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NOTE

From:	Presidency
To:	Delegations
Subject:	October 2023 Schengen Council - Fighting cross-border crime, especially migrant smuggling - Draft Presidency paper

Cross-border organised crime remains a key threat to the good functioning of the Schengen area. The Schengen Council in June 2023 identified the fight against cross-border, serious and organised crime as an area in need of additional impetus for 2023-2024.

Crimes involving smuggling or exploitation of persons (including children), such as migrant smuggling, different forms of trafficking in human beings and child sexual exploitation remain at critically high threat levels, having an increasingly severe impact on vulnerable persons. In particular, the market for migrant smuggling to and within the EU is propelled by the emergence and deepening of crises, most notably economic recessions, environmental emergencies caused by climate change, and ongoing conflicts, along with demographic pressures in many countries of

origin¹. The dramatic developments over the recent months in the Mediterranean and in the countries on the other side of the Sea will only confirm these trends².

Is our current response to migrant smuggling adapted to this evolving reality and does it allow to address these risks in a coordinated manner? The Schengen Council on 19 October 2023 will debate this issue, following on from the discussion at the December 2022 Schengen Council³. It will decide on actions, commitments and sustainable solutions. The results of this discussion will be of timely relevance, in the context of the announcements made by the President of the European Commission in the State of the Union address and in the 10-point plan announced in Lampedusa in September 2023. Migrant smuggling was part of the Ministers' discussions on the external dimension of asylum and migration at the Justice and Home Affairs Council on 28 September 2023, where the Commission confirmed its intention to organise an International Conference on fighting people smuggling in late November 2023. Importantly, the external dimension of migration will again soon be discussed by the leaders, on the occasion of the meeting of the European Council on 26-27 October 2023.

The Delegations at the meeting of the Working Party for Schengen Matters of 3 October 2023 are invited to prepare the Schengen Council debate by reflecting on the challenges identified in this paper, in particular in the light of the Schengen Barometer + expected from the Commission.

¹ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](https://www.europol.europa.eu/spotlight-report-migrant-smuggling-networks-and-their-methods).

² The EU has recorded 232 350 irregular border crossings for the January-August 2023 period, an increase of 18% compared to 2022, making it the highest total since 2016 (Frontex).

In 2023, the Central Mediterranean migratory route accounts for half of the detections at EU borders, making it the most dynamic migratory route, with nearly double the amount (+96%) of irregular border crossings. In 2023, 70% of arrivals to Italy came from Tunisia and 70% took place in Lampedusa. In spite of the recent conclusion of an EU-Tunisia agreement to tackle migrant smuggling, smuggling activities from Tunisia have surged during summer. In addition, the impact of the Storm which hit north-eastern Libya in September 2023 and its catastrophic aftermath is expected to have consequences on the demand for smuggling services.

Current data indicates that migrant smugglers to a large extent remain out of reach of EU law enforcement and that such criminal networks are still active within the Schengen area and facilitate secondary movements (Europol).

³ 15086/22.

1. Developing shared situational awareness

Migrant smuggling networks have proven to be agile, adapting quickly to changes in irregular migration's dynamics and evolving law enforcement activities⁴. Smuggling networks vary in size and operate under a business model in which criminals cooperate on an ad-hoc or, when needed, a more permanent basis. Criminal networks can quickly shift their activities to new migratory hubs, while those engaged in other crime areas are able to swiftly set up migrant smuggling services with the incentive of high profits. Smuggling routes and used modi operandi are adjusted following heightened law enforcement activities and changes in visa and asylum policies⁵.

To respond to the adaptability of criminal networks, it is crucial to jointly develop shared and timely situational awareness. Various avenues could be explored, most of which involve the enhanced use of existing tools and better sharing of information:

- Member States and operational partners could enhance their use of the specialised services provided by **Europol's European Migrant Smuggling Centre** and they could more actively share information sourced by immigration liaison officers posted in third countries, common operational partnerships, and Common Security and Defence Policy (CSDP) missions. Member States could consolidate the use of the Secure Information Exchange Network Application (SIENA) as well as the upgraded Schengen Information System (SIS)⁶, including its new functionalities and categories of alerts⁷. The roll-out of interoperability should be stepped up.

⁴ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

⁵ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

⁶ According to the most recent statistics, prepared and published by eu-LISA (1 March 2023), in 2022 the system contained 86.5 million alerts while 12.7 billion searches were performed. On 1 September 2023, SIS contained around 89 million alerts, out of which 170 112 alerts on return.

⁷ Among the essential new tools are new categories of alerts, including preventive alerts to protect vulnerable persons and deter irregular migration, as well as alerts on third country nationals subject to a return decision.

