personal betterment. However, it is clear that this narrow definition of ‘migrant’ does not accurately reflect the large-scale movement of persons currently taking place. Rather, of those migrants smuggled into the EU, a significant number should be classified as ‘refugees’.

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11 Q 36

12 <http://www.oxforddictionaries.com/definition/english/migrant> (accessed 27 October 2015)

13 2003 International Convention on the Protection of All Migrant Workers and Members of Their Families (United Nations Convention on Migrants’ Rights). UNESCO, ‘International Migration Convention’: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/international-migration-convention/> (accessed 26 October 2015)

### Box 1: Who is a refugee?

The 1951 Geneva Convention defines a refugee as someone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Source: 1951 United Nations Convention relating to the Status of Refugees (‘Geneva Convention’): <http://www.unhcr.org/3b66c2aa10.html> (accessed 26 October 2015)

21. The 1951 Geneva Convention defines ‘refugee’ (see Box 1), and provides that refugees are entitled to protection from contracting states which receive them. This protection, also known as ‘asylum’, confers a number of rights, including in particular the right not to be expelled from the host state. ‘Asylum seekers’ are individuals who have made a claim to be entitled to such protection from a relevant host state,<sup>14</sup> until such time as their request for asylum has been adjudicated. Some asylum seekers may not be refugees, but it should not be assumed that, if that is the case, such people are acting in bad faith.
22. If an asylum seeker’s claim is unsuccessful, the host state will normally seek to return him or her to their home country. Aware of this risk, some *bona fide* refugees may not attempt to claim asylum, preferring to live and work in a host country “informally”, in the words of one witness.<sup>15</sup> Some refugees may also choose to do this because, having spent their lives in oppressive or corrupt states, they have a fear of law enforcement bodies. At the same time, failure to comply with any of the formal procedures for conferring refugee status may render the individual an ‘irregular migrant’. Indeed, most asylum seekers entering the EU currently do so as ‘irregular migrants’, as they do not possess the necessary documentation to apply for visas or other means of regular entry before lodging their claim.
23. There is thus an inherent ambiguity about the term ‘refugee’: according to the Geneva Convention, the status of refugee exists irrespective of any adjudication on individual cases; yet only such formal adjudication confers the legal protections enjoyed by refugees in their host country. This has led the UNHCR to develop a further concept, of ‘*prima facie* refugee’:
 

“During mass movements of refugees (usually as a result of conflicts or generalized violence as opposed to individual persecution), there is not—and never will be—a capacity to conduct individual asylum interviews for everyone who has crossed the border. Nor is it usually necessary, since in such circumstances it is generally evident why they have fled. As a result, such groups are often declared ‘*prima facie*’ refugees.”<sup>16</sup>
24. In conclusion, there is significant potential for confusion and overlap among the terms ‘refugee’, ‘asylum seeker’ and ‘migrant’. In this report we refer to all individuals entering the EU via one of its external borders collectively

14 Under the Dublin Regulation, it is generally for the Member State, through which an individual first enters the EU, to determine that person’s asylum status.

15 [Q 33](#) (Elizabeth Collett)

16 UNHCR, ‘Asylum Seekers’: <http://www.unhcr.org/pages/49c3646c137.html> (accessed 26 October 2015)

as ‘migrants’, on the understanding that this group encompasses a large number of *prima facie* refugees, along with economic migrants. Where we refer exclusively to those formally seeking international protection under the 1951 Geneva Convention, we use the term ‘refugee’.

*Who are the migrants entering the EU?*

25. On 3 June 2015 the Prime Minister said: “the vast majority of people who are setting off into the Mediterranean are not asylum seekers, but people seeking a better life.”<sup>17</sup> In an evidence session conducted before our inquiry was launched, Mr Brokenshire also told us that the majority of migrants entering the EU by sea were economic migrants.<sup>18</sup> In a subsequent letter to us, he qualified that remark by saying that he was speaking “in the context of information available on the central Mediterranean route at that date.”<sup>19</sup>
26. Other evidence casts doubt on the Government’s position—at least as it was in June. Andrej Mahecic, Senior External Relations Officer, United Nations High Commissioner for Refugees, provided the most recent figures available in June for the breakdown of the migrants reaching the EU by sea. He told us that 36 per cent of these individuals were of Syrian origin, with another 13 per cent and 11 per cent coming from Eritrea and Afghanistan respectively. Syria, Eritrea and Afghanistan are all ravaged by civil war, and those fleeing these countries would appear to fall within the category of what the UNHCR calls ‘*prima facie* refugees’. Mr Mahecic therefore argued:
- “The majority of those taking the sea route to Europe are refugees. Their numbers continue to rise rapidly. Most people arriving by sea are fleeing war, conflict and persecution at home, as well as deteriorating conditions in many refugee-hosting countries.”<sup>20</sup>
27. In written evidence, Amnesty International UK told us:
- “The UK government should revisit and correct its analysis and narrative concerning the current crisis. Its understanding and approach, as evidenced by Ministers’ public statements, is inconsistent with available evidence; and will, if this narrative takes hold in general political and public discourse, increase the barriers or disincentives to adopting comprehensive and collective strategies commensurate with the nature and scale of the crisis.”<sup>21</sup>
28. Similar considerations apply to the Eastern Mediterranean route:
- “There has been a major increase in refugees and migrants taking the eastern Mediterranean route from Turkey to Greece. More than 85 per cent of those arriving in Greece are from countries experiencing war and conflict, principally Syria, Afghanistan, Iraq and Somalia. From Greece, most move onwards across the Balkans to western and northern Europe.”<sup>22</sup>

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17 HC Deb, 3 June 2015, [col 583](#)

18 Oral evidence taken on 8 July 2015 (Session 2015–16), [Q 4](#)

19 Letter of 20 July 2015 from James Brokenshire MP, Minister of State for Immigration: <http://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/EU-Agenda-on-migration/EU-Agenda-on-migration-James-Brokenshire-letter.pdf> (accessed 26 October 2015)

20 [Q 1](#)

21 Written evidence from Amnesty International UK ([PMS0001](#))

22 [Q 1](#)

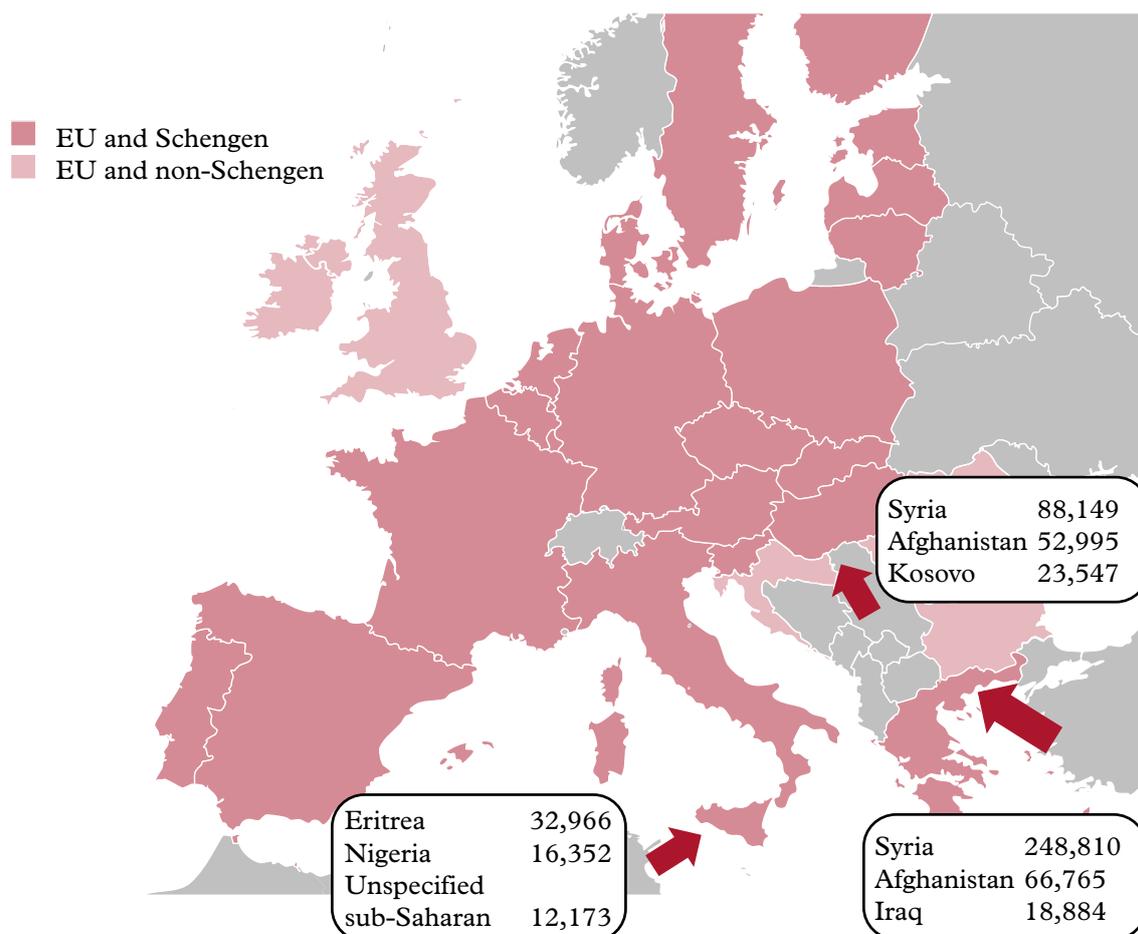
29. The reality is complex even for migrants from sub-Saharan countries such as Niger, who may originally have moved to Libya for economic reasons. The situation in Libya has become increasingly dangerous due to political instability and civil conflict, while neighbouring countries have closed their borders. The result is that persons who were once economic migrants are now in need of protection. Elizabeth Collett, Director, Migration Policy Institute Europe, further highlighted the complexity of the situation saying that in general “motivations may change over time. They also may have multiple drivers attached to them.”<sup>23</sup>
30. The figures outlined above are subject to constant change as international events unfold. At the time of writing, the most up-to-date figures were provided by Frontex, the EU’s border agency, and the European Asylum Support Office (EASO). EASO reported that “In August 2015, the number of asylum applications recorded by EU+<sup>24</sup> countries reached a record high for the fourth consecutive month, with over 148,880 applications reported.” Syria was the main country of origin (49,233 applications), followed by Afghanistan (20,033 applications). While a relatively high number of asylum seekers originated from the Western Balkans (16,472 applications), a further 31,332 applications were lodged by nationals of Eritrea, Iraq, Iran, Pakistan, Sudan and Somalia.<sup>25</sup>
31. Frontex reported that, from January–September 2015, the most popular routes for irregular entry to the EU were the Eastern Mediterranean Route (359,171 detected crossings), the Western Balkan Route (204,630 detected crossings), and the Central Mediterranean Route (128,619 crossings detected). Syria and Afghanistan were the top countries of origin for those taking the first two routes, with most of those taking the latter route being of Eritrean origin.

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23 [Q 33](#)

24 The EU+ is composed of the 28 Member States plus Norway and Switzerland.

25 EASO, *Latest Asylum Trends* (August 2015): <https://easo.europa.eu/wp-content/uploads/Latest-Asylum-Trends-Snapshot-September2015.pdf> (accessed 26 October 2015)

**Figure 1: Main Land and Sea Routes of Irregular Entry into the EU**

From left to right, the arrows indicate the Central Mediterranean Route, the Western Balkan Route and the Eastern Mediterranean Route, which are the main routes for irregular migrants entering the EU. The boxes indicate the top three countries of origin for each route.

Source: Frontex, 'Migratory Routes Map': <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/> (accessed 26 October 2015)

32. **The evidence suggests that a majority of those currently entering the EU as irregular migrants are at least *prima facie* refugees as defined by the UNHCR. It is therefore appropriate to refer to the present crisis as a refugee crisis. We urge the Government to acknowledge that this is the case, and to ensure that the language it uses properly reflects this fact.**
33. **The Action Plan should be amended to acknowledge that those smuggled may be refugees. Equal focus should be placed on the humanitarian aspects of the refugee crisis as on law enforcement.**

#### Trafficking vs smuggling

34. The Action Plan acknowledges that trafficking and smuggling are “different yet interlinked”: trafficking is the transportation of people for the purposes of exploitation, while smuggling involves the clandestine transporting of people across a border. Trafficking is, in itself, “a direct human rights violation” according to David Mepham, UK Director, Human Rights Watch, whereas

smuggling is a crime against the state without necessarily involving a human rights abuse.<sup>26</sup>

35. As the Immigration Law Practitioners' Association (ILPA) pointed out, "The distinction between trafficking and smuggling does not present a conceptual difficulty ... when looking at factual situations, it can be complex to sort out what is going on."<sup>27</sup> Steve Symonds, Programme Director, Refugee and Migrants Rights, Amnesty International UK, told us: "People move ... from situations of smuggling to situations of trafficking ... Individuals may experience both in their journeys, so it is not easy to distinguish the two from a holistic approach to tackling the wider problem."<sup>28</sup>
36. A number of witnesses stated that, regardless of whether trafficking or smuggling were involved, greater emphasis needed to be placed on the individuals being transported. Mr Mahecic told us:
- "Those boats are carrying human beings who are entitled to their human rights and who are in need of international aid and protection. Therefore, all actions must scrupulously respect international human rights law, international refugee law, international humanitarian law and the law of the sea, and ensure the dignified, safe and humane treatment of migrants."<sup>29</sup>
37. Amnesty International UK was also alert to the possibility that:
- "The emphasis upon human trafficking in political rhetoric is also dangerous insofar as it is or may be used as a means to paint the current crisis as one primarily of criminality requiring a policing and border control response; rather than acknowledging and addressing the importance of conflict, brutal regimes and other driving forces behind people's movement and the lack of safe and legal routes which lead to refugees and other migrants turning to smugglers or falling prey to traffickers."<sup>30</sup>
38. **The Action Plan is right to distinguish migrant smuggling from human trafficking. The latter necessarily involves a breach of human rights, whereas smuggling may not. The evidence suggests that in the majority of cases of irregular migration trafficking is not involved.**
39. **Nonetheless, governments, law enforcement bodies and other EU and Member State agencies must have regard to the likelihood that smuggled migrants are vulnerable people. They may at some time have been victims of exploitation, extreme hardship or indeed trafficking. Agencies must not simply treat migrant smuggling as a matter of criminal law, but also one with a humanitarian dimension. They must be ready to provide adequate support and assistance to smuggled migrants.**

