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COMMISSION STAFF WORKING DOCUMENT

Analytical document

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794

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1. Context

1.1. Political context

Migrant smuggling is a criminal activity that disregards and endangers human lives and strips people of dignity in the pursuit of profit, violating people's fundamental rights and undermining the migration management objectives of the EU. Migrant smuggling to and within the EU continues to reach new heights. In 2023, the number of irregular border crossings at the EU's external border reached a total of approximately 380 000, which constitutes an increase of 17% compared to the year before. This was the highest level since 2016. According to the International Organization for Migration, more than 28 000 persons have lost their lives or have gone missing since 2014 on their route towards Europe, of which around 3 041 persons in 2023 alone. It is estimated that more than 90% of the irregular migrants who reach the EU make use of smugglers[1], who are mostly operating in criminal groups and in high-risk criminal networks.

Trafficking in human beings is occasionally intertwined with migrant smuggling into and through the EU[2]. In 2022 the majority (63%) of victims of trafficking were non-EU nationals. Some of them are smuggled to the EU for the purpose of being exploited by organised crime networks. Others are exploited along their journey towards the EU. The debts incurred to pay smugglers and finance their travel make them particularly vulnerable. Non-EU nationals are targeted by attractive job offers on the internet and supplied with fraudulent documents to facilitate their entry to the EU. Irregular migrants and their families are kept in debt bondage and often victimised in exploitative working conditions or subjected to sexual exploitation. Criminal networks also target irregular migrants already residing in the EU, who are exploited in exchange of fraudulent documents and residence permits. In 2022, the number of victims of trafficking amounted to 10.093 people, which represents about 40% increase compared to the average number of victims in the previous years. The number of victims is nevertheless underreported.

The EU Strategy to tackle Organised Crime 2021-2025[3] highlights that migrant smuggling and the trafficking in human beings remain key activities for organised crime groups that endanger migrants and damage the migration management objectives of the EU. 57 of the reported most threatening criminal networks active in the European Union, and affecting the region's internal security, engage in migrant smuggling and 36 in trafficking in human beings[4].

Preventing and combating migrant smuggling and trafficking in human beings, including the activities of criminal groups and high-risk criminal networks behind, are therefore priorities of the European Union, and have to be addressed in a comprehensive way.

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1 Migrant smuggling networks, Joint Europol-INTERPOL Report, Executive Summary, May 2016. ep-ip_report_executive_summary.pdf (europa.eu). Accessed on 25 March 2024.

2 Europol (2022), European Migrant Smuggling Centre 6th Annual Report 2022, Publications Office of the European Union, Luxembourg. EMSC 6 th Annual Report.pdf (europa.eu). Accessed on 25 March 2024.

3 COM(2021) 170 final (14.4.2021).

4 Europol (2024), Decoding the EU's most threatening criminal networks, Publications Office of the European Union, Luxembourg.

In her State of the Union address of 13 September 2023, President von der Leyen called for the strengthening of all tools at the Union's disposal to effectively counter migrant smuggling, by updating the current legislative framework, strengthening the governance on smuggling and the role of EU agencies, in particular of Europol ('the Agency'), and intensifying cooperation between Justice and Home Affairs agencies, Member States, and with partner countries to tackle this issue globally.

To that end, the Commission presented on 29 November 2023 a proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794 (Commission proposal).[5] That proposal formed part of a coherent package also comprising a proposal for a Directive on preventing and countering the facilitation of unauthorised entry, transit and stay in the Union.[6] Together, these two proposals seek to modernise the legal framework to fight migrant smuggling, and to ensure that we have the necessary legal and operational tools to respond to the new modus operandi of smugglers, as set out in the Commission work programme 2024 announced on 17 October 2023.[7] The legislative package was presented on the day of the International Conference launching a 'Global Alliance to counter migrant smuggling'. It complements existing initiatives to counter migrant smuggling and contributes to the implementation of the renewed EU action plan against smuggling (2021-2025) by updating the existing EU legal framework to sanction migrant smugglers acting on the migratory routes. It sets out a new modern, legal, operational and international cooperation framework against migrant smuggling for the years to come.[8]

More specifically, the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794, pursues the following specific objectives:

(1) Strengthening inter-agency cooperation to prevent and combat migrant smuggling and the trafficking in human beings.

To enhance the effectiveness, timeliness and systematic coordination of efforts to combat migrant smuggling and trafficking in human beings among relevant Union agencies, the European Centre against Migrant Smuggling will include liaison officers from Member States, Eurojust and Frontex, permanently stationed at Europol to ensure ongoing information exchange and operational cooperation.

5 COM(2023) 754 final (28.11.2023).
6 COM(2023) 755 final (28.11.2023).
7 COM(2023) 638 final (17.10.2023).
8 COM(2021) 591 final (29.9.2021).

(2) Strengthening the steering and coordination of Member States, EU Agencies and other relevant stakeholders to prevent and combat migrant smuggling and the trafficking in human beings at EU level.

To reply to the political call of stepping up efforts at EU level, the proposal establishes the European Centre Against Migrant Smuggling and outlines specific responsibilities for the Centre aiming at transforming the current European Migrant Smuggling Centre into a European Centre of gravity for EU-level investigative and operational action as well as strategic analysis. These new tasks also aim to establish a coordination framework for implementing the Union's strategic and operational priorities in migrant smuggling and trafficking in human beings.

(3) Improving information sharing amongst all stakeholders to prevent and combat migrant smuggling and the trafficking in human beings.

To address the most prominent gap identified by Europol and Member States, the proposal enhances law enforcement cooperation and information sharing by introducing enhanced responsibilities for Member States to share information, including biometric data, regarding migrant smuggling and trafficking in human beings with Europol. To make full use of the Europol's mandate, it also assigns the European Centre Against Migrant Smuggling the task of identifying cases of migrant smuggling or trafficking in human beings that may necessitate cooperation with third countries, including the exchange of personal data. In this respect, the proposal recognises that such transfer of personal data may for instance be needed in individual cases for the purpose of prevention, investigation, detection or prosecution of criminal offences, or execution of criminal sanctions.

(4) Reinforcing Member States' resources to prevent and combat migrant smuggling and trafficking in human beings.

Based on the existing good practices and to support Member States in efficiently combating migrant smuggling and sharing pertinent information with Europol, the proposal suggests designating specialised units at national level connected to Europol's SIENA platform and empowered to cooperate with the European Centre Against Migrant Smuggling which will consequently serve as a network coordinating these specialized services.

(5) Reinforcing Europol's support to prevent and combat migrant smuggling and the trafficking in human beings through the use of Operational Task Forces (OTF) and of Europol deployments for operational support.

To ensure long-term sustainability and to consolidate Europol's most frequent flagship operational instruments, the proposal formalizes and expands the concept of Operational Task Forces while fully maintaining the flexibility this operational mechanism requires. It also sets up a mandatory pool of experts based in Member States who can be readily deployed to provide operational support offering enhanced coordination and various types of support -analytical, technical and forensic- either at the request of Member States or upon the initiative of the Europol Executive Director.

To fulfill these objectives, the Commission proposed to increase the financial and human resources of Europol, reflecting the fact that complex criminal investigations into criminal networks involved in migrant smuggling are resource intensive for Member States and require additional support from the Agency[9].

To complement the information already provided at the time of the adoption of the proposal to reinforce Europol's role in preventing and combating migrant smuggling and trafficking in human beings, notably in its explanatory memorandum, and in accordance with the Better Regulation principles, the present document provides more detailed information on the facts and figures that underpin the Commission proposal[10].

As indicated in that explanatory memorandum, this legislative proposal was not supported by an Impact Assessment considering that the Commission had little or no choice available, notably due to the urgent operational needs to improve Europol's support to Member States on countering migrant smuggling. Thus, this document provides detailed information which builds on evidence gathered by the European Court of Auditors special report in 2021 on Europol's support to fight migrant smuggling and on targeted stakeholders consultation. In particular, following discussions in the Council's Law Enforcement Working Party, the Commission services consulted Member States at expert level, through a dedicated virtual workshop on 14 November 2023 which was attended by experts from EU Member States and EU institutions. Experts provided their views on: (1) the operational needs and gaps when it comes to Europol's support on migration smuggling, and (2) on any other needs and opportunities when it comes to strengthening Europol's mandate. Member States were generally supportive of strengthening Europol's legal mandate in preventing and combatting migrant smuggling and trafficking in human beings and stressed *inter alia* the need of real time information sharing, on the spot support by Europol and interagency cooperation.

The gaps identified in this document have been well identified by Europol and Member States and discussed at Justice and Home Affairs Council and European Council meetings. The European Council, in its conclusions of 9 February 2023, recognised that through strong cooperation between Member States and with Europol, Frontex and Eurojust, as well as with key partners, the fight against human trafficking and smuggling of migrants will be further reinforced. Importantly, the European Council, in its conclusions of 22 March 2024, supported the Commission's resolve to strengthen all tools at the EU's disposal to effectively counter human trafficking and smuggling. The role of Europol in countering migrant smuggling has been discussed both in the Council and in Europol, including by its Management Board. Furthermore, the European Court of Auditors special report in 2021 on Europol's support to fight migrant smuggling identified the need to

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9 This proposal is without prejudice to any additional request for staff by other EU agencies, particularly Eurojust, due to the importance of law enforcement and judicial cooperation to the proposal.

10 Proposal for a Regulation of The European Parliament and of the Council on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794. COM (2023) 754 final (28.11.2023).

reinforce Europol's role in fighting migrant smuggling, notably to enable Europol to use all relevant external sources of information, including biometric data, and to enhance data exchange with its partners.[11] During the preparation of the legislative proposal the Commission also asked Member States to identify operational needs and gaps when it comes to Europol's support on migration smuggling, as well as other needs and opportunities when it comes to strengthening Europol's mandate. That input is embedded in this document, along with the results of the dedicated virtual workshop held on 14 November 2023, where Member States were consulted at expert level.

This document focuses on what has been described by all stakeholders consulted as the most important problem that hinders effective cooperation in preventing and combating migrant smuggling and trafficking in human beings i.e., the insufficient sharing of information relating to criminal offences of migrant smuggling and trafficking in human beings. Notably, in the context of the targeted consultation, experts participating in the November 2023 virtual workshop identified the need for strengthening the sharing of information. The overall objective of ensuring effective information sharing, by overcoming obstacles in the existing legal framework and at operational level, is a common thread through the Commission proposal and is relevant for all five specific objectives pursued, i.e. strengthening inter-agency cooperation, strengthening the steering and coordination, improving information sharing, reinforcing Member States' resources and reinforcing Europol's support.

Following a description of the operational and budgetary context, this document addresses in detail the shortcomings on information sharing, by analysing the current situation that is characterised since 2015 by a voluntary sharing of information related to migrant smuggling and trafficking in human beings, and by demonstrating the need to move towards binding rules on all five specific objectives as provided for in the Commission proposal.