- Resume and reinforce the exchange of information and data on smuggling on a continuous basis between all relevant JHA agencies. In particular, Frontex, Europol and Eurojust should carry out a joint analysis, bolstering a comprehensive situational picture. Frontex and Member States should make a full use of existing tools to assess the operational situation in real time, in particular the European Border Surveillance System (EUROSUR).
- EU agencies, in particular Europol and Frontex, should enhance their role in research and innovation to identify opportunities for developing new capacities for detecting, preventing and combating migrant smuggling. Investing in technology and further digitalisation, especially in the areas of law enforcement and border and migration management could support the fight against migrant smuggling⁸.
- Closer collaboration between document issuing and document control authorities would also be needed, including by systematically performing the mandatory checks against Interpol's Stolen and Lost Travel Documents database. The future EU-Interpol agreement will be key to boosting the information exchange on migrant smuggling with all relevant partners and to eliminate any possible gaps not effectively covered by new Europol International Agreements.
- Member States should fully use available information systems including the SIS, the Frontex-Interpol Electronic Library Document System (FIELDS) and , the False and Authentic Documents Online (FADO) information system, which should be operated by FRONTEX in the future, to identify falsified documents.

⁸ Together with other JHA agencies, eu-LISA is actively analysing the capabilities of AI and is already working on potential future uses for AI in large-scale JHA IT systems.

2. Reinforcing the EU legal framework on migrant smuggling

Over the past years, the European Council has paid particular attention to the internal security of the Schengen area and in its conclusions of 24-25 June 2021, it reaffirmed the importance of the fight against smugglers, raised serious concerns about the developments on some migratory routes requiring urgent action and called for a whole-of-route approach to tackle them, including by eradicating migrant smuggling and trafficking in human beings⁹. Following this call, the EU renewed its action plan against migrant smuggling (2021-2025) contributing to both disrupting smugglers' business and to fighting smuggling networks.

Importantly, an assessment should be made of the current EU legal framework on migrant smuggling. Dating back to 2002, it includes Council Directive 2002/90/EC establishing a common definition of the offence of facilitation of unauthorised entry, transit and residence and Framework Decision 2002/946 strengthening the penal framework for these offences¹⁰.

Despite this framework, migrant smuggling increasingly appears to be a highly profitable business with a low risk of detection and punishment for criminals¹¹. There are questions as to whether the response provided by the current legal framework is still adapted to current and developing challenges, in a context where smugglers are taking ever-increasing risks, are highly adaptable and make frequent use of digital services tools. More recently, President von der Leyen, in the State of the Union address, announced the Commission's intention to urgently update the EU legal framework on migrant smuggling.

⁹ European Council meeting (24 and 25 June 2021) – Conclusions, Council document EUCO 7/21 of 25 June 2021.

¹⁰ Council Directive 2002/90/EC establishing a common definition of the offence of facilitation of unauthorised entry, transit and residence and Framework Decision 2002/946 strengthening the criminal framework for these offences. European Commission, Communication from the Commission (2020/C 323/01), Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, October 2020.

¹¹ UNODC, Migrant Smuggling A deadly business, accessible at: [Migrant Smuggling A deadly business \(unodc.org\)](https://www.unodc.org/en/migrant-smuggling).

3. Strengthening and integrating European operational cooperation

Migrant smuggling is a complex form of crime that has ramifications in other crime areas¹² and develops on a multidimensional ground. Tackling it effectively requires an integrated and comprehensive response. This means not only enhancing operational cooperation between all stakeholders along the criminal chain, but also increasing interagency cooperation, and addressing its interaction with other crime areas and its various dimensions in a consistent manner.

a) Enhancing operational cooperation

Joint investigations of identified high-value targets and high-risk criminal networks supported by Eurojust and Europol through Operational Task Forces (OTFs) should be enhanced. Dedicated OTFs streamline the efforts of Member States and operational partners in identifying and investigating High Value Targets¹³. Relevant operational stakeholders from Member States, partner countries and the JHA agencies should be continuously mobilised in the European Multidisciplinary Platform Against Criminal Threats (EMPACT)¹⁴.

Within their respective mandates, JHA agencies should establish common joint actions and initiatives, which will have an exponential impact on fighting migrant smuggling. Europol and Frontex are invited to update their working arrangements as a matter of priority.

Member States should more actively seek support from JHA agencies, as relevant.

Moreover, it will be essential to implement relevant legislation and instruments, such as the Police cooperation code, including the Directive on Information exchange, the Council recommendation on operational law enforcement cooperation and the future Regulation on Automated Data Exchange for Police Cooperation (Prüm II).

