Combatting migrant smuggling into the EU

Main instruments:


This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

| EP committee responsible at time of adoption of the EU legislation: |
| - Committee on Civil Liberties, Justice and Home Affairs (LIBE) |
| Date of adoption of current legislation in plenary: |
| Deadline for transposition of legislation: |
| Planned date for review of legislation: |
| Timeline for new amending legislation: |
| - Annex I of the Commission Work Programme 2015 (CWP 2015) noted that one of the objectives of the 2015 European Agenda on Migration is the fight against irregular migration and smuggling. The European Action Plan against migrant smuggling (2015 - 2020) announced a revision of EU legislation on migrant smuggling by 2016. The evaluation of the relevant EU legislation was already planned as one of the REFIT actions for 2015 (CWP 2015 – Annex III). |

1. Background

In its May 2015 Communication on the European Agenda on Migration, the European Commission set out its broad framework for a migration policy in four areas to 1) reduce incentives for irregular migration, 2) ensure efficient border management, 3) strengthen the common asylum policy and 4) update the policy on legal migration. This briefing will focus on the area of reducing incentives for irregular migration and in particular, on the legislation mentioned above concerning the smuggling of migrants, also known as the ‘facilitators package’.

2 See point 66 of the Annex III. According to the CWP 2015, the results of the evaluation of the relevant legislation were expected in 2015. However, no such results were published in 2015 and are not available at the time of drafting of the current briefing.
3 In this regard see Implementation Appraisal: The EU Blue Card Directive, EPRS, December 2015.
Due to the unprecedented number of arrivals of migrants in 2015, the European Union (EU) and the Member States (MS) alike are facing various challenges which test their migration policies and their ability to cooperate internally, as well as with third countries. The prolongation of the conflict in Syria has increased the number of asylum seekers and led to people being smuggled across borders. There are various negative consequences that can stem from migrant smuggling. Those being smuggled often face a risk of serious harm or exploitation. The EU as a whole also faces related challenges, including security and safety concerns as well as socio-economic impacts.

According to Europol, over 90% of the more than one million irregular migrants entering the EU in 2015 used some form of 'facilitation service' which was generally provided by smuggling networks. Often, migrants are forced to work illegally throughout their journey to pay off their debts to the smugglers.

Migrant smuggling is not identical to human trafficking. Although, the concepts are relatively close and often interconnected as, for instance, a smuggled person can become a trafficked person. According to the European Commission, smuggling needs to include initial consent from the migrant to enter a country illegally and a cross-border element. There can be exploitation of the smuggled migrant, but it is not a given as with trafficking.

**TERMINOLOGY**

**Smuggling of migrants (facilitation of irregular migration)** – 'intentionally assisting a person who is not a national of a MS to enter, or transit across, the territory of a MS in breach of the laws of the State concerned on the entry or transit of aliens' or 'intentionally assisting a person who is not a national of a MS, for financial gain, to reside within the territory of a MS in breach of the laws of the State concerned on the residence of aliens' (Article 1(1) Council Directive 2002/90).

**Human trafficking** – 'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' (Article 2(1) Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims).

**TRAFFICKING OF HUMAN BEINGS**
- Directive 2011/36
- Breach of EU Charter of Fundamental Rights
- Purpose of exploitation
- Sexual and labour exploitation or the removal of organs
- May include a cross-border element
- Lack of consent

**SMUGGLING OF MIGRANTS**
- Crime against the state
- Purpose of financial benefit
- Illegal entry into another country
- Always requires a cross-border element
- Includes consent, at least in initial phase

**1.1. Recent EU actions**

In April 2015 the European Council stressed the need for the EU to mobilise its efforts to prevent further loss of life at sea and to tackle the root causes of the human emergency by strengthening the EU's presence in the Mediterranean and by cooperating with the countries of origin and transit. As a follow-up to the European Council meeting and based on Council Decision 2015/778 in 2015, the EU launched a European Union Military operation in the Southern Central Mediterranean – EUNAVFOR MED. The operation was to undertake systematic

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*Europol, study: Migrant smuggling in the EU, February 2016.

