



# OPINION

European Economic and Social Committee

## Migrant smuggling

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A renewed EU action plan against migrant smuggling (2021-2025)  
[COM(2021) 591 final]

*SOC/707*

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## 1. **Conclusions and recommendations**

- 1.1 Migrant smuggling is a cross-border criminal activity that puts people's lives at risk, violates fundamental rights, and disrupts the orderly management of migration flows. In the last 20 years, human smuggling has grown as a result of multiple factors of expulsion in countries of origin (human rights violations, violence, conflicts, inequalities, economic factors, environmental factors, etc.), but also due to the lack of legal means of accessing the territories of many countries. Restrictions, which have increased due to the COVID-19 pandemic, have increased the number of people using these illicit networks, with all the risks that this entails.
- 1.2 Since its inception, European migration policy has aimed, among other things, at combatting this criminal activity, preventing the exploitation of migrants by criminal networks, and reducing incentives for irregular migration. The renewed EU Action Plan against Migrant Smuggling (2021-2025) should be understood as a tool of continuity and improvement in the European Union's fight against this criminal activity.
- 1.3 According to Europol, more than 90% of persons entering the European Union irregularly have travelled via smuggling networks at some stage of their journey. In the framework of the fight against migrant smuggling, the European Union considers it a priority to work with partner countries to reduce the incentives to undertake these dangerous journeys; to address the root causes of irregular migration; to promote regular migration and legal and safe routes to European Union countries; to strengthen the management of common borders; to address pull factors, such as irregular jobs; and to facilitate return and reintegration for those persons who find themselves in an irregular situation on EU territory.
- 1.4 The EESC welcomes the renewed EU action plan and the comprehensive approach it proposes, as the continuation of the European Union's work to combat migrant smuggling. It is understood that, as a criminal activity, smuggling puts the lives of migrants at risk and violates their rights, takes undue advantage of people seeking access to EU territory, and is also a threat to European security.
- 1.5 The EESC understands that safeguarding external borders is a priority for the European Union, but points out that they must always be protected with respect for human rights and the inviolability of public international law, always protecting people and avoiding the criminalisation of solidarity. In any case, the fight against migrant smuggling can never be directed against the migrants themselves or against humanitarian aid and assistance to them.
- 1.6 The EESC considers it essential to combat migrant smuggling by means of a "whole-of-route" approach. That means strengthening the proposed measures against smuggling networks by improving judicial and police cooperation; improving cooperation and dialogue with neighbouring countries in the fight against smuggling networks; strengthening actions to prevent exploitation and ensure the protection of smuggled persons; and combatting irregular employment and labour exploitation in a more coordinated and forceful manner.
- 1.7 The EESC agrees with the need to eliminate demand in order to target the profits of human smuggling networks. However, it warns of the dysfunctions that can arise from addressing only

the supply side (networks). In this regard, it points out that the existence of legal, effective and safe channels, as well as the protection of the right to asylum, are key to deactivating a large part of this illicit business.

- 1.8 The EESC also strongly condemns the instrumentalisation of migrants and asylum seekers as elements of EU destabilisation<sup>1</sup>.
- 1.9 The EESC points out that protecting people and providing medical care<sup>2</sup> and solidarity aid should not be criminalised and treated in the same way as smuggling networks and should only be prosecuted when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit<sup>3</sup>. The clause of obligatory exemption from liability must be expressly included if there have been humanitarian motives in aid or assistance actions.

## 2. General comments

- 2.1 Migrant smuggling is a cross-border criminal activity that puts people's lives at risk, violates fundamental rights, and disrupts the orderly management of migration flows.
- 2.2 In the last 20 years, human smuggling has grown as a result of multiple factors of expulsion in countries of origin (human rights violations, violence, conflicts, inequalities, economic factors, environmental factors, etc.), but also due to the lack of legal means of accessing the territories of many countries. Restrictions, which have increased due to the COVID-19 pandemic, have increased the number of people using these illicit networks, with all the risks that this entails<sup>4</sup>.
- 2.3 The main difference between migrant smuggling and human trafficking is that, in the former, migrants voluntarily participate in the migration process by paying for the services of a smuggler to cross an international border; in trafficking, people are trafficked for labour, sexual or organ removal purposes, and are victims in need of assistance and support. Trafficking activities are not necessarily cross-border. The two phenomena are often interrelated, as smuggled persons may become victims of traffickers for labour, sexual or other types of exploitation.
- 2.4 Since its inception, European migration policy has aimed, among other things, at combatting this criminal activity, preventing the exploitation of migrants by criminal networks, and reducing incentives for irregular migration. In the Pact on Migration and Asylum presented by the European Commission in 2020, it is noted that the fight against migrant smuggling is a priority, and that "cooperation with countries of origin and transit will be strengthened in order to prevent dangerous journeys and irregular crossings, in particular by establishing with third countries specific partnerships against migrant smuggling".

