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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Overall state of the Schengen area - Fighting cross-border crime,
especially migrant smuggling

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. These criminal activities also pose significant challenges in the effective management of our external borders and may disrupt the functioning of Schengen.

The market for migrant smuggling to and within the EU is propelled by the emergence and deepening of various 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 in the European neighbourhood in recent months 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 a number of concrete actions, as well as sustainable solutions to ensure a coordinated EU response to the needs identified. 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 migrant smuggling in late November 2023. Importantly, the external dimension of migration will also soon be discussed by the leaders, at the 26-27 October 2023 European Council.

In the light of the October 2023 Schengen Barometer +, the Ministers are invited to discuss and agree on key actions forming a comprehensive and integrated response to migrant smuggling, on the basis of the challenges and needs identified in this paper (Annex).

¹ Europol (2023): Europol spotlight report: Criminal Networks in Migrant Smuggling; public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

² The EU 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, and the number of irregular border crossings on this route nearly doubled the (+96 %) between January and August. So far in 2023, 70 % of arrivals in Italy have come from Tunisia and 70 % have taken place in Lampedusa. In spite of the recent conclusion of an EU-Tunisia agreement to tackle migrant smuggling, smuggling from Tunisia has surged this summer. In addition, the storm which hit north-eastern Libya in September 2023 and its catastrophic aftermath is expected to have an impact 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.

FOUR KEY ACTIONS FOR A COMPREHENSIVE RESPONSE TO MIGRANT SMUGGLING

I. Enhancing shared situational awareness

1. **Member States** to proactively share information, including information obtained in third countries⁴, with Europol's European Migrant Smuggling Centre (EMSC), in the context of the operational Analysis Project on migrant smuggling, at the beginning of any investigation to enable cross-checks.
→ **Europol** to provide, at the next Schengen Council in December 2023, an initial analysis of the evolution of the information shared by Member States and Frontex.
2. **Frontex, Europol, Eurojust and European Union Agency for Asylum (EUAA)** to develop a joint situational picture and analysis on migrant smuggling. **European Maritime Safety Agency (EMSA)** and JHA Agencies to intensify strategic inter-agency cooperation, information exchange and analysis.
→ **Frontex, Europol, Eurojust and EUAA** to prepare the joint situational picture and analysis on migrant smuggling, in particular based on information received from Member States and other relevant EU bodies/networks such as CSDP missions, in time for it to be taken into account in the March 2024 Schengen Barometer, and regularly thereafter.
3. **Member States** to actively feed the JHA information systems and to carry out systematic checks against the relevant databases⁵, in third countries, at the external borders and within the Schengen area. **Europol** to provide Member States with relevant data for investigations in the fight against migrant smuggling. **Member States** to proactively share personal data with Europol via SIENA.
→ **Europol, Frontex and eu-LISA** to provide the Schengen Council with annual updates on Member States' use of these databases through the Schengen Barometer +, starting with the December 2023 Schengen Council.

⁴ In particular, information sourced by immigration liaison officers posted in third countries, common operational partnership projects and Common Security and Defence Policy (CSDP) missions.

⁵ Including SIS, SIENA/EIS, FIELDS, FADO and Interpol's SLTD.

4. **Europol's EU Internet Referral Unit (EU IRU) and EMSC** to proactively engage with **Member States** to map the digital footprint of migrant smuggling networks.
 - ➔ **Europol – EMSC and EU IRU** – to regularly report on support to Member States via the Schengen Barometer +, starting in December 2023.
5. **Commission, EEAS, JHA Agencies and Member States** to gather intelligence on the role of external actors in facilitating irregular migration for the purpose of destabilising the European Union or the Member States.
 - ➔ **JHA Agencies and Member States** to share information in the relevant fora, including for ISAA and Blueprint reports.
 - ➔ **EU Migration Preparedness and Blueprint Network** to monitor the situation in risk regions and integrate, in a timely manner, aggregated data and information on criminal network activities, modi operandi and routes shared by JHA Agencies and Member States in ISAA. **EEAS** to provide situational awareness based on INTCEN reporting. **EEAS (via EU delegations)** to periodically report on key third countries' level of anti-smuggling cooperation.

II. Reinforcing the EU legal framework on migrant smuggling

1. Look forward to the **Commission** proposal for legislation to reinforce the EU legal framework on migrant smuggling, including elements relating to: sanctions, governance, information flows and role of JHA Agencies.
 - ➔ **Commission** to provide, alongside the new legislative proposals, an overview of the implementation of the operational and legal frameworks, including the renewed EU action plan against migrant smuggling (2021-2025), the EU legal framework and current legislation in Member States on tackling migrant smuggling.

