



C/2024/6024

23.10.2024

**Opinion of the European Economic and Social Committee**

**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 - 2023/0438 (COD))

**Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA**

(COM(2023) 755 final - 2023/0439 (COD))

(C/2024/6024)

Rapporteur: **Florin BERCEA**

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|----------------------------------------------|--------------------------------------------------------------------|
| Advisor                                      | Claudiu CRACIUN (Advisor to the rapporteur, Group I)               |
| Referral                                     | European Commission, 21.6.2024                                     |
| Legal basis                                  | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible                          | Employment, Social Affairs and Citizenship                         |
| Adopted in section                           | 23.5.2024                                                          |
| Adopted at plenary session                   | 10.7.2024                                                          |
| Plenary session No                           | 589                                                                |
| Outcome of vote<br>(for/against/abstentions) | 197/2/0                                                            |

**1. Conclusions and recommendations**

1.1. The legislative proposals put forward by the Commission rightly indicate that the root causes of migration are the emerging and deepening crises, most notably economic recessions, environmental emergencies caused by climate change, conflicts, and demographic pressure in many third countries. This calls for a comprehensive and global approach to dealing with migration and the specific component of this issue under consideration here, migrant smuggling.

1.2. Smuggling and combating smuggling are just part of a complex process involving the root causes of migration in countries of origin, the capacity and willingness of transit countries to limit smuggling and smugglers' ever-evolving strategies. The two legislative proposals and the Global Alliance propose proportional and incremental capacity-building but need more strategic ambition and commitment to deal effectively with the process.

1.3. Combating migrant smuggling needs a new impetus and better coordination at all levels. At the same time, it is essential to open legal migration channels and procedures for those who want to reach the EU safely and legally. These channels will decrease the need for smuggling services and avoid its associated harms and vulnerabilities.

1.4. For the EU asylum system to function effectively, it is crucial to find ways to solve the problems of the systematic use of pushbacks at the EU's external border, as this is banned by the Geneva Convention. The absence of safe and legal pathways to enter the EU leaves refugees and migrants in search of safety, with no other option than to use more dangerous routes that put their lives at risk.

1.5. The Committee reiterates that the EU is a major economic, political and development player. It has the capacity – and it is in its interest – to assist third countries in dealing with the crises that put pressure on their communities and institutions and drive individuals to choose a long, costly, dangerous, and sometimes fatal journey to reach the EU. These third countries are experiencing various crises and pressures on their capacities, and their level of participation in migration cooperation varies significantly. The cooperation is not just technical and administrative. It is also political and needs to be backed up by budgetary commitments, especially in the countries where the smugglers are operating, outside the EU.

1.6. The Committee calls on the Commission to develop a more solid approach beyond the Global Alliance to strengthen third countries' capacities and encourage cooperation with Europol and Member State law enforcement authorities.

1.7. The Committee regrets that the package does not cover the persons using the services of migrant smugglers, even though they are recognised as potential victims. The EU must build into its anti-smuggling strategy a fundamental rights dimension for people who are desperate and vulnerable enough to use the services of smugglers. The policy should be also more geared to groups of people who are even more vulnerable, such as people with disabilities.

1.8. The EESC calls for more transparency in the preparation of the proposals. There was no ex-ante impact assessment report accompanying the proposals. The EESC urges the Commission to carry out an ex-ante impact assessment when the proposals have significant fundamental rights consequences and their implementation can directly affect an individual's life, rights and safety. The Committee requests that the Commission publish the results of the consultations, and that the extensive evidence from civil society and academic research be taken into consideration.

1.9. The Committee welcomes the Directive, but warns that its content could seriously affect the fundamental rights of migrants, and those assisting them on humanitarian grounds. Legal action, administrative and practical obstacles, and police harassment make providing humanitarian assistance more complicated and dangerous, thus causing a 'chilling effect'. The Committee finds that creating and maintaining such a climate of fear around humanitarian, legal or even administrative assistance is a wrong and unacceptable way to combat smuggling.

1.10. Furthermore, humanitarians, family members, and other people providing services to migrants should be excluded from prosecution. Such grounds for prosecution should only be possible when an undue financial benefit is involved.

1.11. The proposed Directive introduces a new criminal ground for 'publicly instigating' third-country nationals to enter, transit or stay irregularly in the EU (Art. 3(2)). The Committee notes with great concern that this can be used against civil society organisations that provide legal information and support to migrants. Thus, the Committee asks for the deletion of the crime of 'public instigation' of irregular entry, stay and transit (Art. 3(2) and in recital 25). The Committee also asks for safeguards against using new investigative methods against migrants' rights defenders and lawyers.

1.12. In establishing the strategic and operational tasks of the European Centre Against Migrant Smuggling in the proposed Regulation, more attention should be given to protecting the fundamental rights of migrants. This responsibility should be embedded in the Centre's management, ensuring that staff is informed and aware of the fundamental rights aspects of their work.

1.13. Despite having a multilateral legal base to fight smuggling, the proposed Global Alliance and the two legislative proposals need to offer clear incentives for law-enforcement cooperation by third countries of origin and transit. This is one of the major weaknesses of the EU's renewed drive to make anti-smuggling measures effective.