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26 [Q 26](#)

27 Written evidence from Immigration Law Practitioners' Association ([PMS0007](#))

28 [Q 28](#)

29 [Q 2](#)

30 Written evidence from Amnesty International UK ([PMS0001](#))

### Smugglers as “evil” and “organised”

40. According to the Action Plan, “Ruthless criminal networks organise the journeys of large numbers of migrants desperate to reach the EU. They make substantial gains while putting the migrants’ lives at risk.”<sup>31</sup> It is undoubtedly true that organised criminal groups are involved in migrant smuggling, and that their indifference to the safety of those migrants has led to many deaths.
41. According to Rob Wainwright, Director of Europol, Europol as the EU’s law enforcement agency has observed organised crime groups becoming less specialised and participating increasingly in illegal migration. He also made clear that there are “established criminal syndicates that are organising the smuggling operation from start point to end point, also with a very deliberate exploitation of the Internet as a recruitment mechanism.”<sup>32</sup> This would indicate that a high level of sophistication is involved.
42. Mr Wainwright also linked people smuggling groups to those involved in other forms of smuggling such as the smuggling of drugs and firearms. In fact, some migrants were smuggled for the “express purpose to support the drugs distribution business in Europe.”<sup>33</sup>
43. He was especially concerned by the possible connection with terrorism. Although Europol had not actually witnessed this “potential threat manifested yet in a significant way,” he felt that there was a risk that smuggling networks might be exploited by groups such as Daesh. Europol was “very sensitive to any signs of that.”<sup>34</sup>
44. Fabrice Leggeri, Executive Director, Frontex, also assured us that Frontex, the EU border agency, had not received “evidence that potential terrorists have crossed the external border of the EU, taking boats with irregular migrants.”<sup>35</sup> At the same time, he conceded that Frontex was not an intelligence agency and so would not necessarily have access to such intelligence. Nonetheless, Frontex was “increasing awareness” among the staff it deployed to screen and debrief migrants.
45. Mr Wainwright conceded that some migrant smuggling was merely opportunistic. Tom Dowdall, Deputy Director, Border Policing Command, National Crime Agency, went further, contrasting migrant smuggling with other forms of smuggling, such as drug smuggling, where one group of individuals oversaw the movement of the commodity from the country of origin to the country of destination. By contrast:

“The nature of the organised criminality in terms of illegal migration is far more compartmentalised. Of course, there is a degree of organisation, but quite often, the decisions around how the organised crime groups operate are taken by the migrants themselves, who will embark on their journey. Sometimes, they will embark on their journey quite legally; sometimes it may well be a bus ride across a border. It may well be some time, some hundred miles, before they first come into contact

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31 Communication from the Commission: EU Action Plan Against Migrant Smuggling (2015–2020) ([COM\(2015\)285 Final](#))

32 [Q 22](#)

33 [Q 21](#)

34 [Q 21](#)

35 [Q 64](#)

with a facilitator or someone who will arrange travel movements or safe houses.”<sup>36</sup>

46. Academic witnesses criticised the Action Plan’s failure to distinguish between the different motivations and methods used by smugglers. Ms Collett told us: “So much of smuggling is horizontal networks. We are talking about sometimes very local networks. Sometimes migrants themselves participate in the facilitation of smuggling to fund the next stage of their journey.”<sup>37</sup>
47. In the light of this complexity, the Migrants’ Rights Network recommended that, when smugglers are convicted of criminal acts,
- “account should be taken of any measures smugglers take to improve the safety and well-being of their passengers when considering charging and sentencing. This would incentivise more to avoid the sort of ‘evil’ behaviour decried by the UK and French governments.”<sup>38</sup>
48. **Migrant smuggling is a complex and little-understood phenomenon. The Action Plan, in its present form, fails to discriminate between the many individuals and organisations who are contributing to the current upsurge in migrant smuggling. These include organised criminal gangs at one end of the spectrum, and local groups, including groups of migrants themselves, who may have humanitarian motives, at the other. It is important that migrant smuggling is understood in all its complexity.**
49. **We support the high priority that is being given to guarding against terrorism, though we have seen no evidence to show that migrants have yet been smuggled into the EU for the purpose of committing terrorist acts.**

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36 [Q 42](#)

37 [Q 34](#)

38 Written evidence from Migrants’ Rights Network ([PMS0006](#))

## CHAPTER 3: THE ACTION PLAN IN CONTEXT

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### Addressing root causes of irregular migration

50. The Action Plan states that it “should be seen in the broader context of EU efforts to address the root causes of irregular migration, in cooperation with countries of origin and transit, and prevent the loss of lives caused by smugglers and traffickers.” As we have seen in the preceding Chapter, the root causes of irregular migration for the majority of migrants include civil war or oppression in their home countries. Even in the case of many migrants who are not refugees, the reason for their onward migration to the EU may be poverty, political instability or the impossibility of going back to their home countries.
51. Some witnesses argued that EU action against migrant smuggling, including the Action Plan, had not sufficiently set out the context in which it was to operate, and had neglected the “demand side” of smuggling.<sup>39</sup> The European Council on Refugees and Exiles contrasted this with the EU’s Global Approach to Mobility and Migration (GAMM),<sup>40</sup> writing that “The lack of acknowledgement of why people need to migrate, the situations they are fleeing, their motivations and needs, including for international protection, means that there is a large gap in the policy.”<sup>41</sup>
52. Mr Mepham, UK Director, Human Rights Watch, told us that:
- “focusing on smuggling to the exclusion of the wider context would not help to address this problem very effectively and might lead to an unbalanced policy response that does not address satisfactorily the major drivers—the major causes—of large-scale migration flows.”<sup>42</sup>
53. The Migrants’ Rights Network agreed: “the overemphasis on policing in the Action Plan is at best a distraction from the root causes of the problem, and at worst will increase violations of the rights of those fleeing persecution and seeking sanctuary in the EU.”<sup>43</sup> Dr Düvell, Associate Professor, University of Oxford, wondered “to what extent [the Commission’s policy proposals] are an adequate response to the complexity and scope of the crisis, in particular the Action Plan.”<sup>44</sup>
54. In addition, the International Organization for Migration complained that the two references made to root causes in the Action Plan do not “provide significant detail on the specific measures that are recommended to address the root causes”.<sup>45</sup>
55. **We welcome the fact that the Commission has sought to place the Action Plan within the context of a broader approach to migration. The Action Plan, however, must focus on the rights of refugees and vulnerable migrants and not just on law enforcement.**

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39 [Q 34](#) (Franck Düvell); see also written evidence from Immigration Law Practitioners’ Network ([PMS0007](#))

40 Communication from the Commission, The Global Approach to Mobility and Migrant Smuggling ([COM \(2011\)743 Final](#)). See also: European Union Committee, *The EU’s Global Approach to Migration and Mobility* (8th Report, Session 2012–13, HL Paper 91).

41 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

42 [Q 23](#)

43 Written evidence from Migrants’ Rights Network ([PMS0006](#))

44 [Q 34](#)

45 Written evidence from International Organization for Migration ([PMS0013](#))

56. **We also urge the Government to participate fully in the Commission’s discussions regarding possible measures for dealing with root causes of migrant smuggling.**

### Establishing safe and legal routes

57. Currently those fleeing their homes as a result of the root causes outlined above have very limited means of reaching the EU legally. The Commission identified this as a problem in its Agenda on Migration, as part of which it brought forward a Recommendation for a resettlement scheme.<sup>46</sup> Under this scheme 20,000 refugees are to be resettled directly from third countries into the EU. This is not a legislative scheme and the Commission has played a predominantly coordinating role. The Commission also said that it would encourage Member States to “use to the full the other legal avenues available to persons in need of protection, including private/non-governmental sponsorships and humanitarian permits, and family reunification clauses.”

### Box 2: What are safe and legal routes?

António Guterres, the United National High Commissioner for Refugees, has called upon EU Member States to “commit to creating more legal alternatives for refugees to find protection, such as expanded resettlement and humanitarian admission schemes, enhanced family reunification, private sponsorship arrangements, and work and study visas”, writing that “Without realistic alternative channels for people to reach safety, the much-needed increase in international efforts to crack down on smugglers and traffickers is unlikely to be effective.”

UNHCR suggests the following admission programmes which would offer legal avenues for accessing safety and protection:

- Humanitarian admission
- Community-based private sponsorship
- Medical evacuation
- Humanitarian visas
- Admission of relatives
- Academic scholarships
- Labour mobility schemes
- Resettlement

Source: António Guterres, ‘U.N. Refugee Chief: Europe’s Response to Mediterranean Crisis is ‘Lagging Far Behind’’, *Time* (23 April 2015): <http://time.com/3833463/unhcr-antonio-guterres-migration-refugees-europe/> (accessed 26 October 2015)

58. Mr Brokenshire argued that establishing safe and legal routes,<sup>47</sup> in the Government’s opinion, would only help relatively few in comparison to the number of potential refugees and irregular migrants coming to the EU. Moreover, with regard to migrant smuggling, he was concerned that such measures might be a source of propaganda to smugglers in the efforts to entice vulnerable people to put their lives at risk. In his view, this solution

46 Commission Recommendation on a European resettlement scheme (C(2015) 3560 Final)

47 See Box 2 and Appendix 6

“can get misinterpreted and manipulated by the traffickers and therefore lead to greater exploitation”<sup>48</sup>

59. The majority of witnesses, in contrast, argued that the creation of safe and legal routes would be a vital element within any comprehensive attempt to curb migrant smuggling.<sup>49</sup>

60. The Refugee Council argued in the strongest terms that there was a link between the creation of safe and legal routes and migrant smuggling: “Smugglers exist fundamentally because of the lack of safe and legal routes for refugees and irregular migrants to the EU.” The Refugee Council continued:

“Clearly, demand for smugglers’ services would be reduced by addressing the causes of refugee flight. But at a time when the international community seems incapable of both ending existing wars and preventing new ones, this remains a distant goal at best. In the meantime, demand can only be reduced by opening new legal channels for refugees to protection in Europe and reinforcing existing ones.”<sup>50</sup>

61. Others agreed, and emphasised that safe and legal routes should be created as part of a more wide-ranging response to the crisis, which would include addressing the root causes of irregular migration.<sup>51</sup>

62. In fact the Action Plan recognises that “smuggling networks can be weakened if fewer people seek their services. Therefore, it is important to open more safe and legal ways into the EU.” Several witnesses welcomed this clear reference, which is also made in the Agenda on Migration.<sup>52</sup> But some still criticised the Action Plan for not giving this objective sufficient priority, and failing to put forward practical measures for creating such alternative routes of entry.<sup>53</sup>

63. The International Organization for Migration wrote:

“Only very brief mention is made of the importance of opening safer, legal ways into the EU. This point in the Action Plan represents an essential opportunity to introduce measures that can adequately disrupt the business model of migrant smugglers.”<sup>54</sup>

64. The Migrants’ Rights Network agreed:

“We are concerned that the Action Plan does not put forward concrete proposals as to developing safe, legal routes for asylum seekers. From this, and from the political response that the recent crisis has received,

48 [Q 57](#)

49 Written evidence from Amnesty International UK ([PMS0001](#)), European Council on Refugees and Exiles ([PMS0004](#)), Migrants’ Rights Network ([PMS0006](#)), International Organization for Migration ([PMS0013](#)) and the Refugee Council ([PMS0003](#)), [Q 23](#) (Steve Symonds)

50 Written evidence from the Refugee Council ([PMS0003](#))

51 [Q 2](#) (Andrej Mahecic), written evidence from Amnesty International UK ([PMS0001](#)) and Migrants’ Rights Network ([PMS0006](#))

52 See for example, [Q 26](#) (Steve Symonds) and written evidence from Amnesty International UK ([PMS0001](#))

53 Written evidence from European Council on Refugees and Exiles ([PMS0004](#)) and Immigration Law Practitioners’ Association ([PMS0007](#)), [Q 27](#) (Steve Symonds)

54 Written evidence from International Organization for Migration ([PMS0013](#))

it seems to us likely that politicians will focus on policing measures, and will place insufficient resources into assisting vulnerable migrants.”<sup>55</sup>

65. Amnesty International UK pointed out the connection between the Action Plan and other proposals put forward by the Commission within the context of the Agenda on Migration:

“Prospects of success for the Agenda and Action Plan are dependent on Member States recognising the interconnected and interdependent nature of the suite of proposals the European Commission has advanced ... Proposals on resettlement and safe and legal routes are critical to reducing the need for large numbers of refugees to turn to smugglers to escape increasingly intolerable and unsustainable situations in countries which remain destinations for the overwhelming majority.”<sup>56</sup>

66. **One effective way of addressing the root causes of irregular migration would be to create safe and legal routes for refugees to enter the EU. We welcome the Commission’s recognition of this but urge that more be done at EU level to work towards the creation of such routes. It is regrettable that the Action Plan does not set out further details in this regard. We recommend that this be addressed as soon as possible. In particular, we recommend that the Commission should bring forward further initiatives to encourage Member States to create such routes, for example by making use of humanitarian visas.**
67. **Since the Action Plan was published the Commission has put forward its resettlement scheme and another scheme to relocate asylum seekers arriving in the EU. We investigated the issue of relocating asylum seekers in a brief report in July.<sup>57</sup> In that report we called on the UK Government to participate, on a voluntary basis, in a proposed relocation scheme.<sup>58</sup> The Government has declined to do so.**
68. **We regret that the Government has declined to participate in the EU measures for the relocation of migrants. We urge the Commission and all Member States to make greater efforts to reach consensus on EU proposals on relocation and resettlement.**

### **Migrant smuggling and other EU policy areas**

69. In its introduction, the Action Plan is clearly described as an implementing measure of both the Agenda on Migration and the Agenda on Security.<sup>59</sup> The Action Plan further states that it should “be seen in connection with on-going work to establish a Common Security and Defence Policy (CSDP) operation to systematically identify, capture and dispose of vessels used by smugglers”, and that “the implementation of actions foreseen in [it] will start immediately and will be made in coherence with other related strategies at EU level”.