III. Strengthening and integrating European operational cooperation

1. **Member States** to increase joint investigations of identified high-value targets and high-risk criminal networks, supported by **Eurojust** and **Europol** through Operational Task Forces and in close cooperation with the European Multidisciplinary Platform Against Criminal Threats (EMPACT). Member States to establish/deploy targeted joint patrols and other joint operations, including online, based on prior analysis⁶. **JHA Agencies** to maximise their involvement in **EMPACT** and, within their respective mandates, establish joint actions. **Member States** and **JHA Agencies**, through EMPACT, to foster synergies between operational actions within the relevant Operational Action Plans that have an impact on migrant smuggling, such as those addressing trafficking in human beings, money laundering and document fraud.
 - ➔ **JHA Agencies**, in particular **Europol**, to regularly report via the Schengen Barometer + on Member States' active involvement in operational cooperation through EMPACT, starting in December 2023.
 - ➔ **The Council and the European Parliament (as budgetary authorities), the Commission, and the Europol Management Board**, to ensure sufficient funding to support operational actions and digitalisation of the platform through their operational budget in 2024-2025 and beyond.
2. **Member States** to 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. National judicial authorities to be part of the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings.
 - ➔ **Eurojust** to regularly report on support to Member States on migrant smuggling via the Schengen Barometer +, starting in December 2023.

⁶ Council Recommendation (EU) 2022/915 of 9 June 2022 on operational law enforcement cooperation.

3. **Member States** to, by default, conduct financial investigations and asset recovery procedures in organised crime investigations with the support of **Europol's Financial and Economic Crime Centre** and **Eurojust**.
- ➔ **Europol (Financial and Economic Crime Centre)** and **Eurojust** to produce a joint report on this matter by June 2024, based on, *inter alia*, information received from Member States and other relevant EU bodies/networks.
4. **Member States** to effectively cover migrant smuggling when aligning their national integrated border management (IBM) strategies with the EU multiannual strategy for European Integrated Border Management (EIBM).
- ➔ **Member States** to align their national IBM strategies, which should cover migrant smuggling, within the timeframe set out in the multiannual strategic policy for EIBM.
5. **National** integrated border surveillance systems to be systematically fed by risk analyses and vulnerability assessments, in particular those prepared at regular intervals by Frontex.
- ➔ **Schengen Council** to be informed regularly about the impact levels allocated to external border sections in order to better focus surveillance activities.
6. **Member States** to enhance the quality of border checks and to make use of Frontex operational support as relevant, particularly at vulnerable and high-risk entry points, including the possibility of receiving EU funding.
- ➔ **Commission** to provide, through the December 2023 Schengen Barometer+, the first horizontal and cross-cutting overview of key deficiencies negatively impacting the security of EU borders, based on the results of the Schengen evaluations and the **Frontex** vulnerability assessment.

7. **High-Level Group (HLG) on access to data for effective law enforcement** to provide solutions that will give practitioners adequate access to data.
- ➔ **Commission** to issue a report to the Council and the European Parliament presenting the main findings of the HLG and propose actions for follow-up by the end of 2024.

IV. Maximising synergies with EU external action

1. Develop and ensure effective implementation in a Team Europe approach, of Anti-Smuggling Operational Partnerships (ASOPs) with third countries or regions in order to support activities such as enhancing border management capacities of partner countries, capacity building, offering operational support to law enforcement, and judicial cooperation and reinforcing cooperation on document fraud.
- ➔ **Member States** and **Commission** to identify potential new partners for ASOPs. **Member States** to follow up with concrete steps to ensure the efficient implementation of the ASOPs launched.
2. Identify concrete options for enhancing the exchange of information related to migrant smuggling with third countries, including for ad-hoc support to ongoing investigations, including through new SIENA connections for Member States' immigration liaison officers and EU-funded projects targeting migrant smuggling in third countries, and through existing partnerships within the Information Clearing House at the EMSC (Europol, Frontex, Interpol, EUNAVFOR Op. Irini). Thus, develop situational awareness and early warning systems.
- ➔ **Member States** and **Commission** to agree on a roadmap for exploring possibilities at technical level.
- ➔ **Commission** to step up negotiations on cooperation agreements between Europol/Eurojust and partner countries to facilitate the exchange of data for operational purposes.
- ➔ **Frontex** to make full use of its mandate to operate in third countries by working towards creating advantageous conditions for region-specific operational presence and intelligence-sharing structures.

The Schengen Council, in cooperation with the Commission and relevant EU agencies, is responsible for supervising the implementation of the above actions and taking decisions on the remaining challenges.

The Commission should provide the Schengen Council with regular reports on the progress made in the implementation of the above actions. This reporting should be based, inter alia, on the information and analysis to be provided by the EU agencies and the Member States. The reporting should in particular be channelled through the annual State of Schengen report⁷.

⁷ The first State of Schengen report to include this reporting should be the one due to be provided by the Commission by April 2024 for the Schengen Council of June 2024.