5 Smuggling has to involve consent, at least in the initial phase, from the smuggled migrant.

6 While human trafficking does not need a cross-border element, i.e. a person can also be trafficked internally within one country, smuggling of migrants requires an irregular (illegal) crossing of international borders.
efforts to identify, capture and dispose of vessels, as well as enabling confiscation of assets used or suspected of
being used by migrant smugglers or traffickers. Apart from this operation, various European agencies, namely
Europol and Frontex, actively take part in the fight against smuggling. For instance, in March 2015 Europol
launched operation JOT (Joint Operational Team) Mare, which focused on combating the organised crime
groups involved in migrant smuggling by boat across the Mediterranean and further into the EU. In February
2016, the JOT Mare operation was integrated into the new European Migrant Smuggling Centre. Frontex also
launched various operations linked to combating migrant smuggling, for instance, Lynx (2008) – an operation to
decrease migrant smuggling via the eastern border; Poseidon (2010) – an operation tackling smuggling in the
Mediterranean; and Triton (2014) – an operation fighting people smuggling in the Mediterranean.

The European Commission is tackling smuggling through various policies. The Communication on the
European Agenda on Security, published in April 2015, covered terrorism, cybercrime and organised cross-
border crime including smuggling. The European Agenda on Migration listed saving lives at sea and tackling
criminal smuggling networks as key short-term priorities, while cooperation between enforcement agencies and
with non-EU countries, as well as addressing the root causes of migration, were seen as important long-term
goals. The European Action Plan against Migrant Smuggling set out these commitments in more detail,
including revising smuggling legislation, destroying smuggler vessels and stepping up the seizure and recovery
of criminal assets. Other actions included strengthening the JOT MARE operation, developing guidance on migrant
smuggling and strengthening bilateral and regional cooperation frameworks and financial support for non-EU
countries to tackle smuggling in their territories.

1.2. Migratory routes

Smuggling hotspots can generally be found in big cities along migration routes. These hotspots can also be found
within the EU, at transport hubs in Europe’s main cities. In terms of the profile of smugglers and their networks,
these vary, but according to Europol the most common countries for suspects were Bulgaria, Egypt, Hungary,
Iraq, Kosovo, Pakistan, Poland, Romania, Serbia, Syria, Tunisia and Turkey. Again according to Europol, 44% of
these networks consisted of non-EU nationals, 30% of EU nationals only, and 26% were mixed, including non-EU
and EU nationals. The networks often varied in size, with many of those involved working for more than one
network. Many networks also recruited actively for drivers and other lower level jobs on social media. In fact,
social media were additionally used to keep track of how the situations were developing on various migrant
routes and on law enforcement activities. While smaller networks usually offered a ‘pay per each facilitation
service along the way’, large international networks generally offered ‘complete packages’ from the country of
origin to the country of destination. Networks often rely on ethnic and national ties with diaspora communities
in the EU.

At present, smuggling is a low-risk undertaking which generates high profits. Europol estimates that in 2015,
criminal organisations involved in migrant smuggling had a €3 to 6 billion turnover. More exact figures are
supplied by the Frontex Operation Triton, which intercepted a cargo ship with 360 migrants on board and
estimated that the smugglers would have earned €2.5 million from this operation alone. In terms of smuggling
inside the EU, a recent European Economic and Social Committee fact-finding mission reported that smugglers
charged €3 000 to get migrants through Bulgaria and around €1 000 to get them through Greece.

Notes:
7 Factsheet on EUNAVFOR MED Mission, EEAS, February 2016.
11 Europol, study: Migrant smuggling in the EU, February 2016.
12 This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo
declaration of independence.
14 EESC fact-finding missions on the situation of refugees, as seen by civil society organisations, Mission report to Bulgaria, January
2016.
As noted in Figure 1, there are various migratory routes into Europe. The data show the general increase in migration across all routes, but in particular on the Eastern Mediterranean route. In 2015, for example, the use of this migratory route was 17 times higher than in 2014. However, it is important to note that the individual migratory routes are used for different reasons and that trends change constantly, as evidenced in Figure 1 which shows the Central Mediterranean route as by far the most common in 2013 and 2014.