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55 Written evidence from Migrants’ Rights Network ([PMS0006](#))

56 Written evidence from Amnesty International UK ([PMS0001](#))

57 European Union Committee, *The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU* (2nd Report, Session 2015–16, HL Paper 23). Relocation does not constitute a safe and legal route, as it does not involve taking potential migrants directly into the EU.

58 Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit for Italy and Greece ([COM\(2015\)451 final](#))

59 Communication from the Commission, EU Action Plan Against Migrant Smuggling (2015–2020) ([COM\(2015\)285 Final](#))

70. The European Council on Refugees and Exiles welcomed the interdisciplinary approach taken by the Action Plan, which recognised the overlaps between migration, security and foreign policy.<sup>60</sup> This was something Ms Collet, Director, Migration Policy Institute Europe, said the EU had previously neglected, but its implementation would constitute “one of the major challenges” going forward.<sup>61</sup>
71. Europol was also positive about “policy synergy” at EU level between the Action Plan, the Agenda on Migration and the Agenda on Security, which was in its opinion facilitated by the EU policy cycle for combating organised crime.<sup>62</sup> Mr Wainwright, Director of Europol, told us that the implementation of the various policies was supported by the European Commission, which is “principally a coordinating actor. It shares that responsibility with the [Member State] governments and the European Council. There are review and coordination mechanisms, which I can testify work in practice.”<sup>63</sup>
72. In contrast, the International Organization for Migration had “severe concerns” about the overlap between the migration and security aspects of the Action Plan and the resulting potential “militarisation of migration”.<sup>64</sup> The European Council on Refugees and Exiles also had “concerns about the possible impact of the EUNAVFOR Med naval operation to identify, capture and dispose of vessels and assets used or suspected of being used by migrant smugglers or traffickers.”<sup>65</sup> It emphasised that “The EU needs to be clear that any naval operations do not put the lives of people fleeing war at risk, and that they do not limit people’s ability to reach Europe to seek asylum”. Drawing a link between the naval operation and the issue of safe and legal routes, the European Council on Refugees and Exiles said that “without the necessary increases in legal ways to reach Europe, the focus on disrupting vessels may lead to refugees and migrants taking even more dangerous routes.”<sup>66</sup>
73. **We welcome the comprehensive nature of the EU response to the crisis, which has brought together policies on migration, security and external affairs. We emphasise that this comprehensive set of EU actions should continue to be conducted in a balanced way, and with due regard to the safety and rights of individuals affected.**

### **Migrant smuggling in the international context**

74. The Action Plan must also be seen within the international context of the global refugee crisis and the work of supranational organisations including the United Nations.
75. Mr Mahecic, Senior External Relations Office, UNHCR, described cooperation between the UNHCR and EU institutions as “regular and strong”, while stressing that such cooperation took place on the basis of the organisation’s refugee protection mandate, and that it therefore played a subsidiary role in the field of migrant smuggling. The main UN body responsible for the law enforcement aspects of migrant smuggling is the UN

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60 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

61 [Q 36](#)

62 Written evidence from Europol ([PMS0002](#))

63 [Q 22](#)

64 Written evidence from International Organization for Migration ([PMS0013](#))

65 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

66 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

Office for Drugs and Crime (UNODC). UNHCR is, though, a member of a consultative forum which issues strategic opinions on the potential fundamental rights impact of planned operations by Frontex, the EU's border agency.<sup>67</sup>

76. The UN seeks to address migrant smuggling through a Protocol against the Smuggling of Migrants by Land, Sea and Air.<sup>68</sup> This Protocol supplements the UN Convention against Transnational Organised Crime. It requires signatory States to establish the smuggling of migrants as a criminal offence when committed with the aim of obtaining a financial or material benefit. It includes specific provisions on the smuggling of migrants by sea, authorising the search of vessels by ships on government service in cases of suspected migrant smuggling.
77. The International Organization for Migration noted that, despite the Action Plan referring to the UN Protocol and calling upon Member States to encourage partner countries to become party to this instrument, there is no explicit connection between EU and UN action and no common definition of migrant smuggling. The International Organization for Migration recommended that in order to increase coherence between the two approaches, “an Action Plan addressing an issue such as migrant smuggling could begin by contextualising the international framework and make reference to international provisions throughout the document.”<sup>69</sup> We look at this issue further in Chapter 4.
78. Similarly, referring to the European Convention on Human Rights, Mr Mepham felt that the international obligations on EU Member States and the EU itself were “not given the prominence and priority that they ought to have in the Action Plan.”<sup>70</sup>
79. **There should be greater synergy between the EU and other international organisations. We recommend, as a first step towards this, the inclusion of internationally accepted definitions of key terms in EU policy documents and legislation.**

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67 [Q 5](#)

68 United Nations, *Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime* (2000): [https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention\\_smug\\_eng.pdf](https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf) (accessed 26 October 2015)

69 Written evidence from International Organization for Migration ([PMS0013](#))

70 [Q 26](#)

## CHAPTER 4: THE ACTION PLAN IN PRACTICE

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### The Four Priorities

80. The Action Plan lists a number of specific actions to tackle migrant smuggling, which are grouped under four main priorities. These are:
- (1) Enhanced police and judicial response
  - (2) Improved gathering and sharing of information
  - (3) Enhanced prevention of smuggling and assistance to vulnerable migrants
  - (4) Stronger cooperation with third countries.
81. In addition to these four priorities, the Action Plan also emphasises that there should be flexibility to allow for additional actions to be taken in coming years to fight migrant smuggling, given its rapidly changing characteristics.
82. Many of our witnesses, and especially those involved in law enforcement,<sup>71</sup> felt that the priorities were the right ones to achieve the Commission's goal of transforming migrant smuggling into a "high risk, low return" operation. Mr Wainwright, Director of Europol, conceded that the Action Plan was "ambitious", but believed that all the actions were achievable "if the actors commit themselves, in the right frame of mind, with the necessary resources, the right information exchange and the right operational attention."<sup>72</sup>
83. The International Organization for Migration and the European Council on Refugees and Exiles were also broadly supportive of the priorities, but argued that too much emphasis was placed on the law enforcement aspects, and not enough on the human rights of migrants or the root causes discussed above.<sup>73</sup>
84. Ms Collett, Director, Migration Policy Institute Europe, on the other hand, said that "The majority of the initiatives set out in the counter-smuggling plan demonstrate to me at what an early stage EU thinking is. There is a lot of talk about setting up networks and contact points in the different states, as well as inter-agency collaboration and intelligence gathering. These are the sorts of things that we would have hoped that by this stage we were building on. The action plan to counter smuggling is to some extent a preparatory document in terms of setting up the institutions within the EU that will think about these things."<sup>74</sup>
85. **We believe that the Action Plan sets out essentially the correct priorities to achieve its aims. In developing this strategy the Commission must ensure that, in practice, the protection of vulnerable migrants is given equal priority to law enforcement considerations.**

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71 Written evidence from Europol ([PMS0002](#)) and National Crime Agency ([PMS0010](#))

72 [Q 15](#)

73 Written evidence from European Council on Refugees and Exiles ([PMS0004](#)) and International Organization for Migration ([PMS0013](#))

74 [Q 35](#)

*(i) Enhanced judicial and law enforcement response**General*

86. Actions under this heading include revising the ‘Facilitators’ Package’ legislation; the identification, capture and disposal of vessels intended to be used by smugglers; financial investigations to seize and recover criminal assets and the confiscation of the proceeds of crime; and the establishment of a single point of contact on migrant smuggling to improve operational cooperation, coordination and the sharing of information between Member States and the EU Agencies.
87. Mr Wainwright welcomed the shift in focus under the Action Plan, from dealing with migrant smuggling as essentially a problem for border guards, to regarding it as a more strategic criminal law enforcement issue:
- “Whereas a lot of the focus has been on reinforcing the external border and dealing with irregular migrants upon arrival, until now they have lacked focus in what should be the critical third area of any strategy: to identify and target the criminal networks behind the smuggling trade.”<sup>75</sup>
88. Mr Wainwright told us that the problem was largely caused by gangs of organised criminals:
- “It is absolutely clear that criminal networks are at least exacerbating the situation, if not directly responsible for the extent of the trade, and using the Internet to encourage people to make the journey in the first place, forcing them, sometimes against their will, on to unseaworthy vessels. Indeed, in some cases they exploit them on their arrival in the European Union. That is a large criminal infrastructure that is fundamental to this trade. If we can take that away, it will make a big difference.”<sup>76</sup>
89. Some witnesses, however, such as the Migrants’ Rights Network and the Immigration Law Practitioners’ Association, felt that law enforcement was overemphasised. The latter agreed, that the focus on law enforcement was unlikely to be entirely successful in eradicating the problem, given the extent of demand: “We are doubtful whether increased criminal penalties will affect the behaviour of smugglers in those circumstances.”<sup>77</sup> Indeed, as Europol pointed out, “Criminal groups may receive as much as €8,000 per migrant for a journey from Libya to Italy.”<sup>78</sup> Such potential profits make it unlikely in the foreseeable future that migrant smuggling will become a ‘low reward’ operation.
90. On the other hand, Mr Wainwright saw these large sums of money as a potential target in the fight against migrant smuggling.<sup>79</sup> He told us that Europol had already acted “as a centre point in the EU for a lot of the anti-money laundering and asset recovery work for the European police community.” He noted, though, that “until now, there has been no systematic use of financial investigation tools in this area. That is something that we need to do a lot more on.”<sup>80</sup> Ms Collett added that while the Action Plan contained “some interesting things in terms of addressing the financing,”

75 [Q 14](#)76 [Q 14](#)77 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))78 Written evidence from Europol ([PMS0002](#))79 [Q 15](#)80 [Q 15](#)

these did “not necessarily build into a solid understanding of what that financing is.”<sup>81</sup>

91. Another of the specific actions under this objective is the destruction of migrant smuggling vessels. The Immigration Law Practitioners’ Association said that this was unlikely to be of much use, since these vessels “are used once and abandoned to the persons being carried to bring to shore, so that the smugglers escape prosecution.”<sup>82</sup>
92. **The Action Plan’s ‘enhanced judicial and law enforcement response’ priority is very ambitious, given the size of the demand. To succeed, law enforcement needs to be seen as part of a broader approach to the problem of migrant smuggling. Nonetheless, it is a fundamental and necessary objective, which we support.**

*The Facilitators’ Package*

93. In 2002 the EU adopted a legal framework on smuggling, often referred to as the ‘Facilitators’ Package’. It is composed of a Directive defining the facilitation of unauthorised entry, transit and residence<sup>83</sup> and a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.<sup>84</sup>
94. The Directive sets out the criminal offences for which EU countries must adopt effective, proportionate and dissuasive penalties (see paragraph 4). The Framework Decision provides minimum rules for EU countries regarding penalties, liability and jurisdiction for infringements relating to the facilitation of irregular immigration. Article 1(2) of the Directive provides that, in cases where the individual has not sought “financial gain,” individual Member States have the option not to impose criminal sanctions “where the aim of the behaviour is to provide humanitarian assistance to the person concerned.” However, this is not mandatory.
95. The Action Plan raises the prospect of further legislative action: “The Commission will make, in 2016, proposals to improve the existing EU legal framework to tackle migrant smuggling ... It will seek to ensure that appropriate criminal sanctions are in place while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress.”<sup>85</sup>
96. In this context, and considering the overlap between the UN Protocol, the Facilitators’ Package and the broader objectives of the Action Plan, we sought to establish whether EU legislation against migrant smuggling added to the UN framework in a coherent and meaningful manner.
97. There are some key differences between the two legal frameworks. Unlike the Facilitators’ Package, the UN Protocol only criminalises smuggling related to criminal acts committed for financial gain. It specifically excludes

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81 [Q 35](#)

82 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

83 Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0090> (accessed 26 October 2015)

84 Framework Decision 2002/946/JHA, Penal framework for preventing the facilitation of illegal immigration: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:jl0045> (accessed 26 October 2015)

85 Communication from the Commission, EU Action Plan Against Migrant Smuggling (2015–2020) ([COM\(2015\)285 Final](#))

the criminal prosecution of migrants on the grounds that they have been the object of smuggling and its related activities.<sup>86</sup> The UN Protocol also cites conduct by smugglers that endangers the lives and safety of migrants or entails inhuman or degrading treatment, including exploitation of migrants, as aggravating factors.<sup>87</sup> In contrast, the EU legislation does not address inhuman or degrading treatment, but does cover endangerment, and smuggling conducted by organised crime organisations.<sup>88</sup>

98. Where Member States chose not to include the optional exemption under Article 1(2) when implementing the 2002 Directive, some witnesses<sup>89</sup> pointed out that the EU Framework appeared to criminalise humanitarian assistance provided to smuggled migrants in distress, for example by fishermen at sea. This has also placed undue pressure on healthcare and welfare providers to collect and provide information on undocumented migrants.
99. Furthermore, the European Council on Refugees and Exiles highlighted a recent report by the EU Fundamental Rights Agency (FRA), which showed that “in almost all EU Member States, irregular entry and stay are offences, often punishable with custodial sentences.”<sup>90</sup> As such, the migrants themselves are criminalised with the result that “many people are afraid to use medical services, send their children to school or register births.” The European Council on Refugees and Exiles was accordingly concerned that the Action Plan “does not address concerns on the Facilitators’ Package and the rendering of humanitarian assistance.” It hoped “that this will be addressed as part of [the Commission’s review of the Facilitators’ Package] and will ensure that humanitarian assistance to refugees and migrants arriving in Europe is no longer a potential crime.”<sup>91</sup>
100. In the light of these concerns we asked Dana Spinant, Head of the Irregular Migration and Return Policy Unit at the European Commission, to clarify the anticipated scope and timing of the Commission’s review of the Facilitators’ Package. She confirmed that the Commission was currently “having an in-depth look at the effectiveness, added value and value in general of this EU legislation. If necessary, we will come forward with fresh legislative proposals to amend it sometime [in 2016]”.
101. Within the scope of this evaluation, the Commission was “looking at ways to bring [the Facilitators’ Package] in line with the UN protocol against migrant-smuggling.” It was also “looking at ways to strengthen the criminal sanctions—the penal framework—against migrant-smugglers, while at the same time making it more differentiated in order to clearly exclude from criminal sanctions organisations that provide humanitarian assistance to migrants.”<sup>92</sup> Ms Spinant expected the evaluation to last until mid-2016, at

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86 Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air. United Nations, *Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime* (2000) p3: [https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention\\_smug\\_eng.pdf](https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf) (accessed 26 October 2015)

87 Article 6(3) of the Protocol against the Smuggling of Migrants by Land, Sea and Air

88 Article 1(3) of Framework Decision 2002/946/JHA, Penal framework for preventing the facilitation of illegal immigration: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:jl0045> (accessed 26 October 2015)

89 Written evidence from European Council on Refugees and Exiles ([PMS0004](#)), International Organization for Migration ([PMS0013](#)) and Immigration Law Practitioners’ Association ([PMS0007](#))

90 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

91 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

92 [Q 70](#)

which point the Commission aimed simultaneously to publish its results, any new legislative proposals and an impact assessment.