In doing so, this document also provides answers to the questions raised by Member States and to the related Opinion of the European Data Protection Supervisor.[12]

1.2. Operational context

Migrant smuggling networks – threat picture and modus operandi

According to the 2023 interim report of the European Union Serious and Organised Crime Threat Assessment (EU SOCTA), migrant smuggling remains at a critically high threat level, with an increasingly severe impact on victims. This crime area is set to further increase in the future due to the sustained demand for smuggling services, due to emerging and deepening crises, most

[11] Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

[12] European Data Protection Supervisor: Opinion 4/2024 on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794 (23.1.2024).

notably economic recessions, environmental emergencies caused by climate change, as well as conflicts and demographic pressure in many third countries. Considering the increase in irregular arrivals and the various worldwide crises in a range of countries of origin and transit, consistently high and possibly increasing migratory flows to Europe[13] and related smuggling criminal activities can be expected.

As it is estimated that more than 90% of the irregular migrants who reach the EU make use of smugglers, mostly organised in criminal groups, smuggling networks make substantial profits from their criminal activities[14]. Profits range between EUR 4.7 to 6 billion worldwide annually.[15][16] This makes migrant smuggling a 'low-risk high-reward' crime generating very substantial profits. Providing a strong and firm response to smugglers' activities is therefore of primary importance to reducing irregular migration. The most threatening criminal networks engaged in migrant smuggling facilitate illicit entry in the EU, secondary movements within the EU, and the legalisation of irregular stay. Some provide services to other smuggling networks, and, in some cases, networks smuggle migrants with a view to exploiting them, mainly in the form of labour exploitation. In some cases, extreme violence – including kidnapping, torture and sexual assault – is used against irregular migrants[17].

This response requires joint and strengthened efforts at EU level due to the complexity of the criminal landscape behind migrant smuggling. This complexitiy is characterised by three main factors.

- First, **criminal networks that smuggle migrants have a global dimension**. According to Europol, most migrant smuggling networks active in the EU are composed of both EU and non-EU nationals, with most individuals being non-EU adult males. In many instances, smugglers have the same nationality as the irregular migrants they smuggle or originate from the countries along the smuggling routes. Many non-EU nationals involved in migrant smuggling reside in the EU. Migrant smugglers residing in the EU typically operate in their own countries or in neighbouring ones. The ringleaders of smuggling networks usually operate remotely and so are rarely successfully pursued by authorities. Most people arrested during counter-smuggling operations and prosecuted are the 'low-level players'.

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13 Frontex, Risk Analysis for 2023/2024. ARA_2023.pdf (europa.eu). Accessed on 27 March 2024.

14 Migrant smuggling is a profitable and widespread criminal activity for organised criminals. Since the migration crisis in 2015, the migrant smuggling business has established itself as a large, lucrative criminal market and it continues to represent a highly profitable business. the common denominator for smugglers remains the profit to be obtained from facilitation of illegal migrants. Smuggling prices vary by route but also depending on fluctuations on demanded services, the type of services provided, means of transportation or the perceived rate of success. Migrant smuggling 2019. The profits of smugglers. Europol. EMSC The profits of smugglers copy (europa.eu). Accessed on 27 March 2023.

15 Migrant smuggling networks, Joint Europol-INTERPOL Report, Executive Summary, May 2016. ep-ip_report_executive_summary.pdf (europa.eu). Accessed on 25 March 2024.

16 Global study on smuggling of migrants (United Nations Office on Drugs and Crime, 2018).

17 Europol (2024), Decoding the EU's most threatening criminal networks, Publications Office of the European Union, Luxembourg.

It is why **a close and reinforced cooperation with partner countries outside the Union is crucial to dismantle the criminal networks and to arrest and pursue their leaders and high-level members,** as also recognised in the EU Roadmap to fight drug trafficking and organised crime adopted in October 2023[18], which sets out concrete and targeted actions to dismantle the high-risk criminal networks and to strengthen cooperation with international partners.

- Second, as highlighted in the EU Strategy to tackle Organised Crime 2021-2025, **criminal networks involved in migrant smuggling have a complex business model based on a 'polycriminal' nature**, i.e., a capacity to engage in multiple crime types while their criminal activities cover a wide geographical scope. According to Europol, around half of the migrant smuggling networks are also involved in other crimes[19], such as the trafficking in human beings, the production and provision of fraudulent and false documents, the smuggling of drugs and firearms, while also facilitating unauthorised movements within the EU. **It is why the EU's approach to tackling migrant smuggling should follow the same approach as the EU approach to tackling serious and organised crime, which also focuses on the polycriminal nature of organised crime groups. Consequently, also for migrant smuggling, law enforcement and judicial cooperation should focus more on the criminal networks** and not only on their individual crimes, which includes following the illicit financial flows to dismantle the financial structures of criminal organizations. This approach requires **joint efforts to enhancing investigations into the logistical supply chains, initiating systematic parallel investigations into financial flows and criminal infrastructure, focusing on digital tools and services used by criminal networks, enhancing collection and exploitation of travel and customs' intelligence**.
- Third, **criminal networks are agile, adjusting their organisations and *modus operandi* in response to technological development such as end-to-end encryption, and to new law enforcement tactics**. Law enforcement and judicial authorities are also faced with multiple and constantly evolving challenges: the increased use of threats and violence vis-à-vis the migrants as well as law enforcement authorities[20]; the use of a broad variety of means of transport, including unseaworthy, less detectable vessels (such as fishing boats and makeshift metal boats), road vehicles in which migrants are dangerously concealed; commercial and charter flights increasingly used to bring migrants to countries close to or bordering the EU, from where migrants then seek to irregularly enter the EU[21]; the use of

18 COM(2023) 641 final (18.10.2023).
19 Estimates by Europol.
20 Europol Spotlight (2023) Criminal Networks in Migrant Smuggling.
21 Frontex, Risk Analysis for 2023/2024.

digital tools at all stages of the process, with online advertising[22] of smuggling services, routes and prices as well as for forging documents; the use of crypto-currencies, digital money or other unofficial forms of payment (e.g. *hawala*[23])[24]. Another key characteristic of criminal networks' agility is their ability to diversify smuggling routes in response to changing dynamics in irregular migration or the responses of law enforcement. This is why **Europol should be able to better identify the threats by collecting more intelligence and real time information notably from key locations and transit hubs for migrant smuggling, including in third countries of interest**.

Europol's support for law enforcement cooperation to counter migrant smuggling networks

Europol's support to Member States to prevent and combat migrant smuggling and trafficking in human beings mainly takes place in four ways: (i) agile operational support, including analytical support from the current European Migrant Smuggling Centre (EMSC), (ii) operational support on the ground through deployments of experts in the Member States, (iii) information exchange through the Secure Information Exchange Network Application (SIENA)[25], and (iv) coordination of priority investigations including through Operational Task Forces (OTF). Moreover, the European Multidisciplinary Platform Against Criminal Threats (EMPACT) and its thematic operational action plans (OAPs) provide the framework to coordinate actions and activities of Member States, EU agencies (Europol, Frontex, Eurojust) and partner countries to prevent and combat migrant smuggling and trafficking in human beings.

The establishment of the current European Migrant Smuggling Centre (EMSC) was announced in the 2015 European Agenda on migration and launched in 2016. The Centre proactively supports Member States' criminal investigations to dismantle criminal networks involved in organised migrant smuggling. Within the European Serious and Organised Crime Centre at Europol, the EMSC covers two Analysis Projects (APs), one dedicated to tackling migrant smuggling (AP Migrant Smuggling) and another dedicated to tackling trafficking in human beings (AP Phoenix). Both APs play a crucial role in coordinating and supporting law enforcement partners in Member States in conducting high-profile operations against criminal networks involved in migrant smuggling. For instance, in 2021, under AP Migrant Smuggling countering facilitated illegal immigration, 161 operational meetings took place, 45 action days were supported on-the-spot, 24

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22 The 2021 European Union Serious and Organised Crime Threat Assessment (EU SOCTA) described the broad use of internet and communication technologies to commit most or some elements of trafficking in human beings, for example the recruitment, advertisement, exploitation of or control over the victims. Since the COVID-19 pandemic this trend has become the rule, which makes the detection of victims and the identification of perpetrators highly challenging.

23 Hawala is an Informal Value Transfer System (IVTS) which operates outside or in parallel of traditional financial channels. Transactions take place without the movement of cash or electronic transfer, through a network of money brokers called hawaladars.

24 Europol Spotlight (2023), Criminal Networks in Migrant Smuggling.

25 The Secure Information Exchange Network Application (SIENA) is a state-of-the-art tool designed to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence between Europol, Member States and Third Parties.

High Value Targets were identified, 21787 messages were received by Europol, 4889 new cases were opened, and 1061 operational reports were drafted. In the same year, under AP Phoenix countering trafficking in human beings, 58 operational meetings took place, 10 action days were supported on-the-spot, 2 High Value Targets were identified, 6971 messages were received by Europol, 1250 new cases were opened, and 185 operational reports were drafted[26]. These figures highlight that the level of cooperation is not sufficient to address the intensity and complexity of migrant smuggling and trafficking in human beings.

Following the November 2015 Paris terrorist attacks, the Council, in the context of strengthening controls at the external borders, called on Europol to deploy guest officers to the hotspots in support of the screening process, in particular by reinforcing secondary security controls.[27] In response to that, Europol set up a pool of law enforcement officers seconded from competent authorities in Member States that can be deployed as 'guest officers'. Acting as seconded national experts, these guest officers are regularly deployed on rotation at key points at the EU external borders (e.g., at migration hotspots) to strengthen the security checks on the inward flows of irregular migrants. The aim is to identify suspected terrorists and criminals and to support Europol's ongoing efforts to disrupt organised crime networks involved in migrant smuggling. Additional activities performed by deployed guest officers include enhancing operational cooperation between the authorities of the host Member and other Member States through Europol, providing forensic support (e.g., digital forensics) in accordance with the host Member State's national legal framework, enhancing the exchange of information, and assisting in the identification of terrorist and criminal threats.

These ad hoc deployments may also include Europol staff acting in liaison and in agreement with the host Member State. Prior to the deployment, Europol agrees with the host Member State on the scope and nature of tasks allocated to the deployed Europol staff and guest officers. The deployed Europol staff and guest officers work alongside the host Member State's authorities and other EU agencies (Frontex, EU Asylum Agency, Eurojust). To date, Europol guest officers are permanently present in 23 stations in 10 countries, covering 28 operational areas. With a pool of around 420 trained and experienced guest officers, Europol can deploy between 60 and 90 guest officers at any point in time, enabling full 24/7 coverage of all the operational areas outlined. Whilst the overall number of trained and deployed guest officers might seem high, it is estimated[28] that an additional recruitment of Europol guest officers would definitely need to take place because not all of these guest officers would always be available for deployment for various personal and professional reasons. In addition, as this pool is based on a voluntary approach, the success of this operational activity is heavily reliant on Member States and on the ability to tap into the right

[26] Europol (2022), European Migrant Smuggling Centre 6th Annual Report 2022, Publications Office of the European Union, Luxembourg. EMSC 6 th Annual Report.pdf (europa.eu). Accessed on 25 March 2024.