In its analysis of the Eastern Mediterranean route, Frontex noted that people smuggling has become an important industry in Turkey, with networks active around Istanbul, Izmir, Edirne and Ankara. The vast majority of migrants on this route arrived in the EU at one of the Greek islands in the Aegean. The nationalities of facilitators vary, though they frequently mirror the nationality of their customers. The Central Mediterranean route is used by smuggler networks established in Libya, from where they cross the Mediterranean Sea. The sea is usually crossed in old, often unseaworthy fishing boats or small rubber dinghies, usually with insufficient fuel and without proper navigation systems. In 2015 there were various fatal accidents resulting in considerable loss of life. The destination on this particular route is usually Malta or Italy (Lampedusa or Sicily). The Western African route is, according to Frontex, one of the least developed migration/smuggling routes. It runs from Northern/Western Africa to the Canary Islands. Frontex noted that on the Western Mediterranean route sea passages are more often done on an individual basis and less as part of organised networks. Smuggling of migrants is not a priority on this route, as drug smuggling is easier and more lucrative. Although the Western

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Figure 1 – Migratory routes in Europe and irregular crossings of borders (map and data)

<table>
<thead>
<tr>
<th>Migratory routes</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Mediterranean route</td>
<td>40 000</td>
<td>170 760</td>
<td>153 964</td>
</tr>
<tr>
<td>Western Mediterranean route</td>
<td>6 800</td>
<td>7 840</td>
<td>7 164</td>
</tr>
<tr>
<td>Eastern Mediterranean route</td>
<td>24 800</td>
<td>50 830</td>
<td>885 386</td>
</tr>
<tr>
<td>Western Balkan route</td>
<td>19 950</td>
<td>43 360</td>
<td>764 038</td>
</tr>
<tr>
<td>Eastern Borders route</td>
<td>1 316</td>
<td>1 270</td>
<td>1 920</td>
</tr>
<tr>
<td>Western African route</td>
<td>250</td>
<td>275</td>
<td>874</td>
</tr>
<tr>
<td>Circular route (Albania – Greece)</td>
<td>8 700</td>
<td>8 840</td>
<td>8 932</td>
</tr>
</tbody>
</table>

Source: Various Frontex publications and information on its website (accessed on 15 March 2016)15

15 Note that the colours of the arrow in the map correspond to migratory routes with the same colour.
**Balkan route** is one of the main migrant routes into the EU today, Frontex points out that, apart from migrant smuggling, this route is also increasingly used for smuggling stolen vehicles, drugs and weapons.

It should be noted, however, that given the nature of irregular entry, figures can only be estimates. In some cases, not all entrants will have been detected, while in others, double counting may occur, i.e. 'a large number of the people who were counted when they arrived in Greece were again reported when entering the EU for the second time through Hungary or Croatia'.

Given the high number of migrants attempting to reach Europe, the death toll has also risen to over 3 770 migrants lost at sea in 2015. In fact, the Mediterranean generally has the deadliest borders in the world with the International Organization for Migration (IOM) estimating that in 2014, 75% of all border-related fatalities worldwide occurred there. An IOM study estimates that between 2000 and 2014, 22 400 people died trying to reach Europe via the Mediterranean.

![Figure 2 – Number of migrant deaths in the Mediterranean 2014-2015](source: International Organization for Migration (Missing Migrant Project))

### 1.3. EU legislation

Current European legislation includes two main legal documents relating to migrant smuggling, namely Council Directive 2002/90 establishing a common definition of the offence of facilitation of unauthorised entry, transit and residence, and Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. These two documents create what is known as the 'facilitators package'.