102. **We recommend that, following its current review of the ‘Facilitators’ Package’, the Commission should propose an EU Framework that builds on the humanitarian aspects of the UN Protocol, by criminalising only acts committed for financial gain, and by adding clauses to avoid the criminalisation of individuals or organisations acting for humanitarian purposes. We would also welcome the addition of inhuman or degrading treatment as an aggravating factor in the sentencing of convicted smugglers.**
103. **While we await the precise outcome of the Commission’s review and any new legislative proposals, we further recommend that the Government should look favourably at opting into any Commission proposals designed to bring the EU’s regime into line with the UN’s and, subject to further parliamentary scrutiny, support such a proposal in the Council.**

*(ii) Improved gathering and sharing of information*

104. The Action Plan states that the present state of knowledge and information concerning migrant smuggling is poor, because of its clandestine and fast-changing nature. It proposes to improve the gathering and sharing of information on “*modus operandi*, routes, economic models of smuggling networks, on links with trafficking in human beings and other crimes, and on financial transfers”, in order to target smugglers effectively.
105. The Action Plan sets out a number of actions to achieve this goal. There is an emphasis on making better use of existing mechanisms, such as strengthening Joint Operational Team (JOT) MARE to make it the EU information hub for cases of migrant smuggling by sea.

### Box 3: JOT MARE

JOT Mare is a Joint Operational Team hosted by Europol, the EU’s law enforcement agency. It was launched on 17 March 2015 specifically to combat migrant smuggling in the Mediterranean. According to Europol, “JOT Mare will combine Europol’s unique intelligence resources and Member States’ capabilities to carry out coordinated and intelligence-driven actions against the facilitators. As well as ensuring an intensified exchange of intelligence with Frontex and close cooperation with Interpol, national experts seconded to JOT Mare will facilitate the necessary cooperation between Europol and the services of the participating EU Member States.”

The Action Plan states that “Europol’s Focal Point on migrant smuggling and its Joint Operational Team (JOT) MARE should be strengthened, to make it the EU information hub for cases of migrant smuggling by sea”.

Source: Europol, ‘Joint Operational Team launched to combat irregular migration in the Mediterranean’: <https://www.europol.europa.eu/content/joint-operational-team-launched-combat-irregular-migration-mediterranean> (accessed 26 October 2015)

106. A ‘Hotspot’ approach has been launched under the heading of ‘Improved gathering and sharing of information’, to enable EU Agencies to operate on the ground in areas where there are large numbers of migrants entering the EU. Hotspots are dealt with further in Chapter 5.

107. The Action Plan also calls for further cooperation with third countries in the gathering and exchange of information. Finally, it calls for monitoring of the Internet, both to develop the knowledge base and to disrupt Internet operations.
108. The National Crime Agency (NCA) and Europol were clear that improved gathering and sharing of information were key to achieving a comprehensive European approach to migrant smuggling. Success in this area would amount to a “complete intelligence picture”, which would “close the intelligence gaps” that currently exist.<sup>93</sup>
109. Other witnesses were more critical. We heard that there were too many actors at both EU and national level collecting information on smugglers. They were doing so for different purposes, and to different quality standards. The European Council on Refugees and Exiles told us: “There is a lack of criminal statistics, data and regular reporting mechanisms on smuggling.”<sup>94</sup> There were also legal and technical difficulties in sharing information effectively. Ms Collett and Dr Düvell were concerned by the quality of the underlying evidence base. Ms Collett regretted that the Action Plan said little of “increasing understanding of the smuggling networks themselves”.<sup>95</sup> She noted that governments were not necessarily trusted by people “who may have grown up with a deep mistrust of the governments of the countries they come from. They are also concerned that anything they tell the authorities may lead to retribution from the smuggling networks themselves.” She therefore believed that, while “There is an enormous amount of research to do ... governments are not necessarily the right actors for conducting the interviews and establishing the research.”<sup>96</sup>
110. Dr Düvell, Associate Professor, University of Oxford, also commented on the difficulty of acquiring accurate information from those most directly affected by migrant smuggling:
- “Everything we know is based either on small-scale case studies made at a certain point in time and thus reflecting a very specific situation or is based on evidence gathered by state agencies. The people we talk about know very well what the discourses are and what the game is: what they are expected to say. They do not talk about their real background motivation and experience; they give what we call a morally adequate account of what they are expected to say.”<sup>97</sup>
111. More fundamentally, it may be impossible ever to establish a complete, final picture. Migrant smuggling affects a vast range of areas inside and outside the EU. The routes and methods of smugglers are changing all the time. As Ms Collett explained:
- “One thing to add to that is about the fluidity of smuggling networks and routes over time, which means that even if you had a robust snapshot of the routes from, say, October last year, when the primary maritime route was through the central Mediterranean, it would not really help you understand what is happening now through Greece and Turkey and

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93 See for example [Q 42](#) and [Q 49](#)

94 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

95 [Q 35](#)

96 [Q 35](#)

97 [Q 36](#)

up throughout the western Balkans. There has been a complete shift in routes, operators, networks and populations. It is not just that there are lots of different institutions working in lots of different geographies and constellations, with different levels of mandate and resources, but the picture is constantly changing. It is not possible to say, ‘We have done it now; we have mapped all the smuggling networks’, and sit back.’<sup>98</sup>

112. The sharing of information, once acquired, is equally problematic, being heavily reliant on Member States’ authorities’ willingness to participate fully. As Mr Wainwright said, “Can we build the necessary trust and operational engagement with the relevant authorities so that they will share data with us effectively and systematically? The answer to that is yes a lot of the time, but not always.”<sup>99</sup>
113. Nonetheless, the NCA remained optimistic that the Action Plan put in place a strategy for dealing with these problems: “Our response reflects this flexibility: the breadth of our overseas deployments and our commitment to Europol’s JOT Mare will enable our intelligence collection and analysis capabilities to keep pace with criminals’ adaptability.”<sup>100</sup>
114. The International Organization for Migration welcomed the strengthening of JOT MARE to become “a single inter-agency information hub for cases of smuggling by sea”, but noted that there was an “absence in details for a mechanism of information sharing for other forms of migrant smuggling, such as by land or air.”<sup>101</sup> The European Council on Refugees and Exiles noted that “Data on the role of smuggling in secondary movements within the EU also needs to be collected in a uniform manner, including through the development of indicators.”<sup>102</sup>
115. **The networks, practices and routes used by migrant smugglers are constantly changing. The fluidity of this situation presents a significant challenge to law enforcement. Urgent work therefore needs to be undertaken at EU level to ensure that information collected and shared is of high quality. Gaps in the intelligence picture should be identified and remedied, and this process should be regularly updated as patterns continue to evolve. The necessary focus on gathering information on migrant smuggling in the Mediterranean must not result in neglect of migrant smuggling operations elsewhere, including within the EU’s borders.**
116. **The Commission should continue its efforts to coordinate the collection of intelligence by Member State authorities and EU Agencies. A single Agency, ideally Europol, should be responsible for collating and sharing.**
117. **We recommend that EU funding be made available for further academic and field research in order to address the lack of a comprehensive understanding of migrant smuggling. This research, together with intelligence and data gathered by law enforcement**

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98 [Q 37](#)

99 [Q 19](#)

100 Written evidence from National Crime Agency ([PMS0010](#))

101 Written evidence from International Organization for Migration ([PMS0013](#))

102 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

**agencies including Europol and Frontex, should inform the development of policy making at EU level.**

*(iii) Preventing smuggling and assisting vulnerable migrants*

*General*

118. The aim of this priority within the Action Plan is to combat migrant smuggling by making it seem less attractive to both smugglers and migrants. The Commission seeks to do this by raising awareness of the risks of smuggling and increasing the effectiveness of returning irregular migrants. It proposes to take stronger action against employers who employ irregular migrants. It will also help business operators by producing a handbook on the prevention of migrant smuggling. Finally, it states that it will “step up efforts to provide smuggled migrants, in particular vulnerable groups such as children and women, with assistance and protection.” To this end it will review Directive 2004/81/EC<sup>103</sup> (the 2004 Directive) on residence permits issued to victims of trafficking in human beings.
119. The European Council on Refugees and Exiles was sceptical that information campaigns would be useful in influencing potential migrants: “It is often argued that migrants know that there are risks involved or that those who want to migrate will not listen to negative information on the journey ahead and will undertake the trip regardless.”<sup>104</sup> The European Council on Refugees and Exiles was similarly sceptical with regard to the enhanced returns measures, saying that there was no evidence that they had any effect on potential migrants’ decision to leave their home countries.<sup>105</sup>
120. While some witnesses welcomed in principle the inclusion of measures to assist vulnerable migrants,<sup>106</sup> NGOs such as the European Council on Refugees and Exiles expressed concern about the lack of detail. Mr Symonds, Programme Director, Refugee and Migrants Rights, Amnesty International UK, said that:
- “When one looks at the detail of the Action Plan under the heading ‘Enhanced Prevention of Smuggling and Assistance to Vulnerable Migrants’, one sees that there is very little that deals with the issue of assistance or protection. Indeed, the one proposal under that heading is itself not specific. It is a proposal for a consultation about amending a directive, without any clarity as to what direction the amendment might take. Indeed, if one looks more broadly at the other objectives, protection is largely absent. That is a great worry.”<sup>107</sup>
121. The International Organization for Migration and Amnesty International UK also lamented the conflation of “prevention” (of smuggling) with “assistance” (to migrants). In the words of Mr Symonds: “There is an eliding of prevention of smuggling with assistance/protection for vulnerable migrants.” Alluding to other international documents to do with tackling migrant smuggling or trafficking, including the EU’s strategy in relation to trafficking, he noted that “objectives that are directed to assistance and

103 Council Directive 2004/81/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML> (accessed 26 October 2015). The UK did not opt in to this Directive.

104 Written evidence from European Council on Refugees and Exiles ([PMS0004](#))

105 *Ibid.*

106 For example written evidence from Migrants’ Rights Network ([PMS0006](#))

107 [Q 26](#)

protection are always separated from those directed to prevention because they are separate and distinct issues ... Indeed, prevention of smuggling can lead to serious human rights abuses and further exacerbation of the vulnerability of, for example, refugees.”<sup>108</sup>

122. **We welcome the inclusion in the Action Plan of measures to assist vulnerable migrants. We believe that insufficient weight is attached to this objective. It should be regarded as being at least equally important as increasing law enforcement measures, and should be distinct from measures intended to prevent migrant smuggling. It is disappointing that no meaningful proposals have been made to address assistance to vulnerable smuggled migrants.**
123. **We recommend that Member States put in place arrangements for the safeguarding of smuggled migrants’ rights and safety. They should allocate resources to ensure that smuggled migrants have adequate shelter, food and other support. The Commission should monitor and support such arrangements and, where appropriate, provide additional funds.**

*Residence Permit*

124. The 2004 Directive defines the conditions for granting residence permits to third-country nationals who cooperate in the fight against trafficking in human beings or migrant smuggling (the UK does not participate in this Directive). The duration of the permits is limited and linked to the length of the legal proceedings. Member States must apply the Directive to third-country nationals who have been victims of human trafficking, even if they have illegally entered the EU. It is currently optional for Member States to apply the Directive to third-country nationals “who have been the subject of an action to facilitate illegal immigration.” The Commission intends to review whether or not application to those falling into this category should be mandatory.
125. Ms Spinant, Head of Unit at the European Commission, explained that extending the Directive to smuggled migrants “would enable Member States to provide temporary residence permits to smuggled migrants who cooperate with authorities in investigations into migrant smuggling.”<sup>109</sup>
126. The Immigration Law Practitioners’ Association was in favour of this change, as long as the Directive’s provisions safeguarding the right to asylum remained in place.<sup>110</sup> Mr Symonds, though, said that “Simply addressing aspects of the residence permit has not proved sufficiently fruitful in terms of protecting victims of trafficking, which is why EU legislation has moved on so far, which is good. Although it is a different phenomenon, there is a question as to how much can be gained from the 2004 Directive in respect simply of victims of people smuggling.”<sup>111</sup>
127. The International Organization for Migration, while supporting the policy to provide residence permits to those who had facilitated criminal proceedings against smugglers, said that “it should not be considered, in and of itself, to