[27] https://www.consilium.europa.eu/en/press/press-releases/2015/11/20/jha-conclusions-counter-terrorism/.

[28] Estimates by Europol.

resources by encouraging their right candidates to apply for these positions. This speaks in favour of moving towards a mandatory pool of experts as provided for in the Commission proposal.

Europol has also developed the establishment on voluntary basis of a pool of highly qualified law enforcement experts to provide specialized support to Member States and Europol for a limited amount of time ('guest experts'). The core goal of the guest expert approach is to pool specialised and scarce expertise and knowledge that may be available in some Member States only and make it available to all Member States in a flexible manner, while respecting Member States' resource constraints. Guest experts can be made available from the pool upon request of a Member State, or occasionally by Europol itself, to support investigations or projects with expertise that is not available in the requesting Member State or at Europol (e.g., language expertise, analysis, forensics). They act under the authority and on behalf of Europol. This initiative allows for a more efficient and targeted support to Member State's investigations by pooling expertise, sharing limited resources and offering a fast and flexible operational response, in line with the newly adopted Europol Strategy ''Delivering Security in Partnership'[29].

Furthermore, over the last five years, Europol has developed an innovative operational concept for more targeted criminal investigations by identifying High Value Targets (HVT) representing the highest risk of serious and organised crime and facilitating complex and high-profile resource-intensive investigations through the setting up and operating of Operational Task Forces (OTF).

Since the start of the HVT/OTF concept in 2018, altogether 90 OTFs have been established by Member States with Europol's support, covering serious and organised crime, financial and economic crime, cyber-crime, and terrorism. Out of these 90 OTFs, only 12% address migrant smuggling and 4% trafficking in human beings. Some of these OTFs have a regional dimension, to step up the operational cooperation between Member States and third countries and to support Member States' investigations against individuals and criminal networks involved in migrant smuggling. The number of OTFs addressing migrant smuggling and trafficking in human beings is not sufficient to address these crimes, given the intensity and complexity of the criminal landscape behind migrant smuggling as well as the urgent need to act.

Based on the experience gained since 2018, Europol has identified the following three challenges in implementing the HVT/OTF concept:

(1) HVT/OTF investigations need to be effectively resourced in terms of staff and expertise such as asset tracing, decryption or other types of demanding IT forensics, access to certified interpreters.

(2) real time information exchange within the OTFs must be enhanced, including during operational activities outside Europol headquarters. Information exchange with third countries also needs to be organised in real time and in a secure manner.

[29] https://www.europol.europa.eu/publications-events/publications/europol-strategy-delivering-security-in-partnership

(3) OTF members work in different law enforcement and legal systems and use a variety of tools to analyse and interpret the intelligence even when physically in the same office. The new joint analysis capabilities introduced by the 2022 Regulation amending the Europol Regulation aim to provide Member States' experts who are part of an OTF with remote access to a common analytical environment.[30]

Beyond the support provided by Europol, the wider EMPACT platform, as an initiative driven by the Member States with the support of EU agencies, provides a framework to coordinate joint actions to prevent and combat migrant smuggling and the trafficking in human beings. In 2021, the Council identified migrant smuggling and trafficking in human beings amongst the 10 EU priorities for EMPACT for the period 2022-2025. Dedicated Operation Action Plans (OAP) have been developed, with notably the support of Europol, to tackle these priorities. The OAP Migrant Smuggling aims '*to fight against criminal networks involved in migrant smuggling, in particular those providing facilitation services to irregular migrants along the main migratory routes crossing the external border of the EU and those involved in facilitation of secondary movements and legalisation of residence status within the EU, particularly focussing on those whose methods endanger people's live*'; the OAP Trafficking in Human Beings aims '*to disrupt criminal networks engaged in trafficking in human beings for all forms of exploitation, including labour and sexual exploitation, and with a special focus on those who exploit minors for forced criminality; those who use or threaten with violence against victims and their families, or mislead victims by simulating to officialise the exploitation; those who recruit and advertise victims online, and are serviced by brokers providing digital services*'. These OAPs involve a wide range of stakeholders (all Member States, non-EU partners, Europol, Frontex, Eurojust, eu-LISA, CEPOL, etc.) and contain multiple actions that cover 9 strategic goals: (1) Criminal intelligence picture; (2) Investigations and judicial response, with a specific focus on high-risk criminal networks (HRCN) and key individuals; (3) Coordinated controls and operations targeting the online and offline trade in illicit goods & services; (4) Criminal finances, money laundering and asset recovery; (5) Document fraud; (6) Capacity building through training, networking and innovation; (7) Prevention, awareness raising and harm reduction, early identification of and assistance to victims; (8) External dimension: cooperation with non-EU partners and (9) Administrative approach (this one is specific to trafficking in human beings).

While the EMPACT priorities on migrant smuggling and trafficking in human beings led to significant operational results in 2022[31] and in 2023, there is still room for improvement. The following main key areas for improvement have been identified: better targeting criminal networks involved in migrant smuggling, focusing on High Value Targets jointly identified at EU level and in partner countries of relevance, and reinforcing transnational investigations. To that end, it is important to strengthen the link between the EMPACT work on migrant smuggling and the work of the current European Migrant Smuggling Centre, that the Commission proposal suggests to turn

[30] See Article 20(2a) of Regulation (EU) 2016/794.
[31] Council press release and EMPACT 2022 results factsheet.

into the European Centre against Migrant Smuggling, with a considerably reinforced governance structure.

1.3. Budgetary context

Since December 2020, the Union has faced a series of unprecedented and unexpected challenges. The EU has acted swiftly and used all means at its disposal, but the limited budgetary flexibility embedded in the Multiannual Financial Framework (MFF) for the years 2021-2027 is nearly exhausted. The negotiations of the mid-term revision of the current financial framework showed the difficulty to reinforce the EU budget and the strong pressure to find redeployments from other EU programmes.

The 2021-2027 MFF provides a stable framework for the preparation of the Draft Budget 2025. Nevertheless, the preparation of the Draft Budget 2025 will take place under challenging circumstances, such as the average inflation rate, the Russian war of aggression against Ukraine and the crisis in the Middle East.

According to the 2025 Budget Circular[32] sent to the EU decentralised agencies to prepare their draft annual budget, the general principle underlying the EU contributions to decentralised agencies in the MFF is stability in real terms over the period 2021-2027, corresponding to a 2% annual indexation. **Increases in the EU contribution beyond stability in real terms are taken into account only if stemming from a legislative financial statement accompanying a legislative proposal with modifications to the agencies' mandates. This reflects the stable staffing principle imposed by the European Council.**

In terms of establishment plan posts, the decentralised agencies are requested to maintain a stable number of establishment plan posts in 2025 compared to the Budget 2024. For the agencies with increasing staff levels as a consequence of legislative proposals, the number of establishment plan posts disclosed in the legislative financial statement accompanying the proposals for the year 2025 will serve as a ceiling for increases, for discussion in the context of the Draft Budget 2025.

In terms of external staff, the number of contract agents and seconded national experts financed with the EU contribution in 2025 will be stabilised at the level agreed during the Budget 2024, except for cases where a change is documented in a legislative financial statement accompanying a legislative proposal.

As a consequence of the fact that the current MFF is marked by very limited margins of manoeuvre, the financial resources provided for in the legislative financial statement accompanying the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794, is expected to be covered by redeployment within the Internal Security Fund (Heading

[32] The Budget Circular sets out the information requested from agencies for the justification of their requests for appropriations and staff, as part of the annual budgetary procedure.

5, EUR 13.5 Million) and Border Management and Visa Instrument (Heading 4, EUR 10 million) as well as from the margin of the Heading 5 of the EU Budget (security and defence, EUR 20 million).

Furthermore, as explained in the legislative financial statement accompanying the proposal, the increase in Europol staff (10 temporary agents, 20 contract agents) will be offset with a reduction of the future reinforcement in Frontex staff.

The limited budget has consequences on the support that Europol can offer to Member States. For instance, the ineffective processing of biometric data by Europol is related to the lack of resources and staff at Europol.

Finally, the additional resources for Europol as provided for in the legislative financial statement accompanying the proposal will only be made available to the Agency when the proposed Regulation is adopted by the co-legislators.

2. Status quo: gaps in information sharing

Section 2 of this document focuses on the insufficient sharing of information relating to criminal offences on migrant smuggling and trafficking in human beings as the most important problem that hinders effective cooperation in the EU. Indeed, all stakeholders involved (e.g. Member States' experts) have repeatedly described the gaps in information sharing as the most important and pressing problem in preventing and combating migrant smuggling and trafficking in human beings. This section addresses **the status quo in the exchange of information** relating to criminal offences on migrant smuggling and trafficking in human beings, which is characterised by **voluntary cooperation**.

The timely exchange of accurate and up-to-date information is crucial for law enforcement authorities to successfully detect, prevent and investigate serious and organised crime. This is in particular the case for migrant smuggling and trafficking in human beings, due to the modus operandi used by organised crime networks involved in these crimes. As regards the bilateral exchange between Member States of information relating to criminal offences on migrant smuggling and trafficking in human beings, Directive (EU) 2023/977 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA will effectively close the gap of information sharing among Member States. However, a major gap remains due to the insufficient sharing of information with Europol (section 2.1). In addition, there are also other gaps related to insufficient sharing of information that hamper Europol's support to preventing and combating migrant smuggling and trafficking in human beings (section 2.2).

2.1. Insufficient sharing of information with Europol

When it comes to law enforcement cooperation in the EU to prevent and combat migrant smuggling and trafficking in human beings, the most important problem that hinders effective cooperation is the insufficient sharing of information with Europol both in quantity and quality.

This gap is related to the core of police cooperation and the very role of Europol as the Agency to facilitate and support this cooperation as the EU criminal information hub. The 2021 European Court of Auditors special report on Europol's support to fight migrant smuggling identified the need to reinforce Europol's role in fighting migrant smuggling, notably to enable Europol to use all relevant external sources of information, including biometric data, and to enhance data exchange with its partners[33].