- **Council Directive 2002/90** defining the facilitation of unauthorised entry, transit and residence

  This Directive presents one of the measures to combat aiding illegal immigration. Its purpose is 'to provide a definition of the facilitation of illegal immigration and to allow effective implementation of Framework Decision 2002/946/JHA'. The Directive requires that every MS adopt appropriate sanctions on all persons who intentionally assist non-nationals of the MS to enter, transit through or reside in the territory of the MS. The MS must sanction every incidence of instigation, participation and attempt to aid illegal migration. The Directive does not provide a list of specific sanctions, but only generally requires that the MS adopt, with regard to this

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16 Disclaimer, Frontex News October 2015.
17 Ibid.
19 Denmark has not taken part in the adoption of this Directive and is not bound by it or subject to its application.
behaviour, their own effective, proportionate and dissuasive sanctions. There is an exception from a general requirement to sanction all the persons assisting the migrants, known as the 'humanitarian clause', included in Article 1(2) of the Directive. According to this exception, the MS may decide not to impose these sanctions in cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned, for example, emergency shelter. This provision thus allows the MS to 'decriminalise' the humanitarian actions of NGOs or individuals. However, this exception clause applies only to facilitation of illegal entry and illegal transit, not to the facilitation of residence.

**- Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence**

The decision is intended to strengthen the penal framework for preventing the facilitation of illegal immigration. It requires that the MS take measures that would punish the conduct defined by Directive 2002/90 with effective, proportionate and dissuasive criminal penalties which may entail extradition. The criminal penalties can be accompanied by confiscation of the means of transport used to commit the offence, which is a prohibition on practising the occupational activity in the exercise of which the offence was committed, and deportation. Acts committed for financial gain should be punished by custodial services. Additionally, legal entities can be held responsible for this conduct. Table 1 shows Member States' different approaches to dealing with irregular entry and stay.

**Table 1 – Type of punishment for irregular entry/irregular stay in EU (2014)\(^{21}\)**

<table>
<thead>
<tr>
<th></th>
<th>No punishment</th>
<th>Fine</th>
<th>Imprisonment and/or fine</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Irregular entry</strong></td>
<td>ES, PT, MT</td>
<td>IT, SI, HU, SK, CZ, PL, NL</td>
<td>IE, UK, FR, BE, LU, DE, DK, SE, FI, EE, LT, LV, BG, RO, GR, CY, HR, AT</td>
</tr>
<tr>
<td><strong>Irregular stay</strong></td>
<td>PT, FR, MT</td>
<td>ES, IT, SI, HU, SK, CZ, PL, SE, FI, LV, LT, BG, GR, RO</td>
<td>IE, UK, BE, NL, LU, DE, DK, EE, HR, CY, AT</td>
</tr>
<tr>
<td><strong>Facilitation of irregular entry</strong></td>
<td></td>
<td>SI</td>
<td>AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, GR, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SK, ES, SE, UK</td>
</tr>
<tr>
<td><strong>Facilitation of irregular stay</strong></td>
<td>IE</td>
<td>BG, EE, LV, LT, RO, SI, ES</td>
<td>AT, BE, HR, CY, CZ, DK, FI, FR, DE, GR, HU, IT, LU, MT, NL, PL, PT, SK, SE, UK</td>
</tr>
</tbody>
</table>

Source: 'Criminalisation of migrants in an irregular situation and of persons engaging with them', *EU Agency for Fundamental Rights, March 2014.*

\(^{21}\) This table reflects the situation in 2014. Several MS have changed their legislation in reaction to the 2015 influx of migrants, for example, Hungary, where irregular crossing of the national border is now punished by more severe penalties. These most recent changes are not reflected in the table.
As can be seen in Table 2, most MS do not decriminalise humanitarian assistance to smuggled migrants.

Table 2 – Humanitarian assistance and its punishment in the EU (2014)

<table>
<thead>
<tr>
<th>Humanitarian assistance (at least partially) excluded from punishment</th>
<th>Legislation requires profit to punish the facilitation</th>
<th>Legislation does not require profit to punish the facilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Irregular entry</strong></td>
<td>IE, UK, BE, ES, AT, GR, LT, FI</td>
<td>IE, PT, DE, LU</td>
</tr>
<tr>
<td><strong>Irregular stay</strong></td>
<td>UK, FR, BE, DE, AT, IT, FI, MT</td>
<td>IE, PT, ES, LU, NL, HU, SK, CZ, PL, SE, BG, CY, DE, AT, IT</td>
</tr>
</tbody>
</table>