Fighting cross-border crime, especially migrant smuggling

CHALLENGES AND NEEDS

1. Enhancing shared situational awareness

Migrant smuggling networks have proven to be agile, adapting quickly to changes in the dynamics of irregular migration and evolving law enforcement activities⁸. Smuggling networks vary in size and operate under a business model in which criminals cooperate on an ad-hoc or, when needed, more permanent basis. The smuggling routes and modi operandi used are adjusted when law enforcement activities intensify, or visa and asylum policies change⁹.

To respond to the adaptability of criminal networks, it is crucial to jointly develop shared and timely situational awareness.

2. Reinforcing the EU legal framework on migrant smuggling

Over the past few 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 tackling them, including eradicating migrant smuggling and trafficking in human beings¹⁰. Following this call, the EU renewed its action plan against migrant smuggling (2021-2025), contributing to both disrupting smugglers' business and fighting smuggling networks. 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.

⁸ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; Public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

⁹ Europol (2023): Europol Spotlight report: Criminal Networks in Migrant Smuggling; public, accessible at [Spotlight report: migrant smuggling networks and their methods | Europol \(europa.eu\)](#).

¹⁰ European Council meeting (24 and 25 June 2021) – Conclusions, Council document EUCO 7/21 of 25 June 2021.

An assessment should be made of the current EU legal framework on migrant smuggling, dating back to 2002. Indeed, despite the Facilitators Package¹¹, migrant smuggling increasingly appears to be a highly profitable business with a low risk of detection and punishment for criminals¹².

3. Strengthening and integrating European operational cooperation

Migrant smuggling is a complex form of crime that has ramifications in other areas of crime and develops in a multidimensional way.

Tackling it effectively requires a comprehensive response, first and foremost by enhancing **operational cooperation between all stakeholders along the criminal chain** and by increasing **inter-agency and multidisciplinary cooperation, notably within the framework of EMPACT**. In this vein, cooperation with border guards and, more generally, effective **external border management** are key to contribute to the fight against migrant smuggling. Moreover, migrant smuggling is a highly profitable business, with an estimated annual turnover of several billion euros worldwide. Hence, **financial investigation** needs to be integrated into this comprehensive response.

Furthermore, migrant smuggling networks are becoming increasingly digitalised. They **abuse the online environment** and use **encrypted communication** to provide illegal services, organise their logistics and secure their profits¹³. It is therefore necessary to reinforce the capacity of law enforcement and judicial authorities along migratory routes (including in third countries) to target smuggling networks' online presence and their use of modern technology for communication purposes.

¹¹ 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

¹² UNODC, Migrant Smuggling A deadly business, accessible at: [Migrant Smuggling A deadly business \(unodc.org\)](https://www.unodc.org/en/news/2020/10/20201020_migrant-smuggling-a-deadly-business).

¹³ Europol, Migrant smugglers and human traffickers: more digital and highly adaptable, accessible at: [Migrant smugglers and human traffickers: more digital and highly adaptable | Europol \(europa.eu\)](https://www.europol.europa.eu/newsroom/news/migrant-smugglers-and-human-traffickers-more-digital-and-highly-adaptable).

Increasingly, the fight against organised migrant smuggling requires law enforcement agencies to have **access to data**, including electronic information and evidence located both domestically and abroad, to be able to decrypt that data for the purpose of national investigations, when necessary, and to retain it for the time required to conduct an investigation and set up a fair trial.

It is important that our response to migrant smuggling addresses its links with other crime areas in an integrated manner. 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 sexual, labour or other forms of exploitation. It is essential, therefore, that the EU and the Member States take action to **protect vulnerable migrants** and, at the same time, combat trafficking in human beings through prevention, law enforcement and judicial cooperation to bring perpetrators to justice. In addition, more should be done to strengthen the fight against fraudulent documents, since **document fraud** frequently serves as a key enabler of criminal operations in the field of migrant smuggling¹⁴.

4. Maximising synergies with EU external action

Fighting migrant smuggling requires international cooperation and coordination with key partner countries along migration routes. Much progress has been made on this in recent years, including the strengthening of links with **CSDP missions**, the establishment of the European network of immigration liaison officers (**ILO network**) and the measures presented by the Commission in its **EU Action Plans for the Central Mediterranean**, the **Western Balkans** and the **Western Mediterranean and Atlantic**. However, more needs to be done to maximise synergies with the EU's external action in priority third countries and regions. The ASOPs will be an integral part of the EU's migration partnerships with countries of origin and transit. They will provide for a more coordinated and structured approach towards operational cooperation with partner countries to combat migrant smuggling.

¹⁴ European Migrant Smuggling Centre (2022), 6th Annual Report, 2022, accessible at: [EMSC 6th Annual Report.pdf \(europa.eu\)](#).