As clearly depicted in the available data summarised below, information sharing with Europol on migrant smuggling is insufficient, considering the gravity of the crime as such and the intensity of the phenomenon. The deficiencies in information exchange are of particular importance considering that Europol offers to the Member States a large portfolio of tools and services, which can provide analytical, operational, technical, and forensic support, including operational and forensic analysis, operational coordination and support on the ground through Europol deployments and Operational Task Forces, where appropriate in cooperation with Eurojust or other EU agencies. The common denominator of these support tools and instruments is actionable information that needs to be available to the Agency to fulfil its mandate and support the Member States, by detecting links between different investigations, or by supporting the initiation or expansion of investigations in the Member States.

The number of SIENA messages exchanged on migrant smuggling with Europol (i.e., Europol in copy or as the main recipient), compared to the overall number of SIENA messages exchanged (i.e., for all crimes) is strikingly low, ranging from 10% to 12% in between 2019 and 2023. This is mainly attributed to the lack of a specific obligation on Member States to provide Europol with information held by its competent authorities relating to the criminal offences of migrant smuggling and trafficking in human beings and has not been addressed so far. Similarly, the number of SIENA messages exchanged on migrant smuggling between third countries and Europol, compared to the overall number of SIENA messages exchanged, is extremely low, ranging from 6% to 13% in the same reporting period. As regards trafficking in human beings, the number of SIENA messages exchanged with Europol on trafficking in human beings shows a decreasing trend since 2021. While in 2021 6.971 messages were exchange and in 2022 6.156, in 2023 the exchanges decreased to 6.041.

This low level of information exchange over the years impacts the number of operational cases on migrant smuggling and trafficking in human beings supported by Europol, compared with the overall operational cases supported by the Agency (i.e., for all crime areas) since 2016. For instance, in 2023 only, Europol supported 164 operational cases on migrant smuggling out of 3.155 overall operational cases, which equals to approximately 5% of all operational cases being supported by the Agency. Similarly, in the same year (2023), Europol supported by 59 operational

[33] Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

cases on migrant smuggling out of 3.155 overall operational cases, which equals to approximately 2% of all operational cases being supported by the Agency.

Likewise, the percentage of objects related to migrant smuggling that are recorded over the years in Europol Information System (EIS)[34], which facilitates cross-checking[35] of information aimed at identifying connections or other relevant links between suspects and cases, is extremely low, ranging between 1.3% in 2019 to 2.7% in 2023 of the overall objects recorded in EIS for all crime areas.

Furthermore, a persistent trend of bilateral exchanges between Member States without involving Europol has been identified. Europol is in copy of approximately one out of three SIENA messages being exchanged between Member States on migrant smuggling.[36] This considerably hampers the possibility of the Agency to fulfil its role in identifying links and connections between different investigations and reduces its ability to support Member States' ongoing investigations or to facilitate the initiations of new ones by Member States, and more generally Europol's ability to provide an accurate intelligence picture. Moreover, only 33 % of Member States systematically report information to Europol on the results of its support in the area of migrant smuggling[37].

In the same vein, the number of joint action days coordinated and supported by Analysis Project (AP) Migrant Smuggling is low over the years, ranging between 26 in 2020 to 54 in 2019 which equals to approximately 13% of the total number of action days supported and coordinated by Europol (197) in 2020 and approximately 21% in 2019. In 2022, 31 action days focused on migrant smuggling, out of 394 actions days supported by Europol, which represent only 8% of all action days being supported by Europol and in 2023, 45 action days on migrant smuggling were supported by Europol, which represent only 10% of the overall number of action days supported by Europol (453) in 2023[38]. The joint actions days supported by Analysis Project (AP) Phoenix on trafficking in human beings have remained significantly lower throughout the years despite their increasing trend: 7 in 2020, 10 in 2021, 18 in 2022 and 23 in 2023.

In addition, migrant smuggling covers on average only 15% of the information shared by the Member States, ranked as the third crime area after fraud and drugs. While some Member States are very active with their contributions on migrant smuggling reaching 48% of their overall

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34 The Europol Information System (EIS) is Europol's central criminal information and intelligence database and covers all of Europol's mandated crime areas, including migrant smuggling. EIS is a reference system that can be used to check whether information on a certain person or an object of interest (e.g., a vehicle, a telephone number, an identity document) is available beyond national or organisational jurisdictions. Users in designated authorities in the Member States may run searches in the system. If their searches turn up initial results, users may request more information through their Europol National Unit. The EIS interfaces with SIENA, Europol's message-exchange system, for the follow-up to searches and hits found. Europol Information System (EIS) | Europol (europa.eu), accessed on 12 March 2024.

35 The cross-checking of data is performed against data contained in Europol's data environment, including EIS.

36 Information provided by Europol.

37 Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

38 Information provided by Europol.

contributions, others are far less active in sharing information which amount to only 5% to 7% of their overall contributions. For a vast majority of Member States, migrant smuggling represents less than 15% of their contributions to Europol. 16 Member States' contributions to Europol on migrant smuggling are below or equal to 15% of their overall contributions to Europol, while only 8 Member States' contributions are above 20%.[39] The 2021 European Court of Auditors special report on Europol's support to fight migrant smuggling in particular stresses the aspect of varying degrees of engagement among Member States in feeding Europol the information the Agency needs to perform its tasks as one of the main issues affecting the completeness of information obtained by Europol.[40]

Trafficking covers on average only 5% of the information shared by the Member States, ranking as number 8 compared to other crime areas. Only 5 Member States indicated it amongst the 5 most prevalent crime areas to exchange information on.[41]

The diversity in Member States' engagement, notably on the provision of operational information to Europol as regards migrant smuggling is also evident in the context of EMPACT. The implementation of the 2022 EMPACT Operational Action Plans (OAP), in terms of the engagement and cooperation among the OAPs participants, was overall considered partially satisfactory[42]. However, in the same year (2022), for some Operational Actions (OAs) aiming to prevent and combat migrant smuggling, there was a clear need for more commitment from the participants in terms of provision of relevant operational information and cases.

Moreover, while the digitalisation of migrant smuggling and trafficking in human beings[43][44] remains a key challenge to law enforcement, with migrant smugglers and traffickers increasingly using social media, the volume of content related to irregular migration that has been assessed by the EU Internet Referral Unit at Europol, which is mainly based on Member States contributions, has significantly decreased over the last years by almost 93% between 2020 (2517) and 2023 (173).

Further to the low quantity of information shared with Europol, several other factors also have a negative impact on the quality, timeliness, relevance and usability of the information provided to Europol. For example, incident-based information,[45] namely information that does not refer to the criminal networks and groups that are actively involved along the migrant smuggling route (e.g.,

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39 Information provided by Europol on information provided by Member States in 2022 in accordance with Article 7(11) of the Europol Regulation.

40 Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

41 Information provided by Europol on information provided by Member States in 2022 in accordance with Article 7(11) of the Europol Regulation.

42 EMPACT Drivers' reporting.

43 Migrant smugglers use digital services and tools, such as social media and mobile applications for recruitment, communication and money transfers, pick-ups and handover of migrants, providing route guidance, sharing pictures and videos of documents and tickets, and even monitoring law enforcement activities. Renewed EU Action Plan against migrant smuggling.

44 Discussion at Council Working Group level.

45 Discussion at Council Working Group level.

historical – not 'live' information stemming for instance from terminated investigations), or fragmented information on individual or low-level suspects, in isolation do not suffice for the development of cases and investigations that target organised crime groups and criminal networks. Indeed, Member States need to provide Europol with quality information that, in turn, enables the Agency to support Member States in investigating and prosecuting migrant smuggling as a transnational crime. Indeed, only such quality information will allow deep diving into the criminal networks and groups involved along the migrant smuggling route, the digitalisation of migrant smuggling and trafficking, notably the use of social media by the smugglers and traffickers, the identification of victims and money laundering[46].

The insufficient level of information sharing with Europol related to migrant smuggling is also depicted in critical intelligence gaps identified by Member States in the context EMPACT OAP Migrant Smuggling. These gaps refer *inter alia* to the extent and routes of facilitated secondary movements within the EU and to the remote management of smuggling networks, often from outside the EU, rendering critical actors unidentified or out of the reach of law enforcement. In addition, the gaps refer to the limited view on criminal networks' involvement in enabling the legalisation of irregular migrants' residence in the EU, to the existing links with other criminal activities, specifically the cross-cutting elements with trafficking in human beings, and the further exploitation of irregular migrants. The gaps also refer to the smuggling of unaccompanied minors, as an especially vulnerable category of irregular migrants, and to the lack of intelligence in relation to the tracking of their movements. In addition, there are also important gaps related to financial flows generated by migrant smuggling criminal networks, digital footprints of criminal networks and digital evidence to support investigations and prosecutions of criminal actors. Without intelligence and information provided by Member States, Europol cannot provide adequate intelligence pictures on migrant smuggling and hence cannot close these critical intelligence gaps.

The limited sharing of information on trafficking in human beings with Europol becomes even more visible if the data is compared with the statistics published by EUROSTAT. While according to EUROSTAT Member States registered in 2022 10.093 identified and presumed victims, EUROPOL was informed only about 4.109 victims. Pursuant to the 2022 data, 15% of the victims were children but EUROPOL statistics showed that only 2% were child victims.

2.2. Other gaps related to insufficient sharing of information

In addition to the general lack of sufficient information sharing with Europol described in section 2.1, there are also other gaps related to insufficient sharing of information that hamper Europol's support to Member States in preventing and combating migrant smuggling and trafficking in human beings and that also hamper close judicial follow-up to ensure proper prosecution and conviction. These gaps relate to inter-agency cooperation with Frontex and Eurojust, to the operational support the Agency provides to the Member States through deployments and Operational Task Forces, and to the sharing of information from third countries through

[46] Discussion at Council Working Group level.

Immigration Liaison Officers. Finally, Europol also faces specific technical challenges when it comes to the processing of biometric data.

Inter-agency cooperation

One of the main pillars of the renewed EU Action Plan against migrant smuggling 2021-2025 is reinforcing cooperation and supporting the work of law enforcement and the judiciary. The Action Plan identified the need to further strengthen cooperation between national authorities and with EU agencies, including Frontex, Europol and Eurojust, notably the need to intensify inter-agency information exchange and analysis.

In this context, EU agencies should cooperate at an early stage of migrant smuggling cases to use their complementary mandates in support of national authorities[47]. Inter-agency cooperation is a key component of a holistic approach to countering migrant smuggling especially to enhancing information exchange and ultimately achieving a thorough intelligence picture that will fuel and guide investigations, in an intelligence-led and integrated approach, which is also recognised as a key feature of EMPACT[48]. This in turn facilitates law enforcement and judicial cooperation that leads to the investigation, prosecution and conviction of perpetrators.