Source: ‘Criminalisation of migrants in an irregular situation and of persons engaging with them’, EU Agency for Fundamental Rights, March 2014

**UN Protocol Against the Smuggling of Migrants by Land, Sea and Air**

Although this protocol was adopted by the UN, the Protocol was approved on behalf of the EU by Council Decision 2006/616 and by Council Decision 2006/617. The signatories of the Protocol are obliged to consider certain acts as criminal offences when they are committed intentionally in order to obtain a financial or material benefit. These acts include migrant smuggling, producing fraudulent travel or identity documents, or enabling migrants to remain in a country without complying with the necessary requirements. Endangering migrants’ lives or treating them inhumanely are considered aggravating circumstances. Countries should not prosecute migrants but only those facilitating their entry or stay. The protocol also sets measures against smuggling migrants by sea, land and air. It presumes international cooperation between the parties to the protocol in order to deny entry to persons implicated in migrant smuggling. Furthermore, the parties to the protocol also agree to facilitate the return of their citizens and persons who have the right of permanent residence in their territory who have been the object of smuggling.

**2. EU-level reports, evaluations and studies**


The study assesses the implementation of the EU ‘facilitators package’ in selected MS (Spain, UK, Greece, Italy, Germany, France and the Netherlands). Evaluating this package against the international rules, it found various inconsistencies such as, differences in terminology or lack of aggravating or facilitating circumstances. The study concludes that the MS have a wide margin of appreciation and that there is an implementation gap in the current EU legislation relating to migrant smuggling. The study reveals that there is a lack of information from the MS on the application of this Directive or of the humanitarian clause. The study provides four recommendations, to:

- reform the current EU legal framework to strengthen its clarity, legal certainty and effectiveness;
- monitor the enforcement of the ‘facilitators' legislation;
- make EU funding for cities and civil society organisations available to address the irregular migrants’ needs, particularly in relation to their human rights; and
- create protection for irregular migrants so that they can report human rights abuses.

- **European Commission Study on smuggling of migrants (September 2015)**

22 This table reflects the situation in 2014. Several MS have changed their legislation in reaction to the 2015 influx of migrants. These most recent changes are not reflected in the table.

23 Study commissioned by the Policy Department for Citizen’s Rights and Constitutional Affairs, DG IPOL, at the request of the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs in 2015.
The study is based on various data, including interviews with stakeholders at international/EU level and case studies (which included interviews with migrants and smugglers). The study explores migrant smuggling from three different perspectives: the market (demand for and supply of migrant smuggling), business (the business nature of migrant smuggling), and social (social bonds affecting the smuggling market).

The market perspective looks at migrants as 'buyers of a service' with smuggling supplied via a network of various agents working together to deliver a service. This market is flexible, new suppliers can easily join, while the buyers 'shop around'. The study also points out that the price depends on the type of service (a journey, a fraudulent document, etc.) and that sub-markets exist for different nationalities, and different budgets. For example, a journey from Libya for a sub-Saharan African national travelling below deck could cost US$1 000 compared to US$2 500 for a Syrian migrant paying for a 'safer' journey. In this context, the study highlights that effective return policies have a deterrent effect. Freedom to communicate is described as one of the most important characteristics in this market. This freedom is facilitated by social media (e.g. Facebook), pre-paid phones and other forms of communication (e.g. WhatsApp or Viber). However, there are no examples of deterring migration through engaging on social media. The research confirmed that there are a range of actors within the migration 'business' performing a variety of roles. It distinguishes between leaders (smugglers), recruiters, guides/drivers, corrupt government officials, corrupt service providers (e.g. train conductors) and enforcers/receivers. The research shows that the business of smuggling is best described as a 'network model' with a network of communication links between smaller groups or facilitators. It also underlines the fact that this 'business' is very complex with the ability to react to changing migration patterns. With regard to the social perspective of migrant smuggling, the study underlines the importance of social networks that can be used in various ways, from raising funds for migrants to facilitating their integration in the destination country. It shows that family and social media are sources of information in the preparation of and during the journey and in the integration process. This aspect should not be neglected in counter-smuggling policies.