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108 [Q 26](#)

109 [Q 68](#)

110 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

111 [Q 29](#)

be a measure of assistance to smuggled migrants, if the motivation is solely about tackling smugglers as opposed to providing protection.”<sup>112</sup>

128. **We support the extension of the 2004 Directive, which requires Member States to provide residence permits to victims of human trafficking, to smuggled migrants who have assisted in criminal proceedings against smugglers. The current asylum safeguards, which protect the right of asylum, must remain in place.**

*(iv) Cooperation with third countries*

129. The Action Plan calls for closer cooperation with third countries in order to target migrant smuggling and also to address the root causes of irregular migration. Accordingly, the Commission aims to launch or enhance bilateral and regional cooperation frameworks, providing capacity building to third countries and improving cooperation and coordination with third countries.
130. Mr Brokenshire told us that the Government was particularly committed to this element of the Action Plan. It was involved in the Khartoum Process, a joint initiative of the EU and African Union states to tackle migrant smuggling in the Horn of Africa. It also intended to create some “regional development and protection programmes.”<sup>113</sup> Mr Brokenshire felt that this was a “more fruitful and positive way of dealing” with the current crisis than engaging in resettlement and relocation schemes, which would benefit relatively few people.
131. Other witnesses questioned the efficacy of the measures suggested under this priority, including the Immigration Law Practitioners’ Association, which stated:
- “Work with third countries to tackle border management, youth and employment and mobility are unlikely to affect patterns of movement where the causes of that movement are war, famine, pestilence and death.”<sup>114</sup>
132. Mr Symonds said:
- “It is again disappointing that while there is much in this plan about co-operation with third countries, none of the co-operation that is referred to refers to anything about capacity-building on those lines in relation to those third countries, which would clearly be a valuable and important aspect of any working with African or indeed other states in relation to this.”<sup>115</sup>
133. Mr Symonds also felt that the EU should not think that “it can simply demand of African states—or, indeed, Asian states that are much poorer than Europe—that they can continue to bear the by far the greater numbers and pressure without some degree of sharing of responsibility.” The International Organization for Migration regretted that there was not “greater partnership language here, in line with the EU’s GAMM, which also considers the needs and interests of third countries in relation to migrant smuggling.”<sup>116</sup>

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112 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

113 [Q 57](#)

114 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

115 [Q 27](#)

116 Written evidence from International Organization for Migration ([PMS0013](#))

134. Ms Collett cautioned that the Action Plan “might be slightly naive”, in that
- “it does not really mention corruption and rule of law in the countries where smuggling is taking place. It is extremely difficult to talk about robust counter-smuggling activities without taking into account the governance structures within which you are working. It would mean really thinking about how smuggling links to corruption, law enforcement locally, the facilitation of those networks and how local economies often depend on smuggling networks.”<sup>117</sup>
135. Aside from the practical difficulties of cooperating with third countries, there are also ethical difficulties. The Migrants’ Rights Network welcomed “an increase in cooperation with third countries, providing it is focused on measures that preserve the rights and improve the conditions of people in those countries”, but stressed that “the EU should be very careful to avoid situations where third countries end up committing human rights abuses against those seeking to enter the EU, pursuant to EU policy.”<sup>118</sup>
136. The European Council on Refugees and Exiles agreed: “The EU Action Plan should not be pursued in isolation, as a targeted cooperation area, but as part of a more holistic cooperation package with partner countries. The GAMM should still remain the overarching framework for cooperation with third countries in this regard.”<sup>119</sup>
137. **Cooperation with third countries is key to tackling migrant smuggling effectively, as third countries may be either countries of origin or transit for migrants. We therefore welcome the efforts being made to coordinate efforts with third countries, while cautioning that in return assistance must be provided to share some of their burdens in dealing with this crisis. Particular care must be taken to avoid actions that would make the EU or Member States complicit in human rights abuses.**
138. **We also note that cooperation with third countries will do little to help the many thousands of migrants who have already reached the EU. The large amount of secondary migration within the EU means that these people are not yet safe from the dangers posed by migrant smugglers.**
139. **We welcome the Government’s engagement with this objective within the Action Plan. However, as argued in our report on the relocation of migrants, the Government, by being selective about which measures to support, risks undermining the EU’s ability to develop a coherent response to the refugee crisis.**

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117 [Q 39](#)

118 Written evidence from Migrants’ Rights Network ([PMS0006](#))

119 Written evidence of European Council on Refugees and Exiles ([PMS0004](#))

## CHAPTER 5: EU AGENCIES

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### The role of EU Agencies in the Action Plan

140. EU Agencies are expected to play a significant role in putting the Action Plan into practice. From the number of tasks allocated to Europol, Frontex and the European Union’s Judicial Cooperation Unit (Eurojust), it appears that the Commission will rely heavily on these Agencies going beyond their current responsibilities in order to implement the Action Plan successfully.
141. This reliance will test Agencies’ mandates, resources and current modes of communication and operational cooperation. It also raises questions of accountability and transparency, where responsibility for tasks may be shifted from individual Member States or the Commission to one or more of the Agencies.
142. A list of all Agencies involved in EU action against migrant smuggling, including their respective mandates and tasks, is attached to this report as Appendix 5.

### Mandates

#### *Legal and operational issues*

143. In order to account for the expanding list of tasks to be carried out by EU Agencies, the Action Plan both implicitly and explicitly refers to extending their respective mandates.
144. Mr Wainwright, Director of Europol, thought that Europol’s current mandate for tackling migrant smuggling was both clear and legal. However, he had concerns about one specific aspect of the Action Plan, which would require Europol to increase its support for detecting Internet content used by smugglers: “Until now we did not have an established direct operational connection with the private sector. Our new legal regime, which is currently being negotiated, should clarify that point.”<sup>120</sup>
145. Frontex said that its current mandate was “not sufficiently straightforward”, with regard to the Action Plan’s calls for more research and risk analyses on possible links between cross border crime, irregular migration and smuggling. This lack of clarity led to “questions if not resistance from parties who do not understand the complex nature of border management or are unaware of the EU concept of Integrated Border Management and its close connections to internal and external security”.<sup>121</sup>
146. Mr Leggeri, Executive Director of Frontex, told us that Frontex was in talks with the Commission regarding changes to the Agency’s mandate with respect to returns policy, and regarding the possibility of establishing a European system of border guards that could be linked with an EU coastguard function.<sup>122</sup> He said that with regard to returns policy, changes would be needed “in order to increase the mandate of Frontex to return people but also to support Member States in their pre-return actions.”<sup>123</sup> Ms Spinant, Head of Unit at the European Commission, said that the former could be achieved within Frontex’s current mandate, but confirmed that with regard

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120 [Q 16](#)

121 Written evidence from Frontex ([PMS0009](#))

122 [Q 66](#)

123 [Q 66](#)

to the latter, “the Commission has already started work on revising the legal mandate of Frontex and we are planning to put the legislative proposals on the table before the end of this year.”<sup>124</sup>

147. The Immigration Law Practitioners’ Association suggested that it was more a question of political will, whether or not the mandates of EU Agencies would continue to be expanded, and that therefore the final extent of these developments remained to be seen.<sup>125</sup>

*Fundamental rights concerns*

148. Some NGOs had concerns about the suggested extensions to Frontex’s mandate, which would enable it to play a larger operational role in returning irregular migrants to their home countries.<sup>126</sup> The Migrants’ Rights Network argued “strongly for placing the onus squarely on European governments to assess asylum or other claims made by individuals ... outsourcing this to an inter-governmental border control agency creates an unacceptable conflict of interest, and would cast doubts on the credibility of the EU system.”<sup>127</sup>
149. Human Rights Watch UK and Amnesty International UK shared these concerns. Mr Mepham, UK Director, Human Rights Watch, was “worried about anything that tried to minimise or diminish the obligation on European governments to assess very carefully not only the asylum and protection claims of individuals but the circumstances in which they might be returned”, which was a “sensitive matter”.<sup>128</sup>
150. Mr Symonds, Programme Director, Refugees and Migrants Rights, Amnesty International UK, warned against the increased potential for collective returns, which take place when asylum claims are not assessed on an individual basis, and which are forbidden by Article 4 of Protocol 4 of the European Convention on Human Rights.<sup>129</sup> He cautioned that “it is often much easier to monitor the actions of individual states than agencies that they subcontract or delegate their authority to”. Amnesty International UK was “very anxious to ensure that if Frontex is to be given such an expanded role, the EU starts by building into that how Frontex will avoid, and be seen to avoid, conducting [collective returns].”<sup>130</sup>
151. Mr Leggeri stressed the mechanisms currently in place to protect the fundamental rights of migrants coming into contact with Frontex: “The first is that the European Charter of Fundamental Rights applies to Frontex. Then there is democratic control through the European Parliament ... Internally, we have a Fundamental Rights Officer. This person is independent but works in the agency, and her role is to make recommendations to the Executive Director of Frontex on fundamental rights issues.”<sup>131</sup> In addition, a so-called consultative forum, comprised of NGOs, the Council of Europe and the EU Agency for Fundamental Rights (FRA), issued strategic recommendations with regard to planned Frontex operations.

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124 [Q 66](#)

125 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

126 Written evidence from Migrants’ Rights Network ([PMS0006](#)), [Q 29](#) (Steve Symonds)

127 Written evidence from Migrants’ Rights Network ([PMS0006](#))

128 [Q 29](#) (David Mepham)

129 *Hirsi Jamaa and Others v Italy* (February 2012), 27765/09

130 [Q 29](#) (Steve Symonds)

131 [Q 67](#)

152. Ms Spinant also noted that returns policy was governed by the EU Returns Directive,<sup>132</sup> which the Commission planned to evaluate by 2017. Therefore, “the procedure and safeguards regarding returns will not be part of the revision of the legal framework of Frontex. Of course, any provision regarding the involvement of Frontex in the process of the return of irregular migrants will be matched by safeguards concerning fundamental rights, as is already the case in the Frontex legal basis.”<sup>133</sup>
153. Frontex has also recently been involved in a pilot project with the European Asylum Support Office (EASO) aimed at gathering information and intelligence on smuggling activities in the course of an asylum interviews.<sup>134</sup> We questioned the impact that involvement by Frontex in these interviews—intended to determine and safeguard an individual’s right to international protection—could have upon the rights of asylum seekers and refugees. Ms Spinant’s responded:
- “Very many safeguards are included. The search for information on migrant smuggling is carried out at the appropriate stage without interference and with due respect for the asylum process so as not to interfere with the rights of, and safeguards for, the asylum seekers.”
- She added that as part of these efforts, the Commission was placing renewed emphasis on providing information to migrants, “not only on their options regarding asylum but also on their option of taking up assisted voluntary return instead of again falling prey to smugglers while making secondary movements within the EU.”<sup>135</sup>
154. Despite these assurances, we note concerns from some witnesses that the Action Plan allows for law enforcement officials to participate in debriefing sessions with migrants. The Migrants’ Rights Network argued that information sharing should only be done “in a manner that respects vulnerable individuals’ rights to privacy.”<sup>136</sup> Mr Leggeri did not, however, provide us with more precise information about what role Frontex has in these meetings.
155. **International law requires Member States to protect refugees and assess asylum claims on an individual basis. There is a danger that the proposed extensions to the mandates of EU Agencies may encourage Member States to distance themselves from this responsibility. Changes to the mandate of Frontex in particular should be monitored closely by the Fundamental Rights Agency and others on the Agency’s consultative forum.**
156. **We also recommend that the planned evaluation of the Returns Directive should be brought forward to a maximum of six months after any changes to Frontex’s mandate come into effect—rather than 2017—so as to assess the impact of any changes to its mandate. The consultative forum should be involved in contributing to such an evaluation.**

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132 [Q 67](#)

133 [Q 68](#)

134 Written evidence from Frontex ([PMS0009](#))

135 [Q 69](#)

136 Written evidence from Migrants’ Rights Network ([PMS0006](#))

157. **Interviews with vulnerable migrants should be undertaken discreetly and considerately. Migrants should as normal practice be informed in advance of the purpose of any interview—whether to determine an asylum application or to collect information about migrant smugglers.**

### Resources

158. The expanding list of tasks for EU Agencies also raises the question of whether they possess the human and financial resources to take on this additional burden. There appear to be differences between the Agencies in this respect.
159. Eurojust confirmed that the refugee crisis had required the Agency to step up its support to Member States in investigating and prosecuting migrant smuggling networks, and that “additional resources would support Eurojust in its strategic and operational activities in the field of illegal immigrant smuggling, and ensure proper implementation of all the points in the EU Action Plan that require follow-up actions by Eurojust.”<sup>137</sup>
160. Mr Wainwright, Director of Europol, explained that the Agency’s core team dealing with migrant smuggling consisted of fewer than 20 staff, and that “for the moment, only an additional three posts have been allocated to Europol ... That is clearly not enough.” He estimated that an additional 25 posts would be needed over the next two years in order to allow Europol to carry out its activities against migrant smuggling satisfactorily, alongside its growing responsibilities in other areas.<sup>138</sup> Europol had informed the EU institutions of these needs, but Mr Wainwright acknowledged that “in these difficult budgetary times that will be a difficult and challenging discussion.”<sup>139</sup>
161. Frontex, on the other hand, seems to be well resourced, with the EU budget authority agreeing to increase the Agency’s 2015 budget by €47 million to €142 million, following the European Council in April. The Agency was also authorised to recruit 16 additional members of staff, with potential for further recruitment to be agreed by its management board. Mr Leggeri told us that Frontex currently deployed roughly 100 agents in Italy and 85 in Greece, and that the Agency “will very likely be authorised to recruit more staff members” in the future.<sup>140</sup>
162. The Immigration Law Practitioners’ Association was concerned that the rationale for allocating additional resources to EU Agencies should be transparent: “We are concerned that funds will be directed at more general immigration enforcement work and as a consequence the sums allocated to address the humanitarian crisis in the Mediterranean will be lower than the headline figures.”<sup>141</sup>
163. **Agencies’ budgets should be reviewed to ensure that they are still adequate. If the Member States continue to delegate ever greater and more complex responsibilities to the Agencies, they should ensure that the Commission allocates sufficient resources to the Agencies reflecting this increased burden and responsibility.**

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137 Written evidence from Eurojust ([PMS0011](#))

138 Written evidence from Europol ([PMS0002](#))

139 [Q 16](#)

140 [Q 66](#), (Fabrice Leggeri)

141 Written evidence from Immigration Law Practitioners’ Association ([PMS0007](#))

164. **The Commission must ensure that funds are allocated transparently and based on clear criteria. While some Agencies have been generously funded, others are under-resourced. We urge the Commission to review and address such discrepancies.**

#### **Cooperation, communication and coordination**

165. The Action Plan refers to actions to be undertaken at both EU and national level, often in concert. We therefore sought to establish whether current structures to facilitate such cooperation were sufficient to accommodate the additional tasks foreseen in the Action Plan.
166. Law enforcement officials, including Mr Wainwright and Mr Dowdall, Deputy Director at the NCA, were largely positive about the interaction among the many different organisations, although Mr Dowdall admitted that it was a complex picture with room for improvement.<sup>142</sup> Academic witnesses were less positive.