Inter-agency cooperation is portrayed in the Europol mandate in the ability of the Agency to maintain cooperative relations with Union bodies and to exchange information with them, including personal data to the extent necessary for the performance of its or their tasks. In this context, Europol has cooperation agreements in place with *inter alia* Eurojust and Frontex and cooperates with them accordingly. Furthermore, Europol has established the Information Clearing House to enhance the intelligence picture on organised migrant smuggling from countries of origin and transit, including from agencies such as Frontex, as well as the Joint Liaison Task Force (JLT) Migrant Smuggling and trafficking in human beings that brings together liaison officers seconded to Europol's headquarters from the Member States, Eurojust and non-EU countries to speed-up cooperation in major investigations.

However, despite these set-ups to facilitate information exchange between EU agencies and their overall cooperation in countering migrant smuggling, their cooperation has not yet reached its full potential. The 2021 European Court of Auditors special report on Europol's support to fight migrant smuggling has identified the suboptimal cooperation notably on data exchange between Europol and its partners, in particular with relevant EU agencies, and recommended enhancing cooperation between Europol and Frontex and Eurojust, respectively[49]. This unsatisfactory level of cooperation is also depicted in the limited number of JITs on migrant smuggling, which were

47 A renewed EU action plan against migrant smuggling (2021-2025). COM(2021) 591 final. 29.9.2021.
48 EMPACT Terms of Reference, Council of the European Union, 9921/21, 17 June 2021.
49 Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

supported by Europol, that are decreasing since 2020 and range between 3 and 8 on an annual basis[50].

The 2019 Regulation on the European Border and Coast Guard (EBCG Regulation) specifically provides for a limited exchange of operational personal data between Europol and Frontex, aiming to close the legal gaps in this regard. Under strict conditions, including compliance with the EU Data Protection Regulation (DPR)[51], the Regulation allows Frontex to process operational personal data that was collected in the context of monitoring migratory flows, carrying out risk analyses or during operations for the purpose of identifying suspects of cross-border crime, such as migrant smuggling and trafficking in human beings, including to share this operational personal data with Europol[52][53]. Despite this provision in the EBCG Regulation, cooperation remains very limited to date.

In addition, contributions from Frontex decreased by approximately 1500 messages, following the measures taken by Frontex in reaction to the 2022 opinions of the European Data Protection Supervisor (EDPS) on Frontex's internal personal data processing framework[54]. These opinions, inter alia, had an effect on Frontex's "Processing of Personal Data for Risk Analysis (PeDRA)" which included the forwarding of information on potential human smugglers or traffickers to Europol. The situation should be improved with the now-ongoing implementation of the new data protection framework in Frontex, and through the negotiation of a new working arrangement between Europol and Frontex based on the new mandates of both agencies[55]. The EBCG Regulation, in particular, requires the existence of a working arrangement as a prerequisite for the transfers of personal data envisaged to take place between the two Agencies[56].

Furthermore, on 23 January 2024 the EDPS published an Opinion on the Commission proposal[57]. The EDPS acknowledged the need to act as well as the crucial importance of the cooperation

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50 However, this number does not itself serve as a fully representative indicator of cooperation between Eurojust and Europol, because the decision to involve either agency is taken by the national authorities.

51 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), PE/31/2018/REV/1, *OJ L 295, 21.11.2018, p. 39–98.*

52 Idem.

53 Article 90 EBCG Regulation.

54 EDPS (2022). 'Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0147' and EDPS (2022). 'Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148'. For further context information, see the Commission Staff Working Document accompanying the evaluation of the EBCG Regulation (SWD(2024) 75 final), p. 40.

55 Commission Staff Working Document Evaluation Accompanying the document Report form the Commission to the European Parliament and the Council on the evaluation of Regulation (EU) 2019/1896 on the European Border and Coast Guard, including a review of the Standing Corps. SWD(2024) 75 final, 2.2.2024.

56 Article 68(5) EBCG Regulation.

57 European Data Protection Supervisor. Opinion 4/2024 on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794.

between relevant EU agencies and the competent authorities of Member States and of third countries, including information sharing. In this context, the EDPS recommended further clarifying and circumscribing the role of Frontex in the fight against migrant smuggling and trafficking in human beings, notably by taking into account the findings of the supervisory activities of the EDPS vis-à-vis Europol and Frontex and considering that the collection of information about suspects of any cross-border crime by Frontex must be strictly limited to identified needs of Europol, Eurojust and Member States competent authorities, in compliance with their respective mandates.

The need for a better inter-agency cooperation is also highlighted by the evaluation of EBCG Regulation[58], which recognises the need to ensure complementarity and avoid overlaps between Europol and Frontex. In this context, on 31 January 2024, Frontex and Europol signed a joint statement on cooperation and complementarity, aiming, *inter alia*, to further strengthen mutual exchange of information, to increase joint operational impact on cross-border crime, in particular migrant smuggling and trafficking in human beings, to enhance their partnership, intensify joint synergies towards and avoid duplication of efforts, and to facilitate the speedy conclusion of the working arrangement. However, the level of cooperation between Frontex and Europol remains limited to date because the representation and presence of Frontex in the current European Migrant Smuggling Centre is not mandatory, and hence the permanent presence of representatives of Frontex in related discussions at Europol is not ensured.

The human element is pivotal in forming effective synergies and enhancing inter-agency cooperation, notably boosting inter-agency information exchange. Information sharing is often based on the deployment and active engagement of liaison officers whose role is to facilitate and enhance cooperation. Following the example of Member States' and Third Countries' Liaison Officers deployed at Europol, the appointment of a Union agency's representative as an embedded agency official in a Europol centre has proven an effective way to boost cooperation between Europol and the deploying agency, considering the example of the appointment of the new Eurojust representative in 2022 in the European Counter-Terrorism Centre (ECTC) at Europol. Following this appointment, swift exchanges and cooperation in terrorism cases involving both agencies remained continuous, and the regular meetings between the Eurojust representative and the ECTC leadership were re-established[59].

Europol's operational support through deployments and Operational Task Forces

The most advanced type of support Europol can offer to Member States is the Agency's deployment for operational support, as well as the establishment of Operational Task Forces (OTFs). These forms of operational law enforcement cooperation are well developed flagship Europol services. Europol deployments for operational support take place in the context of complex and large-scale investigations requiring Europol's support, including in the context of

58 Idem.

59 Eurojust Consolidated Annual Activity Report 2022, Eurojust, 13 June 2023.

Joint Investigation Teams (JITs)[60] or Operational Task Forces (OTFs), or to support checks against relevant databases to strengthen controls at the Union's external borders, or migration management support teams in accordance with the EBCG Regulation or to provide support to Member States in major international events. Typical examples of Europol deployments are guest officers deployed to hotspots in support of the screening process, in particular by reinforcing secondary security controls[61], and mobile offices deployed for on-the-spot support operations in Member States[62].

Today the pools of guest experts and guest officers set up by Europol are on a voluntary basis. Based notably on the lessons learnt from the major migrant smuggling incidents in the recent years, it is proposed to set up a mandatory reserve pool of Member States' experts to reinforce Europol deployments for specialised support. There are clear synergies and economies of scale for Member States resulting from the use of this reserve pool as fighting against migrant smuggling require resource- and expertise-intense operations. This mandatory reserve pool of experts should be adequate and consistent for two reasons:

First, the mandatory reserve pool should take into consideration the status of the existing guest experts. Guest experts is a category of seconded national experts (SNEs) with short-term duration and several rotations for the same expert might be needed to cover the entire duration of the requested support.

Second, the pool of guest experts should comprise experts from Member States' competent authorities covering a large number of specialized skills which are more and more requested on the ground: i.e., analytics (e.g. social media, digital evidence and Geographic Information Systems (GIS) analysis); forensics (e.g. extraction of data from computers, sound extraction and drone data analysis); specialised investigative techniques in specific crime-areas like cyber-crime (e.g. dark web investigations, victim identification) or money laundering; investigation (e.g. witness assessment, crime scene management); cultural and language expertise.

By stepping up this pool of experts while maintaining the flexibility, scalability and adaptability of this operational mechanism, Europol will be better equipped to respond to Member States' requests regarding emergency or developing situations that require Europol support at very short notice, making use of resources for potential rapid deployments when and where these are needed.

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60 A JIT is one of the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more States for the purpose of carrying out criminal investigations. Made up of prosecutors and law enforcement authorities as well as judges, JITs are established for a fixed period, such as is necessary to reach successful conclusions to investigations. Providing operational, legal and financial support to JITs is a key part of Eurojust's mission. Europol is mandated to support JITs at the request of Member States, in accordance with Article 5 of the Regulation (EU) 2016/794.

61 Europol setting up team of 200 investigators to deploy to migration hotspots | Europol (europa.eu). Accessed on 19 March 2024.

62 Services & Support | Europol (europa.eu). Accessed on 19 March 2024.

Furthermore, OTFs have been developed at Europol as multi-national and multi-disciplinary temporary groups formed to carry out specific projects, coordinating intelligence and investigative efforts focusing on the criminal activities of one or more selected High Value Target(s), namely persons whose criminal activities constitute a high risk for security[63], and members of their criminal network. In this context, OTFs in practice constitute a coordination mechanism set up by Member States among their competent authorities with the support of Europol to conduct joint, coordinated, and prioritised criminal intelligence activities and investigations into a crime falling within the scope of Europol's objectives that requires coordinated and concerted action.

Both these forms of advanced support can be used and should be used to support Member States in countering migrant smuggling and combating trafficking in human beings. Member States have embraced these law enforcement cooperation tools either by contributing their assets (e.g., seconding national experts) or by requesting to and receiving from Europol this type of support. In this context, there is a high demand for these instruments by Member States, as well as high expectations, mainly due to the operational success of the instruments and the need for specialised support and resources not available to some Member States. For instance, specifically OTFs on migrant smuggling are time consuming (i.e., in terms of requiring full-time involvement and lasting for a considerable time) and resource intensive and require a dynamic and constant information flow. OTFs also entail tailored support to investigation requirements and the allocation of a dedicated team for the duration of the OTF which comprises of analysts, specialists, and seconded national experts, as well as a tailored funding scheme[64].

To cope with the high demand on operation support through deployments and OTFs, Europol needs resources, both human and financial, to be able to maintain the spearhead of its support adequate to the needs. Currently, Europol's capacity to allocate and deploy staff required to cope with the needs and advance investigations is limited in staff and budget. Indeed, the current European Migrant Smuggling Centre, the smallest Centre within the Operations Directorate, is understaffed, notably on specialised profiles, including on cyber smuggling, on informal value transfer systems, as well as on high-risk criminal networks engaged in migrant smuggling. For the year 2024, the current European Migrant Smuggling Centre has a total of 39 Temporary agents (TAs) split into the Analysis Project "Migrant Smuggling" and the Analysis Project "Phoenix" related to trafficking in human beings. Part of these 39 staff is currently deployed to support countries neighbouring Ukraine on a periodical basis (i.e., Romania, Hungary, Slovakia, Moldova, Poland) as well as the EU Regional Task Force (EURTF) Piraeus. In addition, EMSC staff also provides operational support to Member States (i.e., Croatia, Hungary, Bulgaria, Lithuania, France) under the umbrella of Regional Operational Task Forces.