**OECD Migration Policy Debates Briefing No 9: Can we put an end to human smuggling? (2015)**

Although the OECD briefing notes that the migratory routes are well established, the precise smuggling routes vary according to the development of border controls, geopolitical context and risks. Nonetheless, it identifies several 'traditional' smuggling routes to Europe:

- **A route from Africa to Europe, crossing the Mediterranean between Libya and Italy.** The briefing highlights a considerable increase in human smuggling and illegal maritime arrivals in Italy on this route after the fall of the Gaddafi regime, from 4 406 in 2010 to 64 261 in 2011. The record on this route was in 2014 with 172 114 illegal crossings.

- **A route from Africa to Europe, crossing the Mediterranean between Morocco and Spain.** The use of this route peaked in 2006. Today, the numbers remain relatively low (around 5 000 per year). However, in the first months of 2015 the use of this route also increased.

- **A route between Turkey and Greece.** With regard to this route the briefing identified 'pay-as-you-go systems' used by the smugglers to reach Greece and then connect to other brokers to organise their trip through the western Balkans or travel independently.

- **Routes from Eastern Europe to the EU** are currently the least prominent.

The briefing describes two main types of smuggling systems (1) full package and (2) pay-as-you-go model. While the first system (1) works almost like a 'travel agent', requires large sums of money and includes many 'services', including provision of falsified documents and procuring of transport, the second system (2) means that the final destination is not predetermined and the speed and direction of the journey depends on the funds available to migrants at each step. Furthermore, the OECD document also notes some means to combat migrant smuggling.

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24 The study was outsourced by the European Commission in 2015 and carried out by Optimity Advisors.
26 OECD Migration Policy Debates Briefing, p. 4.
These, inter alia, include addressing corruption, addressing the root causes and adapting development programmes.

- **OECD Briefing: Corruption and the smuggling of refugees (October 2015)**

This OECD briefing points to a direct link between migrant smuggling and corruption. It also notes that smuggling human beings not only endangers the rights of the migrants but can also lead to security threats, as money gained from smuggling may be used to finance terrorist activities and may allow terrorist groups to physically relocate. The paper points out that corruption can occur throughout the smuggling process, for example, bribes to national or foreign public officials at entry and exit points, bribes to obtain exit from refugee camps, documentation fraud, etc. In many countries, migrant smuggling provides immigration and border protection officials with significant additional income. As an example, the briefing shows that, on average, a potential irregular migrant travelling from Pakistan to the United Kingdom pays up to US$14,000 to smugglers. The briefing ends with several recommendations to the international community including: increase international cooperation; improve cooperation between law enforcement and financial intelligence units; develop awareness raising campaigns; or increase opportunities for facilitating the safe passage of refugees.27

- **UN Office on Drugs and Crime (UNODC) Publications**

The United Nations Office on Drugs and Crime (UNODC) has conducted various studies on smuggling. Its 2011 ‘Smuggling of Migrants: A Global Review and Annotated bibliography of Recent Publications’ offers a broad overview of research available in this area, including on the profile of migrants and smugglers, as well as smuggling networks and fees. However, the report notes various challenges in researching these issues, such as a lack of data and the topic’s sensitivity. Opinions among researchers themselves also vary, particularly in terms of how they perceive the smugglers – criminals or ordinary citizens. In ‘Smuggling of migrants into, through and from North Africa’ (2010), a review of the different types of migrants (North African and Sub-Saharan African nationals) and their relationships with smugglers is provided. The smuggling networks are often very flexible, but there is evidence that additional law enforcement has led networks to become more professional. The report concludes that migrant smuggling is very complex and that the different socio-political realities in North Africa make it difficult to gain a comprehensive overview of smuggling there. ‘The role of organized crime in the smuggling of migrants from West Africa to the European Union’ (2011) provides an overview of smuggling in West Africa, where transnational criminal groups are generally involved in smuggling. Most smugglers are themselves migrants and those being smuggled generally do not see themselves as victims. Both of these latter reports talk about the unintended consequences of more rigorous law enforcement which makes smuggling more profitable and therefore more likely to attract organised crime. A holistic approach to tackle smuggling is therefore needed to stop organised crime. In the 2010 ‘Toolkit to Combat Smuggling of Migrants’ a variety of actions are set out, including tackling migration’s root causes, offering legal alternatives and creating approaches to combat smugglers such as providing temporary visas, and raising awareness among potential smuggled migrants about the risks.