#### *Inter-Agency cooperation*

167. Witnesses agreed that inter-Agency cooperation in the field of migrant smuggling was particularly important in two respects: to facilitate an enhanced police and judicial response and to ensure the comprehensive and coherent collection of intelligence, foreseen by the first and second objectives of the Action Plan respectively.

#### **Box 4: What are Hotspots?**

“What is the hotspot concept? Precisely, it is a way to provide concerted support from all relevant EU agencies to the Member States that experience very high and unexpected migratory pressure. That means that all the relevant agencies would deploy experts there and would co-ordinate the deployment of national experts from other EU Member States to the hotspots. The resulting fusion and concentration of information and operational co-operation should maximise the impact of the support provided to that Member State.

“Smuggling is a very important aspect of the hotspot concept. We would expect strong co-operation between FRONTEX and Europol, as well as Eurojust, to enable long-term investigations into cases of migrant smuggling and the identification of the smugglers.”<sup>143</sup>

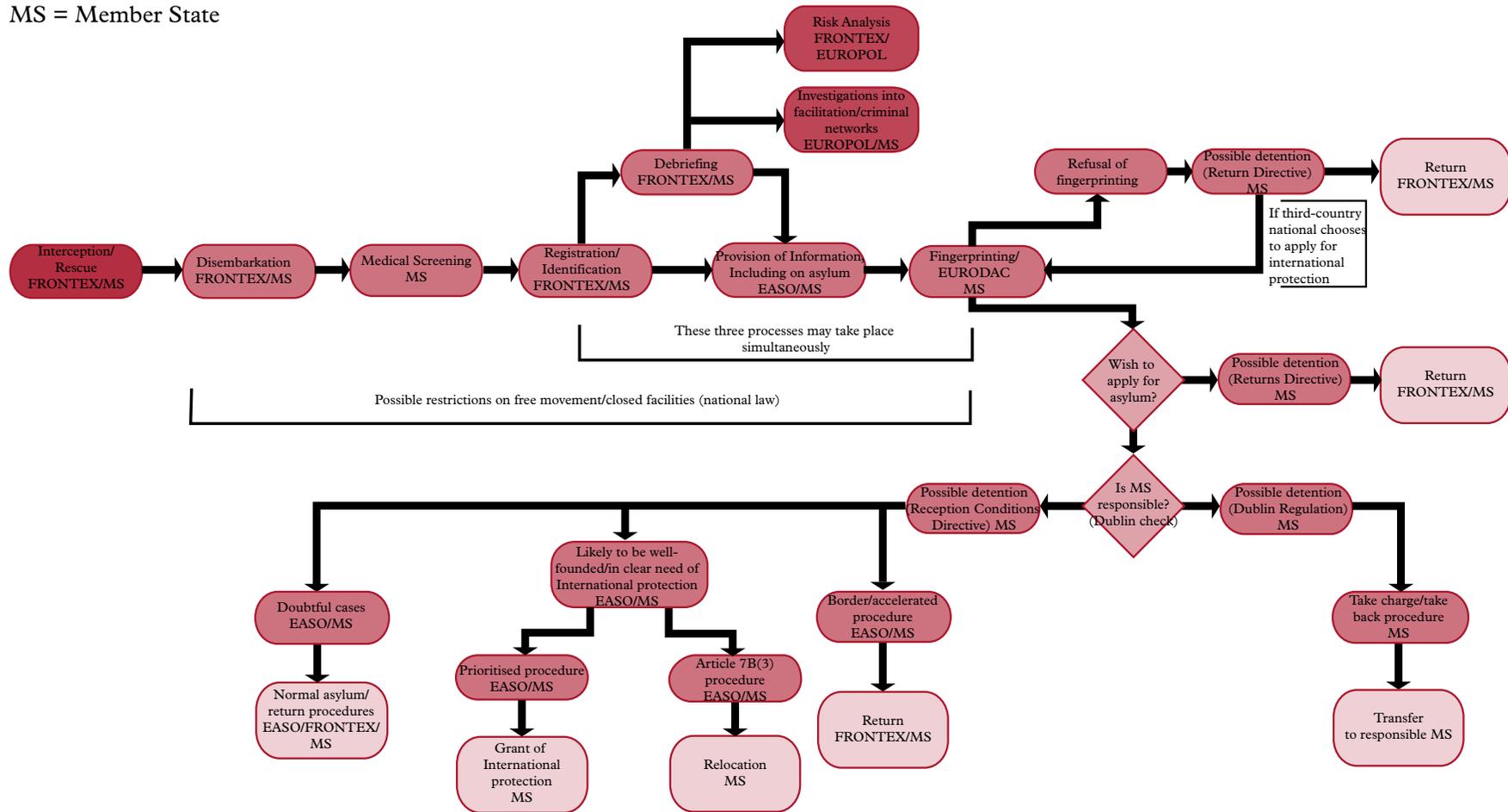
168. ‘Hotspots’ are a key measure put forward by the Action Plan to facilitate inter-Agency cooperation to tackle migrant smuggling in locations that are particularly affected by the refugee crisis. Box 4 explains the concept in further detail. A flowchart illustrating how Member States and various Agencies work together to process an asylum claim, in a location where a Hotspot is operating, can be found in Figure 2.

142 [Q 41](#)

143 [Q 64](#)

**Figure 2: The “Hotspots” approach**

MS = Member State



This diagram charts the steps according to which an irregular migrant or asylum seeker is processed by EU Agencies and Member State authorities in a designated Hotspot.

Source: Statewatch, Explanatory Note on the “Hotspot” approach (July 2015) p12: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf> (accessed 22 October 2015)

169. Mr Leggeri explained how, from Frontex’s perspective, Hotspots had improved the exchange of information on migrant smuggling. Instead of Frontex debriefers forwarding intelligence to host Member State law enforcement authorities, which were previously responsible for forwarding this information to Europol, Frontex now exchanged intelligence with Europol directly through liaison officers.<sup>144</sup> He thought that the first Hotspot, established in Sicily, had been a valuable learning opportunity to optimise these procedures.<sup>145</sup>
170. Mr Wainwright told us that “Europol has always been a proponent of [Hotspots], because they allow us to get into the field, particularly by way of collecting better intelligence more quickly to feed into our system”.<sup>146</sup>
171. Regarding the collection and exchange of information, Dr Düvell, Associate Professor, University of Oxford, described the plurality of actors involved at EU and international level as “a mess”. In his experience “the bodies talk *ad hoc* to one another in the field and on the ground, but not necessarily at a higher level”.<sup>147</sup> Ms Collett, Director, Migration Policy Institute Europe, agreed: “You also have senior officials resorting to informal channels of communication with each other and using Council Working Groups to exchange information, because the formal processes are not working for them in many cases, but also because they do not necessarily want all the information they have to be published.”<sup>148</sup>
172. On the other hand, Mr Wainwright felt that cooperation between Europol and its principal partner Frontex was good, and based on “a very symbiotic relationship that is working rather well”.<sup>149</sup> He did, though, see room for improvement, particularly in the exchange of operational information between the two Agencies. While both Agencies’ mandates allow such an exchange, there is currently no operational agreement enabling it.
173. Mr Leggeri told us that Frontex was waiting for an opinion from the European Data Protection Supervisor in order for such an agreement to go ahead, and that he hoped that “by the end of this year we will get a green light that will make it possible to fine-tune the ICT settings and then we will be able to directly forward to Europol personal data such as the names, or the alleged names, of traffickers and smugglers, phone numbers and the licence plate numbers of vehicles.”<sup>150</sup>
174. Both Europol and Frontex also interact with the EU naval force EUNAVFOR Med. Frontex described this as “an effective cooperation structure and information flow ... that aims at guaranteeing that the EU Common Security and Defence Policy mission and Frontex-coordinated Operation Triton deliver the expected EU value and are fully coordinated.”<sup>151</sup>
175. In recognition of the importance of inter-Agency cooperation, the Commission has established a Contact Group of EU Agencies on migrant smuggling. Through this Group, it intends to support the Agencies involved—

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144 [Q 65](#)

145 [Q 69](#)

146 [Q 18](#)

147 [Q 37](#)

148 [Q 37](#)

149 [Q 19](#)

150 [Q 64](#). At the time of writing this Opinion had not yet been finalised.

151 Written evidence from Frontex ([PMS0009](#))

Frontex, Europol, Eurojust and, to a lesser extent, the European Maritime Safety Agency and the European Police College (CEPOL)—by facilitating discussion on topics such as criteria for the identification of suspect vessels or operational cooperation in tracking smugglers’ assets.<sup>152</sup> It will also be used to discuss new and emerging challenges in order to arrive at a swift and coordinated response.<sup>153</sup>

176. Of this Group, Ms Spinant said: “The aim is precisely to bring around the table all relevant agencies so that they can inform each other about what they have done and what information they have got their hands on regarding migrant smuggling, and so that together they can launch projects ... We believe that that is a very direct, straightforward and efficient way of co-operating.”<sup>154</sup>

*Cooperation with Member State authorities*

177. In order to perform the tasks foreseen in the Action Plan adequately, EU Agencies also require the cooperation of Member State authorities.
178. Mr Wainwright was positive about UK cooperation, saying that he viewed it as one of Europol’s “leading supporters.”<sup>155</sup> The UK does not, though, fully participate in Frontex, although it can be involved in Joint Investigation Teams (JITs) and Joint Operation Teams (JOTs) coordinated by the Agency.
179. The Minister said that he saw “real value in EU cooperation” against migrant smuggling: “there is an important role for the EU on co-ordinating a response ... You have a co-ordination function that may then lead to action being taken or work that may be bilateral or trilateral between individual Member States. I suppose I see it in that context”. He spoke in particular of a fruitful intelligence exchange with Europol and of the border protection activities conducted by Frontex.<sup>156</sup> Mr Dowdall confirmed that the UK was seeking to build upon existing EU structures in fashioning its own response to migrant smuggling, including through its active involvement in Europol’s JOT MARE.<sup>157</sup>
180. In the EU as a whole (and as indicated in Chapter 4), Mr Wainwright thought that the willingness of Member States to cooperate with EU Agencies was variable, especially regarding intelligence exchange.<sup>158</sup> Frontex also indicated that there was room for improvement in this area:
- “Frontex would require that strategic intelligence and analysis stemming out of investigations at national and EU level could be made available for the purpose of more targeted actions at the EU external borders. Furthermore, the possibilities for Frontex to provide analytical advice to relevant stakeholders should be enlarged.”<sup>159</sup>
181. Mr Leggeri pointed out that, as counterterrorism lies within the competence of EU Member States, and Frontex does not itself collect intelligence, there was no method for the Agency to identify relevant security threats at the

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152 [Q 64](#) (Dana Spinant); written evidence from Eurojust ([PMS0011](#))

153 [Q 65](#) (Dana Spinant)

154 [Q 70](#)

155 [Q 17](#)

156 [Q 54](#)

157 [Q 46](#)

158 [Q 19](#)

159 Written evidence from Frontex ([PMS0009](#))

EU's external borders.<sup>160</sup> He also told us of some practical difficulties arising in frontline Member States with regard to the identification and debriefing of irregular migrants:

“In principle, according to EU law, the first responsibility for fingerprinting lies with the host Member State. But, as it turned out last month—I was appointed in January so I could witness it—there were some shortcomings in projects such as this in some host Member States.”<sup>161</sup>

182. Ms Spinant stressed the importance of Member State cooperation with regard to ‘Hotspots’:

“Co-operation with the host countries is essential. The agencies are there to support those front-line Member States, and the experts deployed by the other EU nations are also there to provide support. That is why it is important to have a very good and permanently open communication channel with the front-line countries. They are key as regards smuggling because they are the ones that will launch the investigations.”<sup>162</sup>

183. **We welcome the Action Plan’s call for greater coordination and cooperation between Agencies and Member States, although we recognise that there may be practical obstacles limiting such cooperation. The Commission should provide greater support to Agencies and Member States to encourage cooperation. It should also take steps immediately to counter legal and operational difficulties regarding inter-Agency cooperation. It should monitor the progress and evaluate the success of inter-Agency cooperation. It should do more to encourage Member States to be more forthcoming in sharing information. The Commission should take steps to ensure that such cooperation remains transparent and accountable to external stakeholders.**
184. **We urge the Agencies themselves—since they report to the Council—to do more to convince the Council to encourage the relevant Member State authorities to share information with the Agencies.**

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160 [Q 64](#)

161 [Q 69](#)

162 [Q 70](#)

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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### **Migrants and migrant smugglers**