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63 Article 4(1)(r)(s) of the Europol Regulation. Consolidated text: Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

64 Discussion at Council Working Group level.

At the same time, Member States' commitment is necessary for these instruments to unlock their full potential as genuine means to facilitate information sharing and cooperation. This commitment is essential as these instruments cannot work without the active and structured engagement of the direct beneficiaries, the Member States, notably through sharing relevant information with Europol and making full use of these instruments.

Furthermore, these instruments were initially developed on the basis of the practice followed in the Member States and in Europol. The 2022 amendment of the Europol mandate[65] introduced a reference to OTFs and High Value Targets[66]. Notwithstanding the consolidated practice and the amendments introduced to the Europol Regulation, it would be appropriate to further clarify what advanced and coordinated operational law enforcement cooperation entails concretely. At present, Europol already provides operational support on ongoing investigations on the ground, carrying out investigative non-coercive measures[67] that relate exclusively to data processing like providing forensic and analytical support to investigations, in liaison and in agreement with the competent authorities of the Member State concerned and in accordance with the Europol Regulation and that Member State's national law.

Sharing information from third countries through Immigration Liaison Officers

The European Council, in its conclusions of 9 February 2023, reaffirmed the importance of the fight against smugglers and affirmed the willingness to step up its action to prevent irregular departures and loss of life, also by intensifying cooperation with countries of origin and transit. Cooperation with these countries is crucial considering the transnational nature of organised migrant smuggling. Member States and Europol need actionable information coming from third countries of origin and transit about the criminal networks involved in organised migrant smuggling along the migratory routes. Although Europol has in place a series of operational agreements with third countries allowing for the exchange of personal data, these agreements do not cover key third countries of origin and transit, like in the Middle East and North Africa, Sahel and West Africa.

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65 Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation PE/8/2022/REV/1, OJ L 169, 27.6.2022, p. 1–42.

66 Article 4(1)(r)(s) of the Europol Regulation. Consolidated text: Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA**.**

67 A coercive measure is understood as an action taken by a competent law enforcement or judicial authority under national law and in the context of a criminal investigation to impose a specific constraint foreseen in national law on a person who is suspected of having committed or taken part in a criminal offence. Coercive measures include the exercise of legitimate force by a competent law enforcement authority, including the arrest of a suspect, and performing a house search.

Member States can acquire information on a bilateral basis from third countries including through the deployment of Immigration Liaison Officers (ILOs)[68], including when those issues are only a part of the liaison officer's duties. The Regulation on the creation of the European network of Immigration Liaison Officers (ILO Network Regulation)[69], which entered into force in 2019, reinforced the gathering and sharing of information through a new framework of cooperation and coordination among ILOs deployed to third countries[70].

According to Article 3(4) of the ILO Network Regulation, ILOs have the obligation to collect information, inter alia, related to migratory flows from third countries, including composition of migratory flows and migrants' intended destination and routes. For the prevention and detection of illegal immigration as well as combat migrant smuggling and trafficking in human beings, the ILOs may share information obtained in the course of their duties with competent authorities of the Member States, including law enforcement authorities, in line with Article 3(6)(d) of the ILO Network Regulation.

Despite the obligations set by the ILO Network Regulation and its clear aim to contribute to the fight of migrant smuggling, the work of the ILOs and the Immigration Liaison Network[71] has not been anchored to the operational work of Europol, notably as regards its role as the EU information hub. Many efforts have been made to this regard. In 2021, the Steering Board of the ILO Network established the priorities of the network and planned activities by adopting a biennial Work Programme[72], which sets a series of activities to be implemented by the ILO Network within the framework of EU policy priorities, both at horizontal level and in specific third countries. In line with the priority activity *Prevention of irregular migration and counter smuggling*, Member States under the Steering Board, set the supporting activity *Setting up a pilot project on SIENA connection in third countries* for the transmission of information collected by single ILOs or by the network, that are of relevance to combat migrant smuggling and trafficking in human beings.

ILOs, a source of information has not yet reached its full potential in the context of countering migrant smuggling and Member States' law-enforcement-related assets deployed in third countries are not exploited to the extent necessary. The level of information sharing stemming from this source of information to other Member States or to Europol is suboptimal, leaving room for improvement, notably considering that today Europol does not receive any information from the liaison officers deployed in third countries. This information is necessary notably to feed Europol's

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68 Member States' officials deployed in third countries by the competent authorities of Member States, in accordance with their national law, to deal with immigration-related issues.

69 Regulation (EU) 2019/1240 (OJ L 198, 25.7.2019, p. 88).

70 A renewed EU action plan against migrant smuggling (2021-2025). COM(2021) 591 final. 29.9.2021.

71 In 2019, the EU created the European network of immigration liaison officers (ILO network) to better coordinate officers deployed in third countries by the European Commission, EU agencies and EU countries. As part of the ILO network, these officers focus on gathering and sharing information for its use at a strategic or operational level; rendering assistance to return and readmission related tasks; targeted provision of capacity-building activities to authorities. Migrant smuggling – European Commission (europa.eu). Accessed on 20 March 2024.

72 See Article 8(2)(a) of the Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast), PE/50/2019/REV/1, *OJ L 198, 25.7.2019, p. 88–104.*

strategic analysis (e.g., EU Serious and Organised Crime Threat Assessment, thematic analyses on migrant smuggling) and for generating whole of route-based investigations. While information from an Immigration Liaison Officer of a Member State reaches the national competent authorities of that Member State, they do not always reach other relevant Member States or Europol. This is attributed to the overall insufficient level of information sharing by Member States, the insufficient cooperation with their Europol National Units, and the absence of a direct connection between these officers and Europol.

Ineffective processing of biometric data by Europol

Information sharing also includes biometric data (e.g., fingerprints, facial images), namely personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data[73]. The effective use of biometric data is key to closing the current gaps and blind spots that terrorists and other criminals seek to exploit by hiding behind false or multiple identities. Europol's legal framework allows the Agency to process biometric data. However, as highlighted by the European Court of Auditors special report in 2021 on Europol's support to fight migrant smuggling, there is a need to enable Europol to use biometric data effectively.[74]

The 2022 amendment of the Europol Regulation introduced references to processing biometric data by Europol[75] and Europol is called to process biometric data as part of its involvement in the interoperability framework covering the EU information systems for borders, security and migration. However, the way biometric data is processed at Europol (i.e., manually by a very limited number of staff), attributed mainly to the lack of resources (e.g., dedicated staff to work on requirements, architecture, security, data protection, development, project management and maintenance, both functional and infrastructure, hardware and software) at Europol is not as effective as would be desirable, including with regard to the more recent VIS or Prüm II

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73 See Article 3, point (18), of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), PE/31/2018/REV/1, *OJ L 295, 21.11.2018, p. 39–98.*

74 Europol support to fight migrant smuggling: a valued partner, but insufficient use of data sources and result management. European Court of Auditors, 2021.

75 See Article 30 of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

Regulations[767778]. The low level of processing of this type of information affects the ability of the Agency to be the EU criminal information hub and will notably affect Europol's capacity to deliver on the obligations set up in the interoperability framework covering the EU information systems for borders, security and migration such as the increased use of biometrics[7980].

3. The way forward: closing the gaps and strengthening the cooperation framework

The pressing need to prevent and combat migrant smuggling and trafficking in human beings effectively in the complex operational context described in section 1.2., and the limited results achieved through voluntary cooperation due to the gaps and shortcomings identified in section 2, both call for (1) adopting binding rules on the sharing of information with Europol, (2) closing other gaps related to information sharing and (3) significantly increasing Europol's resources and staff to meet the operational objectives of the Regulation. Indeed, the gaps and shortcomings identified require action and the adoption of binding rules in order to meet all five specific objectives identified in section 1, i.e. strengthening inter-agency cooperation, strengthening the steering and coordination, improving information sharing, reinforcing Member States' resources and reinforcing Europol's support.

3.1. Mandatory sharing of information with Europol

While the Europol Regulation (EU) 2016/794 sets a general obligation on Member States to "*supply Europol with the information necessary to fulfil its objectives, including information relating to forms of crime the prevention or combating of which is considered a priority by the Union*"[81], the current rules leave it to the Member States to determine which information they consider necessary for Europol to fulfil its objectives. Due to the nature of migrant smuggling and trafficking in human beings and the modus operandi of criminal networks, however, it is often not possible for Member States to determine whether an isolated incident of migrant smuggling or trafficking in human beings relates to a wider organised crime scheme and should therefore be reported to Europol to enable the Agency to fulfil its objectives as hub for law enforcement information exchange in the Union.

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76 Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System. *OJ L 248, 13.7.2021, p. 11–87.*

77 Consolidated text: Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation). *OJ L 218, 13.8.2008, p. 60–8.*

78 Regulation (EU) 2024/982 of the European Parliament and of the Council of 13 March 2024 on the automated search and exchange of data for police cooperation, and amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, (EU) No 2019/817 and (EU) 2019/818 of the European Parliament and of the Council (the Prüm II Regulation). PE/75/2023/REV/1. *OJ L, 2024/982, 5.4.2024.*

79 europol_strategy_2020.pdf (europa.eu). Accessed on 20 March 2024.

80 Europol_Programming_Document_2022-2024.pdf (europa.eu). Accessed on 20 March 2024.

81 See Article 7(6)(a) of Regulation (EU) 2016/794.

Consequently, there is a need to introduce a specific obligation on Member States to provide Europol with information held by its competent authorities relating to the criminal offences of migrant smuggling and trafficking in human beings, as provided for by the Commission proposal.[82] This will enable Europol to acquire the necessary information to analyse possible links between different cases and provide the possible bigger picture.

With the introduction of a specific obligation relating to the criminal offences of migrant smuggling and trafficking in human beings, Member States would no longer need to determine on a case-by-case basis whether the information related to individual incident of migrant smuggling or trafficking in human beings is necessary for Europol to fulfil its objectives. Instead, Member States would have to share any information held by its competent authorities and relating to criminal offences on migrant smuggling and trafficking in human beings, since that information would be deemed necessary for Europol to fulfil its objectives. Any such information might be necessary for Europol to establish links between isolated incident of migrant smuggling or trafficking in human beings, and to detect the criminal networks that are responsible for these serious crimes.