¹² According to EU SOCTA 2021, about half of the criminal groups involved in migrant smuggling were exclusively active in migrant smuggling. Migrant smugglers are on occasion also involved in the trafficking in human beings, drug trafficking, excise fraud, firearms trafficking and money laundering (Europol, European Union Serious and Organised Crime Threat Assessment (SOCTA) 2021).

¹³ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

¹⁴ EMPACT identified migrant smuggling as one of the priorities for the period 2022-2025. EMPACT is currently implementing an Operational Action Plan (OAP) on migrant smuggling. The main aim of the OAP is to disrupt criminal networks along the main migratory routes towards and within the EU. This OAP has successfully enhanced the operational cooperation among Member States and third countries. In 2022, this Operational Action Plan led to 3 646 arrests, the seizure of EUR 2 267 655 and 4 113 false documents and the support of 4 408 investigations. With the support Agencies such as Europol, Frontex or Eurojust, EMPACT supports ongoing investigations and coordinates EU scale checks to detect migrant smuggling cases. eu-LISA is leading one of the actions under the EMPACT OAP on migrant smuggling, on providing training on “Eurodac & SIS II: role of large-scale IT systems in combatting migrant smuggling”.

In addition, to help ensure that perpetrators are brought to justice, Member States should make optimal use of Eurojust support in migrant smuggling cases, using the full spectrum of judicial tools available including joint investigations teams and operational tools. To support cooperation between law enforcement and the judiciary, not only Eurojust, but also judicial authorities should be part of the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings. Lastly, Eurojust and judicial authorities should further increase their participation in EMPACT.

The cooperation among EU agencies and international partners, namely Frontex, the European Union Agency for Asylum (EUAA), INTERPOL and European Union Naval Force Mediterranean (EUNAVFORMED) Operation IRINI should be further strengthened within the framework of the Information Clearing House¹⁵.

b) Border management to contribute to the fight against migrant smuggling

Effective external border control allows for timely action and intervention, preventing smugglers to continue their illegal activities within the Schengen area.

On the basis of the EU's multiannual strategic policy for European Integrated Border Management, a technical and operational strategy was adopted by the Frontex Management Board on 19 September 2023. When aligning their national integrated border management strategies, Member States should pay particular attention to migrant smuggling.

In this context, the national integrated border surveillance systems should be fed risk analyses and vulnerability assessments, including those prepared at regular intervals by Frontex. In cooperation with Frontex and Europol, impact levels should be more flexibly allocated to external border sections in order to better focus on surveillance activities.

The quality of border checks, particularly at vulnerable and high-risk entry points, should be significantly enhanced, to ensure systematic checks of EU information systems at the external borders.

¹⁵ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

c) Factoring in the financial dimension

Migrant smuggling is a highly profitable business, the estimated annual turnover is reaching multiple billion euros worldwide. Therefore, to strengthen financial investigations, it could be considered to:

- Systematically conducting financial investigations in organised crime cases, using the follow-the-money-approach, tracing, seizing and recovering criminal assets.
- Enhancing financial investigations and asset recovery procedures at national, European and international level, using capabilities of Europol's European Financial and Economic Crime Centre.
- Making more systematic use of Eurojust's assistance in facilitating coordination and cooperation between Member States and third countries, including the use of best practices and recommendations for cross-border asset tracing, freezing, confiscation, and disposal, including the re-utilisation of confiscated assets to fight migrant smuggling organisations and help the victims, also in the countries of origin.
- Concluding the negotiations on the Directive on asset recovery and confiscation.
- Concluding the negotiations on the Anti-money laundering package.

d) Addressing the links between migrant smuggling and other crime areas

Actions against migrant smuggling shall take into account the links with other crime areas. In particular, **trafficking in human beings** is regularly intertwined with migrant smuggling into and through the EU. Upon arrival in the EU, irregular migrants often find themselves subjected to exploitative working conditions. They are obliged to indebted themselves and pay compensation as a means of repaying the debts incurred for the migrant smuggling services¹⁶.

Some well-established criminal networks are able to manage both migrant smuggling and labour and sexual exploitation, while in other cases trafficking networks outsource the movements of victims into and within the EU to migrant smugglers¹⁷.

¹⁶ European Migrant Smuggling Centre (2022), 6th Annual Report, 2022, accessible at: [EMSC 6 th Annual Report.pdf \(europa.eu\)](#).

¹⁷ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

It is essential that the full dimension of this worsening phenomenon be fully taken into account, and that the EU and the Member States take action to protect vulnerable migrants from being victimised in exploitative working conditions upon arrival in the EU.