1. The evidence suggests that a majority of those currently entering the EU as irregular migrants are at least prima facie refugees as defined by the UNHCR. It is therefore appropriate to refer to the present crisis as a refugee crisis. We urge the Government to acknowledge that this is the case, and to ensure that the language it uses properly reflects this fact. (Paragraph 32)
2. The Action Plan should be amended to acknowledge that those smuggled may be refugees. Equal focus should be placed on the humanitarian aspects of the refugee crisis as on law enforcement. (Paragraph 33)
3. The Action Plan is right to distinguish migrant smuggling from human trafficking. The latter necessarily involves a breach of human rights, whereas smuggling may not. The evidence suggests that in the majority of cases of irregular migration trafficking is not involved. (Paragraph 38)
4. Nonetheless, governments, law enforcement bodies and other EU and Member State agencies must have regard to the likelihood that smuggled migrants are vulnerable people. They may at some time have been victims of exploitation, extreme hardship or indeed trafficking. Agencies must not simply treat migrant smuggling as a matter of criminal law, but also one with a humanitarian dimension. They must be ready to provide adequate support and assistance to smuggled migrants. (Paragraph 39)
5. Migrant smuggling is a complex and little-understood phenomenon. The Action Plan, in its present form, fails to discriminate between the many individuals and organisations who are contributing to the current upsurge in migrant smuggling. These include organised criminal gangs at one end of the spectrum, and local groups, including groups of migrants themselves, who may have humanitarian motives, at the other. It is important that migrant smuggling is understood in all its complexity. (Paragraph 48)
6. We support the high priority that is being given to guarding against terrorism, though we have seen no evidence to show that migrants have yet been smuggled into the EU for the purpose of committing terrorist acts. (Paragraph 49)

### **The Action Plan in context**

7. We welcome the fact that the Commission has sought to place the Action Plan within the context of a broader approach to migration. The Action Plan, however, must focus on the rights of refugees and vulnerable migrants and not just on law enforcement. (Paragraph 55)
8. We also urge the Government to participate fully in the Commission's discussions regarding possible measures for dealing with root causes of migrant smuggling. (Paragraph 56)
9. One effective way of addressing the root causes of irregular migration would be to create safe and legal routes for refugees to enter the EU. We welcome the Commission's recognition of this but urge that more be done at EU level to work towards the creation of such routes. It is regrettable that the Action Plan does not set out further details in this regard. We recommend that this be addressed as soon as possible. In particular, we recommend that the Commission should bring forward further initiatives to encourage Member

States to create such routes, for example by making use of humanitarian visas. (Paragraph 66)

10. We regret that the Government has declined to participate in the EU measures for the relocation of migrants. We urge the Commission and all Member States to make greater efforts to reach consensus on EU proposals on relocation and resettlement. (Paragraph 68)
11. We welcome the comprehensive nature of the EU response to the crisis, which has brought together policies on migration, security and external affairs. We emphasise that this comprehensive set of EU actions should continue to be conducted in a balanced way, and with due regard to the safety and rights of individuals affected. (Paragraph 73)
12. There should be greater synergy between the EU and other international organisations. We recommend, as a first step towards this, the inclusion of internationally accepted definitions of key terms in EU policy documents and legislation. (Paragraph 79)

### **The Action Plan in practice**

13. We believe that the Action Plan sets out essentially the correct priorities to achieve its aims. In developing this strategy the Commission must ensure that, in practice, the protection of vulnerable migrants is given equal priority to law enforcement considerations. (Paragraph 85)
14. The Action Plan's 'enhanced judicial and law enforcement response' priority is very ambitious, given the size of the demand. To succeed, law enforcement needs to be seen as part of a broader approach to the problem of migrant smuggling. Nonetheless, it is a fundamental and necessary objective, which we support. (Paragraph 92)
15. We recommend that, following its current review of the 'Facilitators' Package', the Commission should propose an EU Framework that builds on the humanitarian aspects of the UN Protocol, by criminalising only acts committed for financial gain, and by adding clauses to avoid the criminalisation of individuals or organisations acting for humanitarian purposes. We would also welcome the addition of inhuman or degrading treatment as an aggravating factor in the sentencing of convicted smugglers. (Paragraph 102)
16. While we await the precise outcome of the Commission's review and any new legislative proposals, we further recommend that the Government should look favourably at opting into any Commission proposals designed to bring the EU's regime into line with the UN's and, subject to further parliamentary scrutiny, support such a proposal in the Council. (Paragraph 103)
17. The networks, practices and routes used by migrant smugglers are constantly changing. The fluidity of this situation presents a significant challenge to law enforcement. Urgent work therefore needs to be undertaken at EU level to ensure that information collected and shared is of high quality. Gaps in the intelligence picture should be identified and remedied, and this process should be regularly updated as patterns continue to evolve. The necessary focus on gathering information on migrant smuggling in the Mediterranean must not result in neglect of migrant smuggling operations elsewhere, including within the EU's borders. (Paragraph 115)

18. The Commission should continue its efforts to coordinate the collection of intelligence by Member State authorities and EU Agencies. A single Agency, ideally Europol, should be responsible for collating and sharing. (Paragraph 116)
19. We recommend that EU funding be made available for further academic and field research in order to address the lack of a comprehensive understanding of migrant smuggling. This research, together with intelligence and data gathered by law enforcement agencies including Europol and Frontex, should inform the development of policy making at EU level. (Paragraph 117)
20. We welcome the inclusion in the Action Plan of measures to assist vulnerable migrants. We believe that insufficient weight is attached to this objective. It should be regarded as being at least equally important as increasing law enforcement measures, and should be distinct from measures intended to prevent migrant smuggling. It is disappointing that no meaningful proposals have been made to address assistance to vulnerable smuggled migrants. (Paragraph 122)
21. We recommend that Member States put in place arrangements for the safeguarding of smuggled migrants' rights and safety. They should allocate resources to ensure that smuggled migrants have adequate shelter, food and other support. The Commission should monitor and support such arrangements and, where appropriate, provide additional funds. (Paragraph 123)
22. We support the extension of the 2004 Directive, which requires Member States to provide residence permits to victims of human trafficking, to smuggled migrants who have assisted in criminal proceedings against smugglers. The current asylum safeguards, which protect the right of asylum, must remain in place. (Paragraph 128)
23. Cooperation with third countries is key to tackling migrant smuggling effectively, as third countries may be either countries of origin or transit for migrants. We therefore welcome the efforts being made to coordinate efforts with third countries, while cautioning that in return assistance must be provided to share some of their burdens in dealing with this crisis. Particular care must be taken to avoid actions that would make the EU or Member States complicit in human rights abuses. (Paragraph 137)
24. We also note that cooperation with third countries will do little to help the many thousands of migrants who have already reached the EU. The large amount of secondary migration within the EU means that these people are not yet safe from the dangers posed by migrant smugglers. (Paragraph 138)
25. We welcome the Government's engagement with this objective within the Action Plan. However, as argued in our report on the relocation of migrants, the Government, by being selective about which measures to support, risks undermining the EU's ability to develop a coherent response to the refugee crisis. (Paragraph 139)

### EU Agencies

26. International law requires Member States to protect refugees and assess asylum claims on an individual basis. There is a danger that the proposed extensions to the mandates of EU Agencies may encourage Member States to distance themselves from this responsibility. Changes to the mandate of

Frontex in particular should be monitored closely by the Fundamental Rights Agency and others on the Agency's consultative forum. (Paragraph 155)

27. We also recommend that the planned evaluation of the Returns Directive should be brought forward to a maximum of six months after any changes to Frontex's mandate come into effect—rather than 2017—so as to assess the impact of any changes to its mandate. The consultative forum should be involved in contributing to such an evaluation. (Paragraph 156)
28. Interviews with vulnerable migrants should be undertaken discreetly and considerately. Migrants should as normal practice be informed in advance of the purpose of any interview—whether to determine an asylum application or to collect information about migrant smugglers. (Paragraph 157)
29. Agencies' budgets should be reviewed to ensure that they are still adequate. If the Member States continue to delegate ever greater and more complex responsibilities to the Agencies, they should ensure that the Commission allocates sufficient resources to the Agencies reflecting this increased burden and responsibility. (Paragraph 163)
30. The Commission must ensure that funds are allocated transparently and based on clear criteria. While some Agencies have been generously funded, others are under-resourced. We urge the Commission to review and address such discrepancies. (Paragraph 164)
31. We welcome the Action Plan's call for greater coordination and cooperation between Agencies and Member States, although we recognise that there may be practical obstacles limiting such cooperation. The Commission should provide greater support to Agencies and Member States to encourage cooperation. It should also take steps immediately to counter legal and operational difficulties regarding inter-Agency cooperation. It should monitor the progress and evaluate the success of inter-Agency cooperation. It should do more to encourage Member States to be more forthcoming in sharing information. The Commission should take steps to ensure that such cooperation remains transparent and accountable to external stakeholders. (Paragraph 183)
32. We urge the Agencies themselves—since they report to the Council—to do more to convince the Council to encourage the relevant Member State authorities to share information with the Agencies (Paragraph 184)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Condon  
 Lord Cormack  
 Lord Faulkner of Worcester  
 Baroness Janke  
 Lord Jay of Ewelme  
 Baroness Pinnock  
 Baroness Prashar (Chairman)  
 Baroness Massey of Darwen  
 Lord Morris of Handsworth  
 Lord Ribeiro  
 Lord Soley  
 Lord Wasserman

### Declarations of interests

Lord Condon  
*No relevant interests*

Lord Cormack  
*No relevant interests*

Lord Faulkner of Worcester  
*No relevant interests*

Baroness Janke  
*No relevant interests*

Lord Jay of Ewelme  
*Vice chair, Business for New Europe*  
*Member, Senior European Experts Group*

Baroness Pinnock  
*No relevant interests*

Baroness Prashar (Chairman)  
*No relevant interests*

Baroness Massey of Darwen  
*No relevant interests*

Lord Morris of Handsworth  
*No relevant interests*

Lord Ribeiro  
*No relevant interests*

Lord Soley  
*No relevant interests*

Lord Wasserman  
*No relevant interests*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Baroness Armstrong of Hill Top  
 Lord Blair of Boughton  
 Lord Borwick  
 Lord Boswell of Aynho (Chairman)  
 Earl of Caithness

Lord Davies of Stamford  
Baroness Falkner of Margravine  
Lord Green of Hurstpierpoint  
Lord Jay of Ewelme  
Lord Liddle  
Baroness Prashar  
Baroness Scott of Needham Market  
Baroness Suttie  
Lord Trees  
Lord Tugendhat  
Lord Whitty  
Baroness Wilcox

During consideration of the report the following Member declared an interest:

Baroness Suttie

*Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan*

A full list of Members' interests can be found in the Register of Lords Interests <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <http://www.parliament.uk/eu-action-plan-against-migrant-smuggling> and is available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a \*\* gave both oral and written evidence. Those marked with a \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

- |    |  |                                 |
|----|--|---------------------------------|
| *  | Andrej Mahecic, Senior External Relations Officer, United Nations High Commissioner for Refugees | <a href="#"><u>QQ 1–12</u></a>  |
| ** | Rob Wainwright, Director, Europol  | <a href="#"><u>QQ 13–22</u></a> |
| *  | David Mepham, UK Director, Human Rights Watch  | <a href="#"><u>QQ 23–31</u></a> |
| ** | Steve Symonds, Programme Director, Refugee and Migrants Rights, Amnesty International UK         |                                 |
| *  | Elizabeth Collet, Director, Migration Policy Institute Europe                                    | <a href="#"><u>QQ 32–39</u></a> |
| *  | Franck Düvell, Associate Professor and Senior Researcher, COMPAS, University of Oxford           |                                 |
| ** | Tom Dowdall, Deputy Director, Border Policing Command, National Crime Agency                     | <a href="#"><u>QQ 40–51</u></a> |
| *  | James Brokenshire MP, Immigration Minister, Home Office  | <a href="#"><u>QQ 52–63</u></a> |
| *  | David Smith, Deputy Director, Border Force South East and Europe Region                          |                                 |
| *  | Richard Quinn, Director of Criminal and Financial Investigations, Immigration Control            |                                 |
| ** | Richard Baumgartner, Head of External Relations, EU Affairs Team, Frontex                        | <a href="#"><u>QQ 64–72</u></a> |
| ** | Fabrice Leggeri, Executive Director, Frontex   |                                 |
| *  | Dana Spinant, Head of Unit, Irregular Migration and Return Policy, DG HOME, EU Commission        |                                 |

### Alphabetical list of all witnesses

- |    |   |  |
|----|---|--|
| ** | Amnesty International UK (QQ 23–31)   | <a href="#"><u>PMS0001</u></a><br><a href="#"><u>PMS0012</u></a> |
|    | British Red Cross   | <a href="#"><u>PMS0008</u></a>                                   |
| *  | Franck Düvell, Associate Professor and Senior Researcher, COMPAS, University of Oxford (QQ 32–39) |  |
|    | Eurojust  | <a href="#"><u>PMS0011</u></a>                                   |
| *  | European Commission (QQ 63–71)  |  |

	European Council on Refugees and Exiles	<a href="#"><u>PMS0004</u></a>
**	Europol (QQ 13–22)	<a href="#"><u>PMS0002</u></a>
**	FRONTEX (QQ 63–71)	<a href="#"><u>PMS0009</u></a>
*	Home Office (QQ 52–63)	
	Human Rights Watch (QQ 23–31)	
	Immigration Law Practitioners’ Association	<a href="#"><u>PMS0007</u></a>
	International Organization for Migration	<a href="#"><u>PMS0013</u></a>
	Migrants’ Rights Network	<a href="#"><u>PMS0006</u></a>
*	Migration Policy Institute Europe (QQ 32–39)	
**	National Crime Agency (QQ 40–51)	<a href="#"><u>PMS0010</u></a>
	Refugee Council	<a href="#"><u>PMS0003</u></a>
	United Nations High Commissioner for Refugees (QQ 1–12)	

## APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Home Affairs Sub-Committee, chaired by Baroness Prashar, is launching an inquiry into the EU's Action Plan against migrant smuggling. Written evidence is sought by Friday 21 August 2015.