3. **European Parliament position / MEPs' questions**

3.1. **Position of the European Parliament**

Parliament has set out its position on migrant smuggling in various resolutions, urging strong criminal sanctions against smugglers, while ensuring that those helping migrants on humanitarian grounds are not penalised. It has called for more legal options to enter Europe, such as humanitarian visas; arguing that the lack of legal avenues pushes many to turn to smugglers. In its resolution on Migration and Refugees in Europe on 10 September 2015, Parliament explicitly called for the Commission to consider revising Council Directive 2001/51 which penalises carriers taking in third-country nationals. It also stressed that a long-term approach to address the root causes of

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27 The OECD also developed Guiding principles on combatting corruption related to trafficking in persons which are also applicable to the crime of migrant smuggling.
migration is needed, but questions plans to link development aid to additional border controls or third country readmission agreements. In its resolution on the European Security Agenda on 9 July 2015, Parliament reiterated that victims of smuggling should be sufficiently protected, as ensuring their security 'sends a clear message to offenders that society will not succumb to violence and will at all times safeguard victims and their dignity'. In its resolution on 29 April 2015, Parliament called for MS to work with Europol, Frontex, EASO and Eurojust to tackle criminal smuggling and trafficker networks and to intercept their funding sources.

### 3.2. MEPs' Written questions

**Question for written answer by a group of MEPs, July 2015**

MEPs inquired whether the Commission was aware that the current formulation of Directive 2002/90 does not comply with international law, namely the 1982 UN Convention on the Law of the Sea. Furthermore, they asked whether the Commission intended to reword the Directive to bring it into compliance with international law and the EU Charter of Fundamental Rights. MEPs also asked whether the Commission agreed with the opinion of the Fundamental Rights Agency that there is a risk that national legislation on facilitation may lead to punishment of those who provide humanitarian assistance.

**Answer given by Commissioner Dimitris Avramopoulos on behalf of the Commission, September 2015**

The Commission stated that it was preparing an evaluation of EU legislation against facilitation of unauthorised entry, transit and stay (Directive 2002/90 and Framework Decision 2002/946/JHA), and that it does not agree that the Directive raises issues of compliance with international law. The Commission stressed that it intended to improve the existing EU legal framework on tackling migrant smuggling, while seeking to ensure that criminal sanctions in place do not criminalise those who provide humanitarian assistance to migrants in distress. The Commission also explained that the Fundamental Rights Agency will contribute as regards the protection of smuggled migrants.

**Question for written answer by Nadine Morano, MEP, June 2015**

The MEP inquired about the actions of the EU institutions with regard to the destruction of people smugglers’ boats. The MEP pointed to the fact that no information about these actions was available.

**Answer given by Vice-President Federica Mogherini on behalf of the Commission, November 2015**

The Commission is committed to the ongoing UN-led political dialogue in Libya. It also stated that, since October 2015, **Operation Sophia** is able to board, search, seize and divert vessels suspected of being used for human smuggling or trafficking on the high seas, in line with international law. Furthermore, the Commission noted that any other actions require a Libyan invitation and an appropriate UN Council Resolution to be able to operate on Libyan sovereign territory, including in its territorial waters.

**Question for written answer by John Stuart Agnew, MEP, June 2015**

The MEP asked whether, in view of the compound risks to MS’ personnel and equipment and the uncertain legality of the destruction of migrant smugglers’ vessels, the Commission would commit itself to acting only after the issue of an appropriate UN resolution.

**Answer given by Vice-President Federica Mogherini on behalf of the Commission, September 2015**

The Commission explained that the EU’s **EUNAVFOR MED** operation is designed to disrupt the business model of human smuggling and trafficking networks. The operation is conducted in four phases: deployment and assessment (phase 1), boarding, search, seizure and diversion of smugglers’ vessels (phase 2), disruption of smugglers’ assets (phase 3) and completion and withdrawal (phase 4). The Commission noted that the activities undertaken by EUNAVFOR MED will always adhere to and respect international law. Furthermore, according to the Commission, this operation is intended to last for 12 months after it reaches its operational capacity.