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1 Forthcoming EESC opinion REX 554.

2 [CPME statement on criminalisation of acts of solidarity](#). See also the European Parliament report (2019): [Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update](#).

3 Article 6 UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

4 Global Initiative (2021), [The Global Illicit Economy](#).

- 2.5 According to Europol, more than 90% of persons entering the European Union irregularly have travelled via smuggling networks at some stage of their journey.
- 2.6 The renewed EU Action Plan against Migrant Smuggling (2021-2025) should be understood as a tool of continuity in the European Union's fight against this criminal activity. Migrant smuggling must be seen not only as a migration challenge, but also a security threat which affects the EU's external borders. Appropriate management and protection of the EU's external borders, respecting the international legal framework and fundamental rights, is a key issue. The EU needs to strengthen common standards and procedures, in a way that respects human rights and international standards, in order to prevent migrant smuggling to the EU.
- 2.7 In the framework of the fight against migrant smuggling, the European Union considers it a priority to work with partner countries to reduce the incentives to undertake these dangerous journeys; to address the various root causes of irregular migration; to promote regular migration and legal and safe routes to European Union countries; to strengthen the management of common borders; and to facilitate return and reintegration for those persons who find themselves in an irregular situation on European territory<sup>5</sup>.
- 2.8 The fight against human smuggling also involves strengthening the application of the Employer Sanctions Directive<sup>6</sup>, and understanding that irregular work is an element of attraction for irregular migration and that it may be linked to the smuggling of migrants: it must be remembered that if there are foreign workers in an irregular situation in the EU, it is because there are irregular employers who provide them with illegal work that does not comply with the minimum working conditions regarding salary, working hours, health and safety conditions, etc.
- 2.9 The renewed EU Action Plan against Migrant Smuggling (2021-2025) takes into account the results of targeted consultations and a public consultation that took place between 19 March and 11 June 2021. By contributing to the disruption of criminal businesses, it also supports the objectives of the EU Strategy for a Security Union<sup>7</sup>, as well as the EU Strategy to Combat Organised Crime 2021-2025<sup>8</sup> and the EU Strategy to Combat Trafficking in Human Beings 2021-2025<sup>9</sup>.

### 3. **Comments on the renewed EU Action Plan against Migrant Smuggling (2021-2025)**

- 3.1 The EESC welcomes the renewed EU action plan and the comprehensive approach it proposes, as the continuation of the European Union's work to combat migrant smuggling and trafficking in human beings.

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<sup>5</sup> [OJ C 517, 22.12.2021, p. 86](#)

<sup>6</sup> [Directive 2009/52/EC](#)

<sup>7</sup> [COM/2020/605 final](#)

<sup>8</sup> [COM/2021/170 final](#)

<sup>9</sup> [COM/2021/171 final](#)

- 3.2 It is understood that, as a criminal activity, smuggling puts the lives of migrants at risk and violates their rights, and also takes undue advantage of people seeking access to EU territory. The EESC therefore believes that the necessary mechanisms and tools should be put in place to combat this criminal activity.
- 3.3 The EESC understands that safeguarding external borders is also a priority for the European Union, but points out that they must always be protected with respect for human rights and the inviolability of public international law, always protecting people and avoiding the criminalisation of solidarity. In any case, the fight against migrant smuggling can never be directed against the migrants themselves or against humanitarian aid and assistance to them nor be an excuse to abolish the right of asylum both in the EU and internationally.
- 3.4 Protecting people and providing medical care<sup>10</sup> and solidarity aid should not be criminalised and treated in the same way as smuggling networks and should only be prosecuted when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit<sup>11</sup>. The clause of obligatory exemption from liability must be expressly included if there have been humanitarian motives in aid or assistance actions
- 3.5 The EESC considers it essential to combat migrant smuggling by means of a "whole-of-route" approach, and to understand that the lack of legal and safe routes is one of the reasons why smuggling networks are able to flourish.
- 3.6 The EESC also considers that irregular work can be linked to human smuggling networks, which often end up in situations of labour exploitation. The EESC therefore believes that efforts should be made to improve the implementation of the Employer Sanctions Directive and to combat irregular employment and labour exploitation in a more coordinated and forceful manner.
- 3.7 The EESC considers it necessary to strengthen the proposed measures against smuggling networks by improving judicial and police cooperation, supporting the work of the European Multidisciplinary Platform against Criminal Threats (EMPACT) and EUROJUST, and improving information gathering and information campaigns on the risks of migrant smuggling at source.
- 3.8 The EESC welcomes the fact that this integrated approach also involves improving cooperation and dialogue with neighbouring countries in the fight against smuggling networks, but warns against the danger of negatively impacting cooperation relations with these countries, which could end up strengthening smuggling networks by making spurious use of concepts such as return and reintegration. In this regard, it should be noted that the Commission communication correctly points out the growing role that state actors play in artificially creating and facilitating irregular immigration to promote the destabilisation of the EU.