## 2. General comments

2.1. The proposals are being put forward in a worrying context, outlined by the Commission. In 2022, around 331 000 irregular entries were detected at the EU's external borders, the highest number since 2016 and a 66 % increase on 2021. In 2023, in the first nine months of the year approximately 281 000 irregular border crossings were detected at the EU's external borders, which was an 18 % increase on the same period in 2022. This coincides with increased smuggling activities, with a record 15 000 or more migrant smugglers reported to the European Border and Coast Guard Agency (Frontex) in 2022. It is estimated that more than 90 % of the irregular migrants who reach the EU make use of the services of smugglers, and that activities of smugglers, especially at sea, have resulted in a death toll of over 28 000 people since 2014.

2.2. A fundamental challenge for an effective anti-smuggling strategy is that most activities occur outside EU territory, including in international waters. This challenge is not adequately addressed in the anti-smuggling package. The focus on strengthening Europol, including its work with Member States, is welcomed and necessary.

2.3. The Committee restates its support for a 'whole-of-route' approach, already put forward by the Commission, which means strengthening the proposed measures against smuggling networks by improving judicial and police cooperation; improving cooperation and dialogue with neighbouring countries in the fight against smuggling networks; strengthening actions to prevent exploitation and ensure the protection of smuggled persons; and combatting irregular employment and labour exploitation in a more coordinated and forceful manner<sup>(1)</sup>. These measures could also prevent rights violations at the EU's external border by ensuring that EU anti-smuggling policy is implemented in line with the Charter of Fundamental Rights of the EU, international law, as well as the EU's legal obligations concerning asylum and migration.

2.4. The fundamental rights safeguards mentioned in the proposals should be expanded outside the narrow concern over the protection of personal data and respect for private life, to include the rights of those being assisted by smugglers. Focusing on identifying and prosecuting smugglers should not lead to abandoning people in a situation of vulnerability and risk.

2.5. The Committee considers that the two legislative proposals should include safeguards against the criminalisation of solidarity. As pointed out in its previous opinion, those who are protecting people and providing medical care and humanitarian aid should not be criminalised or treated in the same manner as smuggling networks, and should only be prosecuted when the act of smuggling is committed intentionally and to obtain, directly or indirectly, a financial or other material benefit<sup>(2)</sup>.

2.6. The Committee notes with great concern that the current proposal for the Directive does not create satisfactory safeguards against the criminalisation of solidarity. The Committee suggests removing 'directly or indirectly' from Article 3(1)(a), as this can lead to the criminalisation of mutual aid, landlords, taxi drivers, and the provision of other services to undocumented people.

2.7. Moreover, in the new Article 3(1)(b), Member States are obliged to criminalise the facilitation of irregular entry or stay when there is a high risk of causing serious harm, even when the person has not received, requested or accepted any financial or material benefit. Article 3(1)(b) should be deleted, and 'causing serious harm' should be moved to the list of aggravating circumstances in Article 4.

2.8. The Committee reiterates its position that the instrumentalisation of migrants by third countries, especially those bordering the EU such as Belarus, is a hybrid threat and completely unacceptable. It would also make the point that all actions designed to prevent this hybrid threat must ensure that humanitarian assistance is offered to migrants under EU law, primarily to support vulnerable individuals. Humanitarian organisations should be able to provide aid in the affected areas, and not be criminalised for their acts of solidarity<sup>(3)</sup>.

2.9. In its call for a Global Alliance, the EU invites third countries, among others, to develop and reinforce national legal frameworks and capacities; enhance border management; develop information and awareness-raising campaigns; dedicate adequate and targeted resources; improve the collection and sharing of data; promote joint law enforcement investigations and operational cooperation; enhance cooperation between judicial authorities; cooperate on financial investigations, asset confiscation and recovery; and ensure the protection of migrants' rights and assistance.

Apart from indicating the countering of migrant smuggling as an integral part of EU migration partnerships, and organising high-level conferences and expert groups, the call does not advance any specific instruments, programmes and commitments to achieve the desired cooperation.

<sup>(1)</sup> Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A renewed EU action plan against migrant smuggling (2021-2025) (COM(2021) 591 final) (OJ C 290, 29.7.2022, p. 90).

<sup>(2)</sup> Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A renewed EU action plan against migrant smuggling (2021-2025) (OJ C 290, 29.7.2022, p. 90) and Article 6 of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>(3)</sup> Opinion of the European Economic and Social Committee on 'Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Responding to state-sponsored instrumentalisation of migrants at the EU external border' (OJ C 365, 23.9.2022, p. 60).

2.10. The Committee welcomes the establishment of the European Centre Against Migrant Smuggling within Europol and a governance framework to regulate and support its activities as a focal point to support Member States in the prevention and combating of migrant smuggling and trafficking of human beings.

2.11. The Committee welcomes the proposal in the Directive to define the aggravated criminal offences (e.g. offence committed as part of an organised criminal group, causing serious harm or endangering life or health, causing death) to which there are corresponding higher levels of criminal penalties.

2.12. The Committee draws attention to the detrimental effects of the fight against smuggling on various economic sectors such as the road transport industry. For example, truck drivers, many of them being migrants themselves, could be disproportionately affected by the policy to combat smuggling. Additional work should be done to protect drivers and transport businesses.

2.13. A necessary step forward is the improvement of jurisdictional reach. The expansion in the proposed Directive of the jurisdiction of the Member States to cases in which the facilitation of unauthorised entry into the EU fails and third-country nationals lose their lives is welcomed. The proposal refers to cases in which unseaworthy boats sink in international waters before reaching the territorial waters of a Member State or a third country. In these cases and others, the expansion is justified.

Brussels, 10 July 2024.

*The President*  
*of the European Economic and Social Committee*  
Oliver RÖPKE

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