### 4. European Economic and Social Committee (EESC) actions

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The EESC undertook a fact-finding mission to 11 EU countries (Austria, Bulgaria, Croatia, Germany, Greece, Hungary, Italy, Malta, Poland, Slovenia and Sweden) during December 2015 and January 2016. The subsequent report made a series of recommendations, from ensuring a common asylum system to developing sustainable long-term integration policies. In the area of smuggling, the report called for legal options for entry to the EU, such as humanitarian visas, as well as consideration of the registration of asylum requests outside the EU, i.e. in Turkey. It also argued that Frontex’s role should be strengthened to allow the agency to take a more proactive role in relation to asylum registrations and border control. The report argued that information campaigns should be launched to stop economic migrants from trying to travel to the EU and to ensure that failed asylum applicants were promptly returned, to counteract misinformation from smugglers about opportunities to remain in Europe. The individual country reports gave insights into some of the main challenges of migration for civil society. For example, the reports included views from stakeholders relating to border security and Frontex’s involvement in border management.

In January 2015, the EESC, together with the European Commission, launched the European Migration Forum. The first meeting discussed the migratory flow in the Mediterranean. A variety of civil society organisations participated and testimonies were also heard from migrants. There was agreement that the current crisis was not new or unknown, as migrants have been arriving (and drowning) in the Mediterranean since the 1990s. The current crisis was not seen as a refugee crisis but as an internal political crisis for the EU, and a lack of solidarity among MS in accepting a ‘fair share’ of refugees. NGOs and local authorities also called for better compliance with current laws and ensuring that fundamental rights were respected on the ground. The meeting made several recommendations, including: a review of all current migrant and asylum-related legislation before any new legislation is put in place; better monitoring of border controls, for example Frontex’s Triton Operation; more legal channels into Europe; and the decriminalisation of humanitarian assistance.

In its opinion of 10 December 2015 on the EU’s Action Plan against migrant smuggling, the EESC stated its support for firm action against smugglers, but also stressed that more details are needed on how the EU will assist and protect those being smuggled. The EESC highlighted the difficulty of entering the EU legally and recommended that the request of the UN Secretary General to increase legal pathways into Europe for migrants be taken into account. The EESC called for more harmonised asylum policies in the EU, and for Member States’ to honour their commitment to assign 0.7% of gross national income to development. Continuous funding for civil society organisations which provide assistance to migrant should also be available, as their support and understanding of the issues migrants face are important and should be recognised.

5. European Commission Public Consultation

Between 13 January 2016 and 6 April 2016, the European Commission carried out a public consultation, seeking views on whether and how the current legislation can be improved. An analysis of responses is not yet available.

29 The second meeting of the European Migration Forum takes place in April 2016. See, the website of the EESC.
6. Conclusions

It is estimated that most of those who are currently entering the EU to seek asylum have had some help from smugglers in facilitating their journeys. Increased human smuggling in particular, when interlinked with criminal networks, poses serious threats to those smuggled as well as to EU Member States.

The available evidence shows that there are considerable differences in how individual Member States tackle and penalise smuggling and that closer cooperation is needed to deal with this issue effectively. The existing discrepancies are partially linked to differences in the implementation of current European legislation, i.e. 'the facilitators package', which reacts to facilitation of the irregular entry, irregular transit and irregular stay of migrants into individual Member States. Furthermore, there are noticeable differences in national legislation with regard to whether providing humanitarian assistance to migrants is penalised or not.

Smuggling is a complex issue and the modus operandi of smugglers is often very flexible and changes frequently. It is therefore important to tackle smuggling from a holistic perspective and also consider what unintended consequences may arise from policies intended to stop smuggling. Parliament has called for such an approach on several occasions. It is to be seen to what extent the European Commission evaluation of the respective European legislation and the potential legislative proposals will react to these challenges.

7. Other sources of information