In addition to protective actions, more should be done to strengthen the fight against fraudulent documents, since **document fraud** frequently serves as the connection between these activities, as a key enabler of criminal operations¹⁸. EU agencies should provide further training and support also to third countries in detecting false or forged documents.

e) Digitalisation of migrant smuggling – abuse of the online environment

Migrant smuggling networks are increasingly digitalised. They abuse social media and use encrypted communication to provide illegal services, organise their logistics and secure their profits¹⁹. It is therefore necessary to reinforce the capacity of law enforcement and judicial authorities along migratory routes (including in third countries) to target their online presence and their use of modern technologies for communication purposes. Migrant smuggling networks are leaving digital footprints from advertising their services for providing forged documents. Europol's EU Internet Referral Unit and the European Migrant Smuggling Centre can provide support and expertise.

Increasingly, the fight against organised migrant smuggling requires the ability of law enforcement agencies to have access to data, including electronic information and evidence located domestically and abroad, to decrypt them in support of national investigations, when necessary, and to retain them for the time required to conduct an investigation and set up a fair trial. In this light, the recent adoption and entry into effect of the e-evidence package and the future entry into operation of the Second Additional Protocol of the Cybercrime Convention will contribute to efficient investigation and prosecution of crimes.

¹⁸ European Migrant Smuggling Centre (2022), 6th Annual Report, 2022, accessible at: [EMSC 6 th Annual Report.pdf \(europa.eu\)](#).

¹⁹ Europol, Migrant smugglers and human traffickers: more digital and highly adaptable, accessible at: [Migrant smugglers and human traffickers: more digital and highly adaptable | Europol \(europa.eu\)](#).

In this regard, a High-Level Expert Group (HLEG) on access to data for effective law enforcement has recently been created, with the aim of exploring the problems that law enforcement **practitioners** face in their daily work and defining potential solutions to overcome them. Specific focus will be on the need for law enforcement practitioners to have adequate access to data.

4. External policy dimension

In November 2022, due to a significant increase in migratory pressure along the Mediterranean route, the European Commission presented an **EU Action Plan for the Central Mediterranean**. The Action Plan includes 20 measures aimed at reducing irregular and unsafe migration, addressing emerging challenges in search and rescue activities and reinforcing solidarity balanced against responsibility between Member States. Following the Action Plan for the Central Mediterranean, the Commission presented in December 2022, an **Action Plan for the Western Balkans** and an **EU Action Plan for the Western Mediterranean and Atlantic** in June 2023.

Combating migrant smuggling requires international cooperation and coordination with key partner countries along migration routes. The Commission has launched **Anti-Smuggling Operational Partnerships** with Tunisia, Niger, Morocco and the Western Balkans to support regional and international cooperation. They aim to strengthen the legal policy and the operational and strategic frameworks in partner countries and to increase the impact, ownership and sustainability of efforts to tackle migrant smuggling. It will be important to implement these Operational Partnerships efficiently and to strengthen the efforts of the European Union and Member States in a Team Europe spirit.

In 2019, the EU established the European network of immigration liaison officers (**ILO network**) with the aim of enhancing the coordination of officers deployed in third countries by the European Commission, EU agencies, and EU Member States. The gathering and sharing of information among ILOs deployed to third countries enhance the intelligence picture on migrant smuggling from countries of origin and transit.

The EU and its Member States have mandated **CSDP** missions to address security challenges related to irregular migration, enhancing cooperation between CSDP and EU agencies. The participation of CSDP missions in the EMPACT Migrant Smuggling 2023 Operational Action Plan will strengthen the links between external action and internal security.

Stepping-up JHA agencies' operational cooperation with third countries is also essential to effectively tackle migrant smuggling²⁰.

Questions

- 1. In the light of the above, what are the most important actions to fight migrant smuggling effectively?*
- 2. How could the legal framework on migrant smuggling be reinforced, to disrupt and combat migrant smuggling, while ensuring adequate protection of vulnerable persons?*

²⁰ For example, Eurojust has set up a Focus Group on Migrant Smuggling gathering 45 prosecutors and investigative judges from the Member States and 2 third States. Recently, in summer 2023, a new dedicated subgroup on Western Balkans was set up within the Focus Group. The possibility to invite South Partner Countries to join the Focus Group or the future establishment of a new Subgroup with South Partner countries will be explored. Further, Eurojust has supported an increased number of JITs with transit countries and countries of origin and successfully runs the Western Balkan Criminal Justice (WBCJ) and EuroMed Justice (EMJ). Eurojust is exploring opportunities and enhancing cooperation with WACAP and UNODC to better address migrant smuggling at judicial level.