### Background

On 13 May 2015, the European Commission published a European Agenda on Migration,<sup>163</sup> setting out the Commission's plans for both legislative and non-legislative proposals in the field of migration for the short, medium and long term. The publication of this Agenda followed a series of tragedies in the Mediterranean resulting in the deaths of over 1,700 migrants in the first half of 2015 alone, including 800 in a single incident off the coast of Libya on 19 April 2015. Many migrants, including pregnant women and children, continue to risk their lives at the hands of people smugglers rather than remain in their home countries.

One of the measures foreseen in the Agenda was an EU Action Plan against migrant smuggling (2015–2020),<sup>164</sup> which was published on 27 May 2015. The Action Plan aims to counter and prevent migrant smuggling while ensuring the protection of the human rights of migrants. It proposes actions to achieve the following four objectives:

- Enhanced police and judicial response
- Improved gathering and sharing of information
- Enhanced prevention of smuggling and assistance to vulnerable migrants
- Stronger cooperation with third countries

### Rationale for the inquiry

The inquiry reflects the continuing global migration crisis, in response to which the EU and its Member States are seeking to establish both long and short-term solutions. It also takes place ahead of planned legislative reform, as the European Commission aims to review and reform EU legislation on migrant smuggling in 2016.

The aims of the inquiry are therefore:

- to assess how the Action Plan against migrant smuggling contributes to the stated objectives of the EU's Agenda on Migration
- to establish whether or not its four objectives and the actions contained therein are the right ones to achieve the EU's stated goal of rendering migrant smuggling a "high risk, low return" undertaking
- to identify whether the Action Plan strikes the right balance between security considerations and the protection of migrants' human rights, and
- to identify gaps and deficiencies in the current EU response to migrant smuggling in order to make recommendations for planned legislative reform.

Particular questions raised to which we invite you to respond are outlined below. There is no need for individual submissions to deal with all of the issues.

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163 Communication from the Commission: A European Agenda on Migration ([COM\(2015\)240 final](#))

164 Communication from the Commission: EU Action Plan against migrant smuggling ([COM\(2015\)285 final](#))

- (1) One of the priorities of the European Agenda on Migration is the prevention of migrant smuggling, with the goal of transforming migrant smuggling networks into “high risk, low return” operations. Are the four objectives of the Action Plan the right ones to achieve this goal? Which, if any, of the proposals in the Action Plan should be prioritised in this context?
- (2) According to the European Commission, the Action Plan “should be seen in the broader context of EU efforts to address the root causes of irregular migration”. Does it suggest the correct set of measures to bring this about?
- (3) Are Member States currently meeting their obligations under the existing EU framework against migrant smuggling? What are the deficiencies of the current framework, and do the actions foreseen in the Action Plan address these?
- (4) EU Agencies are expected to play a significant role in carrying out the objectives of the Action Plan. Do they have the mandate, budget and other capacities to fulfil this role?
- (5) Does the Action Plan sufficiently differentiate between migrant smuggling and human trafficking? What is your opinion of the proposal to extend the 2004 Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings<sup>165</sup> to smuggled migrants?
- (6) Does current EU action against migrant smuggling, including the actions suggested in the Action Plan, strike the correct balance between law enforcement and the human rights of migrants, including particularly vulnerable migrants such as minors and pregnant women?
- (7) Do the Action Plan and other, related EU strategies (such as the European Maritime Security Strategy, Cyber Security Strategy and the EU Strategy towards the Eradication of Trafficking in Human Beings) form a coherent whole?
- (8) Are the actions proposed in the Action Plan compatible with the international framework on preventing human smuggling, including the UN Protocol on Smuggling of Migrants by Land, Sea and Air? Do they add to this framework in a coherent and meaningful manner?

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165 Council Directive 2004/81/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML> (accessed 26 October 2015).

## APPENDIX 4: LIST OF ACTIONS IN THE EU ACTION PLAN AGAINST MIGRANT SMUGGLING

Objective	Actions
Enhanced police and judicial response	<p>Revision of EU legislation on migrant smuggling by 2016.</p> <p>Establishment of list of suspicious vessel and monitoring of these vessels.</p> <p>Support to Member States for towing to shore boats intended to be used by smugglers or disposing of them at sea.</p> <p>Launching cooperation with financial institutions to step up financial investigations.</p> <p>Establishment of a single point of contact on migrant smuggling in each Member State.</p> <p>Setting up of a Contact Group of EU Agencies on migrant smuggling.</p> <p>Creation of a Eurojust thematic group on migrant smuggling.</p>
Improved gathering and sharing of information	<p>Deployment of European migration liaison officers in key EU Delegations.</p> <p>Evaluation, in 2106, and possible revision of EU legislation on Immigration Liaison Officers.</p> <p>Strengthening of JOT MARE as EU information hub on migrant smuggling.</p> <p>Further development of Africa Frontex Intelligence Community.</p> <p>Enhanced monitoring of pre-frontier area with full use of Eurosur.</p> <p>Stepping up Europol support for detecting Internet content used by smugglers.</p> <p>Including migrant smuggling data within the regular Eurostat collection of crime statistics.</p>

Objective	Actions
Enhanced prevention of smuggling and assistance to vulnerable migrants	<p>Information and prevention campaigns in third countries on risks of smuggling.</p> <p>Launch of consultation, in 2016, and impact assessment on possible revision of EU Directive 2004/81/EC on residence permits.</p> <p>Development of handbook on prevention on migrant smuggling by 2017.</p> <p>Development of guidelines for border authorities and consular services.</p> <p>Evaluation of the EU legal framework on SIS to explore ways to enhance effectiveness of return and reduce irregular migration.</p> <p>Proposals to open negotiations on readmission with main countries of origin of irregular migrants.</p> <p>Define targets as regards the number of inspections to be carried out every year in the economic sectors most exposed to illegal employment.</p>
Enhanced cooperation with third countries	<p>Launching or enhancing bilateral and regional cooperation frameworks.</p> <p>Funding of projects to support third countries set up strategies on migrant smuggling, step up police and judicial responses, and develop integrated border management.</p> <p>Setting up of EU cooperation platforms on migrant smuggling in relevant third countries and regions.</p> <p>Optimising the use of EU funding through joint or coordinated planning</p>

Source: Communication from the Commission: EU Action Plan Against Migrant Smuggling (2015–2020) ([COM\(2015\)285 Final](#))

## APPENDIX 5: LIST OF EU AGENCIES

Name	Mandate	Responsibilities under the Action Plan
EASO	Established in 2010 by Regulation (EU) No 439/2010 <sup>166</sup> in order to help to improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems.	Hotspots Carry out pilot project to develop standard procedures for gathering information about facilitation of irregular migration at an appropriate stage during the asylum determination process
Eurojust	Established in 2002 by Council Decision 2002/187/JHA, <sup>167</sup> amended in 2003 <sup>168</sup> and 2008, <sup>169</sup> to improve judicial cooperation in the fight against serious crime. Eurojust helps national investigating and prosecuting authorities cooperate and coordinate in around 1500 cross-border cases a year. It helps to build mutual trust and to bridge the EU's wide variety of legal systems and traditions. By rapidly solving legal problems and identifying competent authorities in other countries, Eurojust facilitates the execution of requests for cooperation and mutual recognition instruments.	Hotspots: cooperate with Europol to deploy joint mobile teams to provide on-the-spot operational and information support to the frontline Member States under particular migratory pressure Set up a thematic group on migrant smuggling to strengthen and formalise cooperation between national prosecutors and enhance mutual legal assistance Capacity building: finance Joint Investigation Teams and support mutual legal assistance in criminal matters Facilitate the exchange of best practice and identify challenges regarding the collection and use of e-evidence in investigations and prosecutions related to migrant smuggling, with the necessary safeguards

166 Regulation (EU) No 439/2010: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF> (accessed 5 October 2015)

167 Council Decision 2002/187/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2002:063:TOC> (accessed 26 October 2015)

168 Council Decision 2003/659/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003D0659> (accessed 26 October 2015)

169 Council Decision 2009/426/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2009:138:TOC> (accessed 26 October 2015)

Name	Mandate	Responsibilities under the Action Plan
Europol	Established in 2009 by Council Decision 2009/371/JHA <sup>170</sup> to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States.	<p>Hotspots: take the lead in the deployment of joint mobile teams to provide on-the-spot operational and information support to the frontline Member States under particular migratory pressure</p> <p>Strengthen Focal Point on migrant smuggling</p> <p>Strengthen JOT MARE</p> <p>Support national authorities to detect and, where appropriate, request the removal of Internet content used by smugglers, in accordance with national law.</p>
FRA	Established in 2007 by Regulation (EC) No 168/2007 <sup>171</sup> to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.	Map training needs and develop training regarding the protection of smuggled migrants

170 Council Decision 2009/371/JHA: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0371&from=EN> (accessed 26 October 2015)

171 Council Regulation (EC) No 168/2007: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l14169> (accessed 26 October 2015)

Name	Mandate	Responsibilities under the Action Plan
Frontex	Established in 2004 by Regulation (EC) 2007/2004, <sup>172</sup> amended in 2007 <sup>173</sup> and 2011, <sup>174</sup> facilitate and render more effective the application of existing and future Community measures relating to the management of external borders. The Agency has seven areas of activity: coordination, implementation and evaluation of joint operations by Member States; development of training for national border guards; risk analysis; research; providing a rapid response capability in case of a crisis situation at the external border; assisting Member States in joint return operations; and the development and operation of information systems.	<p>Hotspots: cooperate with Europol to deploy joint mobile teams to provide on-the-spot operational and information support to the frontline Member States under particular migratory pressure</p> <p>Provide Member States with financial and technical support to tow boats to the shores and scrap them</p> <p>Produce risk analyses on migrant smuggling routes</p> <p>Establish close cooperation with Europol's JOT MARE</p> <p>Further develop Africa Frontex Intelligence Community (AFIC)</p> <p>Strengthen legal basis to enhance role on the return of irregular migrants</p> <p>Ensure full use of tools such as Eurosur and agreements with the EU Satellite Centre and the European Document Fraud Network</p>

172 Council Regulation (EC) 2007/2004: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33216> (accessed 26 October 2015)

173 Council Regulation (EC) 863/2007: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R0863> (accessed 26 October 2015)

174 Council Regulation (EC) 1168/2011: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2011:304:TOC> (accessed 26 October 2015)

## APPENDIX 6: LETTER FROM UNHCR

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### Letter dated 16 September 2015 from Vincent Cochetel, Director, Bureau for Europe, UNHCR, to Baroness Prashar, Chairman of the EU Home Affairs Sub-Committee.

I appreciate that the House of Lords EU Home Affairs Sub-Committee has undertaken an inquiry on the EU Action Plan against migrant smuggling, as one of the components of the European Agenda on Migration.

UNHCR has welcomed the European Commission's proposals, released in May 2015 and September 2015, which aims to address the current refugee crisis in Europe, in particular the holistic approach adopted in the Agenda on Migration that recognises the need for coordinated action. In this respect, my Office has contributed a number of proposals focusing on persons in need of international protection.

While the EU Action Plan against migrant smuggling recognises the importance of opening more safe legal pathways for people in need of international protection to reach Europe, it still requires development in terms of concrete and practical measures to effectively expand legal avenues for seeking protection in Europe. UNHCR has been urging EU countries to further create legal alternatives for refugees, such as enhanced resettlement, family reunification, humanitarian visas, and "refugee friendly" student and labour migration schemes. Some of these proposals are annexed to this letter for easy reference.<sup>175</sup> Indeed, with more legal alternatives to reach safety in Europe, fewer people in need of international protection will be forced to resort to smugglers and undertake perilous irregular journeys.

UNHCR stands ready to support collective action with the overall objectives of consolidating the Common European Asylum System; ensuring people in need of international protection have access to quality asylum and reception systems throughout the Union; building on proposals that will provide those in need of international protection with legal avenues to reach safety in Europe; enhancing protection capacity, asylum space, and solutions in third countries.

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<sup>175</sup> UNHCR, *UNCHR's proposals in light of the EU response to the refugee crisis and the EU package of 9 September 2015* (10 September 2015): <http://www.unhcr.org/55f28c4c9.pdf> (accessed 22 October 2015), UNCHR, *UNCHR proposals to address current and future arrivals of asylum seekers, refugees and migrants by sea to Europe* (March 2015): <http://www.refworld.org/pdfid/55016ba14.pdf> (accessed 26 October 2015) and UNCHR, *Legal avenues to safety and protection through other forms of admission* (18 November 2015), <http://www.refworld.org/docid/5594e5924.html> (accessed 26 October 2015)

**APPENDIX 7: ACRONYMS AND ABBREVIATIONS**

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AFIC	Africa Frontex Intelligence Community
CDSP	Common Security and Defence Policy
CEAS	Common European Asylum System
CEPOL	European Police College
COMPAS	Centre of Migration, Police and Society
DG Home	Directorate-General for Migration and Home Affairs
EASO	European Asylum Support Office
ECRE	European Council for Refugees and Exiles
EU+	The EU+ is composed of the 28 Member States plus Norway and Switzerland
EUNAVFOR	European Naval Force
Eurodac	The European Fingerprint Database
Eurojust	The EU's Judicial Cooperation Unit
Europol	The EU's Law Enforcement Agency
Eurosur	European external border surveillance system
FRA	EU Agency for Fundamental Rights
FRONTEX	EU Border Agency
GAMM	The EU's Global Approach to Mobility and Migration
ICT	Information Communications Technology
IOM	International Organization for Migration
IPLA	Immigration Practitioners' Law Association
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
JOT	Joint Operation Team
MRN	Migrants' Rights Network
MS	Member State
NCA	National Crime Agency
NGO	Non-governmental Organisation
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office for Drugs and Crime