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<sup>10</sup> [CPME statement on criminalisation of acts of solidarity](#). See also the European Parliament report (2019): [Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update](#).

<sup>11</sup> Article 6 UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

- 3.9 The EESC considers it essential to strengthen actions to prevent exploitation and ensure the protection of smuggled persons. In this regard, it considers it necessary to develop pilot actions according to the whole-of-route approach, in which administrations and social actors from origin, transit and destination countries participate.
- 3.10 The EESC considers the development of operational anti-smuggling partnerships with third countries to be of interest, but points out that these agreements must not violate the guiding principles of the European Union, nor must they be agreed with countries where there are systematic human rights violations.
- 3.11 The EESC considers that the renewed EU Action Plan against Migrant Smuggling (2021-2025) succeeds in identifying the risks posed by this criminal activity and the speed with which smuggling networks adapt to circumstances and use new technologies to their greatest advantage.
- 3.12 The EESC agrees with the need to eliminate demand in order to target the profits of human smuggling networks, as set out in the renewed action plan. However, it warns of the dysfunctions that can arise from addressing only the supply side (networks) without understanding the need for structural reforms to reduce demand. In this regard, it points out that the existence of legal, effective and safe channels, as well as the protection of the right to asylum, are key to deactivating a large part of this illicit business.
- 3.13 The EESC is concerned that improving the prevention of smuggling – an objective that it shares – could constitute a violation of the mechanisms for assisting vulnerable migrants. It highlights the fact that in recent months there has been an increase in actions by parties and governments to criminalise acts of solidarity. The EESC points out that protecting vulnerable people and providing medical care<sup>12</sup> and solidarity aid should not be criminalised and treated in the same way as smuggling networks<sup>13</sup>.
- 3.14 The EESC considers that special attention should be paid to the victims of smuggling, especially those who are more vulnerable, such as (unaccompanied) minors<sup>14</sup>, disabled people and women<sup>15</sup>. The Committee urges the European Commission to draw up a Directive on the protection of unaccompanied minors that would serve the best interests of the child. Furthermore, the role of civil society actors, social entities and NGOs in helping and supporting victims of smuggling should be recognised as humanitarian actions to reinforce the EU principles.

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<sup>12</sup> [CPME statement on criminalisation of acts of solidarity](#). See also the European Parliament report (2019) [Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update](#).

<sup>13</sup> Expert Council on NGO Law of the Conference of INGOs of the Council of Europe: [Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States](#) (2019).

<sup>14</sup> [OJ C 429, 11.12.2020, p. 24](#)

<sup>15</sup> Objective 9 of the Global Compact for Safe, Orderly and Regular Migration: Strengthen the transnational response to smuggling of migrants. Also point 25(c): Develop gender-responsive and child-sensitive cooperation protocols along migration routes that outline step-by-step measures to adequately identify and assist smuggled migrants.

- 3.15 The EESC acknowledges that the plan is also relevant and clearly addresses the current problems of instrumentalised migration, when the direct involvement of state actors is evident. The EESC, like the European Council<sup>16</sup>, also strongly condemns the instrumentalisation of migrants and asylum seekers as elements of destabilisation, as has recently been seen at the borders with Morocco and, in particular, Belarus<sup>17</sup>.
- 3.16 The EESC points out that the Member States are always obliged to comply with international commitments, including the 1951 Geneva Convention and the 1967 New York Protocol governing the right to asylum, in addition to the entire EU legislative framework.
- 3.17 The configuration of migration as a threat, and the discourse that presents migrants as a danger, dehumanise human beings and only favour those who want to take advantage of them for geostrategic or national political reasons.
- 3.18 The EESC regrets that the fight against migrant smuggling is of greater concern than the fight against trafficking in human beings, which remains the most lucrative criminal activity and represents not only a violation of human rights, but also a real threat to national security, economic growth and sustainable development<sup>18</sup>.

Brussels, 23 March 2022

Christa Schweng  
The president of the European Economic and Social Committee

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<sup>16</sup> JOIN(2021) 32 final, [Responding to state-sponsored instrumentalisation of migrants at the EU external border](#).

<sup>17</sup> <https://www.eesc.europa.eu/en/news-media/presentations/eesc-expresses-its-concern-about-situation-border-belarus>.

<sup>18</sup> Bigio, J., & Vogelstein, R. B. (2021), [Ending Human Trafficking in the Twenty-First Century](#), Council on Foreign Relations.