Necessity and proportionality

In terms of necessity and proportionality of such a specific obligation to provide Europol with information held by its competent authorities relating to criminal offences on migrant smuggling and trafficking in human beings, it should be recalled that preventing and combating these serious crimes is one of the priorities of the European Union and crucial to addressing irregular migration in a comprehensive way. In addition, as set out in section 1.2., the complexity of the criminal landscape behind migrant smuggling make it distinct from other forms of serious crime. Effectively fighting these serious crimes represents an important objective of general interest, and thus it may justify limitations on the exercise of the fundamental right to the protection of personal data as guaranteed by Article 8 of the EU Charter of Fundamental Rights, in accordance with Article 52(1) of the Charter.[83]

In terms of necessity[84], the specific obligation provided for in the Commission proposal is essential to achieve the objective of improving Europol's ability to support Member States in preventing and combating migrant smuggling and trafficking in human beings. Ensuring that Europol will receive the information held by Member States' competent authorities relating to criminal offences on migrant smuggling and trafficking in human beings would effectively contribute to achieving this objective. As demonstrated in section 2.1., the existing legal framework does not ensure that Member States sufficiently share with Europol information relating to criminal offences on

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82 See Article 8(1) of the Commission proposal (COM(2023) 754 final).

83 European Data Protection Supervisor: Opinion 4/2024 on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794 (23.1.2024), p. 6.

84 European Data Protection Supervisor: Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A toolkit (11.4.2017).

migrant smuggling and trafficking in human beings. The current legal framework – that leaves it to the Member States to determine which information they consider necessary for Europol to fulfil its objectives – is less likely to limit on the exercise of the fundamental right to the protection of personal data. However, as demonstrated in section 2.1. above, the current legal framework is insufficient to achieve the objective. All efforts taken since 2015 to increase the level of information sharing within the existing legal framework – including calls at political level, discussions at technical level or technical improvements such as data loaders to automatise the information sharing – have not resulted in the necessary increase in the sharing of information relating to criminal offences on migrant smuggling and trafficking in human beings. As there are no other effective options available, the specific obligation provided for in the Commission proposal is necessary. Moreover, it is limited to what is absolutely necessary to achieve the objective of enabling Europol to effectively support Member States in preventing and combating migrant smuggling and trafficking in human beings as objectives of general interest.

In terms of proportionality[85], the specific obligation provided for in the Commission proposal corresponds to the need identified in section 2.1. and would effectively address the current problem of insufficient sharing of information with Europol relating to criminal offences on migrant smuggling and trafficking in human beings. It does not impose a disproportionate and excessive burden on the persons affected by the limitation, namely persons who are related to a criminal offence on migrant smuggling and trafficking in human beings, as Europol's data protection regime would provide for the necessary safeguards. The specific obligation provided for in the Commission proposal constitutes a proportionate response to the need to solve the problem resulting from the insufficient sharing of information with Europol on criminal offences on migrant smuggling and trafficking in human beings, given that a number of existing safeguards would apply to that specific obligation:

First, Europol is only authorised to process information, including personal data, for the achievement of its objectives, that is, to support Member States in preventing and combating serious crime and terrorism. It is therefore Europol's obligation to determine whether information received from Member States is relevant to its tasks.

Second, Member States are only authorised to supply Europol with information necessary for the Agency to fulfil its objectives. The specific obligation provided for in the Commission proposal would not apply to any information that is not relating to criminal offences on migrant smuggling and trafficking in human beings.

Third, the Europol Regulation provides for effective rights of the data subjects, including the right of access and the right to rectification, erasure and restriction.

Fourth, Europol is subject to effective data protection supervision by the European Data Protection Supervisor.

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[85] European Data Protection Supervisor: EDPS Guidelines on assessing the proportionality of measures that limit the fundamental rights to privacy and to the protection of personal data (19.12.2019).

These safeguards allow to have a balance between the extent and nature of the interference with the fundamental right to the protection of personal data and the reasons for interfering as translated into the objective of ensuring that Europol can effectively support Member States in preventing and combating migrant smuggling and trafficking in human beings. Consequently, the specific obligation provided for in the Commission proposal constitutes a proportionate response to the need to address the current problem of insufficient sharing of information with Europol relating to criminal offences on migrant smuggling and trafficking in human beings.

Consistency with other Union policies

The specific obligation for the Member States to provide Europol with information held by its competent authorities relating to criminal offences on migrant smuggling and trafficking in human beings would be consistent with similar such obligations that the EU legislator introduced in other areas of the fight against serious crime and terrorism.

In the area of counter-terrorism, Council Decision 2005/671/JHA obliges Member States to ensure that information concerning criminal investigations for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to Europol.[86] Similarly, Regulation (EU) 2023/2131 on digital information exchange in terrorism cases obliges Member States to ensure that information concerning criminal investigations for terrorist offences which affect or may affect two or more Member States and involve judicial authorities are transmitted to Eurojust for the European Judicial Counter-Terrorism Register. Moreover, Regulation (EU) 2018/1862 on the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters obliges Member States to inform Europol through the exchange of supplementary information of any hit on alerts related to terrorist offences.[87]

At the same time, the specific obligation provided for in the Commission proposal would be without prejudice to the discharge by Member States of their responsibilities with regard to the maintenance of law and order and the safeguarding of internal security. The respective provision in the Europol Regulation would apply.[88] Consequently, based on the Commission proposal, Member States would not be obliged to supply Europol with information relating to criminal offences on migrant smuggling and trafficking in human beings that would be contrary to the essential interests of the security of the Member State concerned, jeopardise the success of an ongoing investigation or the safety of an individual, or disclose information relating to organisations or specific intelligence activities in the field of national security.

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86 See Article 2(3) of Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences.

87 See Article 48(8) of Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006.

88 See Article 7(7) of of Regulation (EU) 2016/794.

The mandatory sharing of information is also linked with reinforcing Member States' resources. It is crucial in the fight against migrant smuggling for the Member States' competent authorities and relevant EU agencies such as Europol and Eurojust to have all information they need to perform their tasks. At the same time, the persistence and the gravity of the threat posed by criminal networks involved in migrant smuggling as well as the complexity of the phenomenon raise the need for even more adequate and specialised response.

It is why the Commission proposed that Member States designate at national level specialised services for fighting migrant smuggling and trafficking in human beings and connect these services to Europol's Secure Information Exchange Network Application (SIENA) to exchange relevant information. With these proposals, the European Centre Against Migrant Smuggling – as a considerably reinforced governance structure building on the current European Migrant Smuggling Centre – will act as a network of specialised services. It is also proposed that Member States second experts to the European Centre Against Migrant Smuggling to form an enhanced cross-border investigation support unit, capable of providing quick and comprehensive support to the investigation of major migrant smuggling incidents in the EU.

3.2. Closing other gaps related to insufficient sharing of information

Stronger inter-agency cooperation

With regard to the gaps identified in inter-agency cooperation that hamper effective EU support to preventing and combating migrant smuggling, they ultimately relate to the rather unstructured and ad hoc form of the current inter-agency cooperation that occurred so far, notably between Europol and Frontex as well as Europol and Eurojust, respectively. This is mainly because the representation and presence of Frontex and Eurojust in the current European Migrant Smuggling Centre at Europol is not mandatory, and hence the permanent presence of representatives of Frontex and Eurojust in related discussions at Europol is not ensured. While Frontex and Eurojust cooperate with Europol, there is a clear need to boost their cooperation, notably on frontline information sharing, in line with the Agencies' respective mandates, and the support to judicial follow-up, and to promote effective synergies through the active involvement of representatives of Frontex and Eurojust in the daily work of Europol, in accordance with their mandates. To that end, further to the need for a swift conclusion of the working arrangement between Frontex and Europol, there is a need to move towards a legal obligation on Frontex and Eurojust to deploy liaison officers as permanent representatives at Europol to enhance the EU support to preventing and combating migrant smuggling, as provided for in the Commission proposal.[89] Finally, to ensure the necessary judicial follow-up and thereby the admissibility of evidence, it is crucial that Eurojust is involved at an early stage and informed about existing OTFs. Also, this objective will be served by deploying liaison officers from Eurojust to Europol.

[89] See Article 4(1), (3) and (4) of the Commission proposal (COM(2023) 754 final).

Overall, an effective inter-agency cooperation and coordination both at strategic and operational level requires a governance structure clearly describing the engagement and role of the cooperating agencies in the EMSC, along with all the relevant actors in countering migrant smuggling.

This governance structure that aims to address the insufficient steer and coordination on countering migrant smuggling at EU level, is crucial for several reasons:

Consistency: Coordinated efforts ensure a consistent approach across Member States' specialised services, the Commission, EMPACT representatives as well as other relevant Union bodies or agencies when needed, reducing loopholes that criminal networks may exploit;

Inclusion and engagement: The description of the actors and their role ensures that all relevant actors are at the table, to overcome challenges of inter-agency cooperation, and their full buy-in.

Efficiency: By pooling expertise and sharing of information and intelligence, Member States can optimize their efforts and resources, making them more efficient in preventing, detecting, investigating and prosecuting smuggling activities;

Safety of the victims: Coordinated efforts in terms of collecting more intelligence and real time information can also ensure safety of the vulnerable smuggled migrants who are at risk of exploitation, abuse, or even death during their journey.

Establishing the European Centre Against Migrant Smuggling in a legal proposal, and setting clearly its tasks and composition, will significantly contribute to fighting migrant smuggling and trafficking of human beings more consistently and efficiently at EU level than at national level.

Reinforcing Europol's operational support through deployments and Operational Task Forces

When it comes to the gaps identified as regards Europol's operational support through deployments and Operational Task Forces (i.e., the lack of information passed on to Europol), there is a lack of a minimum set of rules to ensure effective cooperation, notably information exchange, from the side of the Member States that receive such operational support from Europol. In the current absence of such rules, it is not ensured that the support provided by Europol and other Member States through deployments and Operational Tasks Forces are used to best effect and bring the necessary EU added value that is required from such use of the scarce resources at Europol. Consequently, there is a clear need to provide a legal framework for Europol's operational support through deployments and Operational Task Forces with a clear set of requirements to ensure that the host Member State effectively shares information with Europol and engages Europol and other participating Member States in the operational work, while fully respecting the sovereign prerogative of the Member States to request Europol's support, as provided for in the Commission proposal.[90] Such a legal framework for Europol's operational support through deployments and Operational Task Forces will also contribute to the legal certainty and sustainability of these support tools. In the same vein, the EDPS recommended in its Opinion on

[90] See Article 9(3) of the Commission proposal (COM(2023) 754 final).Article 9(3).

the Commission Proposal[91] to clearly define the allocation of responsibility as regards the processing of personal data, in accordance with the relevant provisions of Europol Regulation, the EU Data Protection Regulation (DPR)[92] and the Law Enforcement Directive, in cases when Europol provides operational support to Member States through deployments and Operational Task Forces.

Sharing information from third countries through Immigration Liaison Officers

The ILOs that Member States deploy in third countries constitute a source of information relevant for the prevention and combat of migrant smuggling and trafficking in human beings; however, this source is not used to its full potential. Indeed, the level of information sharing stemming from ILOs to other Member States or notably to Europol is limited, leaving considerable room for improvement. In fact, today Europol does not receive any information from these liaison officers deployed in third countries. To close this gap, there is a clear need to mobilise this significant asset at the disposal of Member States and ensure that ILOs posted in third countries are enabled and obliged to provide relevant information to the Agency and be connected to SIENA, as provided for in the Commission proposal.[93]This engagement of the ILOs would provide Europol with crucial information from third countries which is currently unavailable, enhance the intelligence picture and allow Europol and the Member States to further involve third countries in countering migrant smuggling, where appropriate.

Enabling Europol to process biometric data effectively

The gaps on biometric data processing by Europol identified in section 2.2. refer to the insufficient capabilities of the Agency, notably on the lack of the essential resources to effectively process biometric data. There is a need to give Europol a clear task to support Member States with the effective and efficient processing of biometric data, as provided for in the Commission proposal.[94] This will also unlock the resources needed (i.e., staff, hardware, software) to improve the biometric workflows and capabilities and develop functionalities to make the full use of the biometric data and reduce manual work, in accordance with all the data protection safeguards already set out in Europol's legal mandate.

At the same time, providing a clear task for Europol to process biometric data paves the way to further reinforce the safeguards in relation to the use of biometric data stored by Europol by specifying the technical arrangements as well as the relevant European or international standards

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91 European Data Protection Supervisor. Opinion 4/2024 on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794.

92 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), PE/31/2018/REV/1, *OJ L 295, 21.11.2018, p. 39–98.*

93 See Article 8(5) of the Commission proposal (COM(2023) 754 final).

94 See Article 9 of the Commission Proposal (COM(2023) 754 final).

to be used by Member States and Europol for the exchange of biometric data stored by Europol. In the same vein, EDPS in its Opinion on the Commission proposal[95] recommended to establish mechanisms for mitigation of data protection risks stemming from the increased processing of biometric data, including the adoption of clear binding rules (either in the Europol Regulation, or in implementing or delegated acts adopted pursuant to Articles 290 and 291 TFEU) providing for appropriate safeguards, especially with regard to the necessity and proportionality requirements of the processing of biometric data by Europol and the quality of the data.

3.3. Reinforcing Europol's resources and staff

As explained in the legislative financial statement accompanying the Commission proposal, the additional resources will:

(1) strengthen Europol's capacity to provide immediate and operational, including technical, support to the Member States to combat migrant smuggling and trafficking in human beings. In that way, the Member States will make increasing use of Operational Task Forces, Europol deployment for operational support as well as technical, forensic and financial support provided by Europol;

(2) reinforce Europol as the EU criminal information hub on migrant smuggling and trafficking in human beings by further developing the exchange of information between the Member States, Europol, other EU agencies as well as third countries;

(3) reinforce Europol as centre of gravity at EU level for countering migrant smuggling and trafficking in human beings.

From the point of view of costs, the Commission proposal would mainly impact on Member States administrations but not citizens or business.

(1) Reinforcing Europol's operations budget to support Member States' request for operational support

Complex high-profile criminal investigations through OTFs are extremely resource intensive. Europol is supporting the use of the HVT/OTF concept through a dedicated OTF Grant which was introduced in 2020. Since then, more than EUR 8 million has been allocated through the OTF Grant scheme to finance the operating costs of the countries participating in the investigations.

In the same vein and to enhance the flexibility of assistance to Member States within EMPACT, Europol introduced a funding scheme based on two types of grants: (I) High-value grants (HVGs) are awarded following a call for proposals to finance targeted activities as laid down in the Operational Action Plans (OAPs), and (II) low-value grants (LVGs) with an open-ended procedure to provide shorter-term financing for the OAPs activities that are of distinctly operational nature.

[95] European Data Protection Supervisor. Opinion 4/2024 on the Proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794.

Over the past years, EMPACT grants have become extremely popular, and Member States increasingly resorted to them, praising their usefulness to support the fight against organised crime, including on migrant smuggling, trafficking in human beings and other forms of crime related to migrant smuggling such as document fraud.

OTF and EMPACT grants cannot be programmed under the Internal Security Fund (ISF) and have to be attributed to the Member States through Europol due to the fact that they relate to OTF- or EMPACT-targeted operational activities and criminal investigations. In addition, Europol has a specific expertise in OTFs, and in supporting Member States operational activities in the context of EMPACT.

In this context, and as it is expected that the volume of contributions as well as the number of operations and OTFs will increase due to the identified way forward, the legislative financial statement has proposed to increase Europol's budget for operational activities. These additional resources will increase (1) by EUR 1.5 million per year the deployment budget to increase the deployment of Europol staff and guest experts for operational support; (2) by EUR 3 million per year for the OTF grant to support more OTFs; (3) by EUR 2 million per year for the EMPACT grant to support more operational activities. These additional resources could be used for the recruitment of short-term seconded national experts to support Member States' investigations within the framework of the OTFs concerning organised migrant smuggling, and related crimes from Europol Headquarters and in countries of origin, transit, and destination, including both Member States and third countries.

(2) Reinforcing Europol's Information and Communication Technology (ICT) capabilities

The aim is to reinforce Europol as the EU criminal information hub on migrant smuggling. In that way and in line with Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA, Europol will provide effective technical support to Member States to use SIENA as the default channel of communication. Within its mandate and in accordance with the existing safeguards as well as in the context of the EU interoperability framework, Europol will more consistently and exhaustively consult information both held internally or held in external databases, such as large-scale IT systems from the JHA domain. Europol coordination and contribution to Member States' operation will be made more efficient and targeted by making use of the biometric information which are now an essential part of Member States' organised crime investigations.

As explained in the legislative financial statement accompanying the proposal, Europol's budget for relevant technological developments should be increased by EUR 25.1 million over the period 2025-2027. In particular, this reinforcement would improve Europol's capabilities to process information, including biometric information, through the development or upgrade of systems.

(3) Reinforcing Europol's human resources dedicated to counter Migrant Smuggling and trafficking in human beings

The aim is to strengthen Europol and its dedicated centre against migrant smuggling and trafficking in human beings as the centre of gravity for EU-level investigative and operational action as well as strategic analysis. This will also enhance cooperation and coordination between the Member States, Europol and other Union agencies, notably via the deployment of permanent Liaison Officers from Frontex and Eurojust to Europol[96].

With more analysts and investigative specialists, Europol will be in position to support an increased number of Operational Task Forces (OTFs) and other investigations on organised migrant smuggling as well as on-site operational support services in countries of origin, transit and destination. As complex investigations against criminal networks involved in migrant smuggling and trafficking in human beings must cover all aspects of the criminal activities, additional resources are required with the following priority profiles: OSINT/social media monitoring specialists to provide open source and social media monitoring, social network analysis as well as to promote the real-time and high-quality processing of the collected online information; forensics, decryption and data specialists to ensure the extraction and processing of large and complex data sets collected from the countries of origin, transit and destination, including both Member States and Third Countries; asset tracing and financial investigation specialists and analysts to provide asset-tracing, financial expertise and related analysis services to support Member States' investigations; strategic analysts and data specialists to support Member States' investigations, strategic and operational prioritisation.

As explained in the legislative financial statement accompanying the proposal, Europol's staff should be increased by 10 Temporary Agents, 20 Contractual agents and 20 Seconded National Experts over the period 2025-2027.

4. Conclusion

This document accompanies the proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and combating such crimes and amending Regulation (EU) 2016/794.

It provides detailed information on the facts and figures that underpin the overall objective of the proposal, namely, ensuring effective information sharing by overcoming related obstacles in the existing legal framework and at operational level, as well as the needed increase in resources and staff to enable Europol to offer effective tools to support Member States in the fight against migrant smuggling. In doing so, this document addresses one of the main deficiencies that hinders effective cooperation in preventing and combating migrant smuggling and trafficking in human beings: the insufficient sharing of information relating to criminal offences on migrant smuggling and trafficking in human beings. This problem relates to all five specific objectives of the Commission

[96] Although the proposal will also affect the human resources of Eurojust, through the posting of a liaison officer and enhanced need for judicial follow-up, the legislative financial statement does not reinforce Eurojust's staff. Eurojust's staff would fall under a different budgetary header and could therefore not be offset via a reduction in Frontex staff.

proposal on (1) strengthening inter-agency cooperation, (2) strengthening the steering and coordination, (3) improving information sharing, (4) reinforcing Member States' resources and (5) reinforcing Europol's support.

First, this analysis outlines the complexity and the peculiarities of the criminal landscape behind migrant smuggling, with (i) criminal networks that smuggle migrants having a global dimension, with ringleaders usually operating outside the EU, which calls for a close and reinforced cooperation with partner countries outside the Union, (ii) criminal networks involved in migrant smuggling that have a complex business model based on a 'polycriminal' nature, which calls for joint efforts to enhancing investigations into the logistical supply chains, initiating systematic investigations into financial flows and criminal infrastructure, focusing on digital tools and services used by criminal networks, enhancing collection and exploitation of travel and customs' intelligence, and (iii) criminal networks that are agile, adjusting their organisations and modus operandi in response to technological development such as end-to-end encryption, and to new law enforcement tactics, which calls on being able to better identify the threats by collecting more intelligence and real time information notably from key locations and transit hubs for migrant smuggling, including in third countries of interest.

Second, this analysis demonstrates that Europol is best placed to provide such support to Member States, which cannot effectively fight this serious and organised crime in isolation. However, the support that Europol is already providing is currently severely hampered by several internal and external factors, which need to be addressed. As regards the internal factors, Europol faces (i) budgetary constraints, (ii) human resources constraints, and (iii) a lack of technological capability to support Member States in exchanging information and in effectively processing biometrics. This does not allow Europol to dedicate enough resources to support the fight against such a highly time and resources consuming serious crime. As regards the external factors, Member States, and other agencies such as Frontex and Eurojust, do not share enough information with Europol, which in turn does not allow the agency to make possible links between the different criminal investigations of Member States, share modus operandi and enrich the intelligence picture of Member States, in order to better identify threats and fight the important crime collectively.

Finally, this analysis clearly demonstrates the pressing need to prevent and combat migrant smuggling effectively, and the limited results achieved through voluntary cooperation due to the gaps and shortcomings identified. It confirms the need to adopt binding rules on the sharing of information related to migrant smuggling. The Commission proposal provides for such binding rules to meet all five specific objectives on (1) strengthening inter-agency cooperation, (2) strengthening the steering and coordination, (3) improving information sharing, (4) reinforcing Member States' resources and (5) reinforcing Europol's support. Consequently, based on the arguments set out in this document, there is an urgent need for the co-legislators to make swift progress in the co-decision procedure on the Commission proposal. There is a need to make sure that the legal framework and the accompanying budgetary reinforcement, as provided for the Commission proposal, are turned into a legal and operational reality and hence provide real added

value to the EU support for the prevention and combat of migrant smuggling and trafficking in human beings.