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**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)**

## Introduction

Providing a strong European response to migrant smuggling inside and outside the EU is an essential part of the comprehensive approach to migration, set out in the New Pact on Migration and Asylum<sup>1</sup>. Migrant smuggling is a cross-border criminal activity that puts the lives of migrants at risk, showing disrespect for human life and dignity in the pursuit of profit, and undermines the migration management objectives of the EU and the fundamental rights of the people concerned.

While progress has been achieved at EU level with the necessary structures in place such as the establishment of Europol's European Migrant Smuggling Centre and strengthening operational cooperation between EU Member States' law enforcement agencies, relevant EU Agencies and partner countries, resulting in the dismantling some of the criminal networks, migrant smuggling remains a serious challenge that needs to be continuously, concerted and collectively tackled further.

The European Council, in its conclusions of 24-25 June 2021<sup>2</sup>, reaffirmed the importance of the fight against smugglers, raised serious concerns on the developments on some migratory routes requiring urgent action and called for a whole-of-route approach to tackle them, including by eradicating migrant smuggling and trafficking in human beings. Furthermore, following the European Council conclusions of 24-25 May 2021<sup>3</sup>, and in response to the increasing role of State actors in facilitating irregular migration and using human beings to create pressure at the EU's external borders, the EU and its Member States have expressed their strong determination, and have acted jointly, to respond to these threats and effectively protect the EU's external borders against the instrumentalisation of migration for political purposes.

Stepping up the response to migrant smuggling is a common challenge for the EU, its Member States and partner countries alike. It requires a whole-of-route approach which combines international cooperation and coordination with our partners and between the Member States to break the business model of smugglers.

Working with partner countries to reduce the incentives to embark on dangerous journeys entails supporting them on the whole range of migration-related aspects, providing protection to those in need, addressing the root causes of irregular migration, creating job opportunities and promoting decent work, promoting legal migration and safe legal pathways to Europe, as well as strengthening their border and migration management capacities. The effective return and sustainable reintegration of those without a legal right to stay in the EU also contributes to reducing the incentives for irregular migration and provides the opportunity for a new start to people who return to their countries of origin<sup>4</sup>. The possibility for irregular migrants to find a job in the informal economy is one of the key drivers of irregular migration. The effective implementation of the Employers Sanctions Directive<sup>5</sup> is important to deter irregular

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<sup>1</sup> COM(2020)609 final.

<sup>2</sup> European Council meeting (24 and 25 June 2021) – Conclusions, Council document EUCO 7/21 of 25 June 2021.

<sup>3</sup> Special meeting of the European Council (24 and 25 May 2021) – Conclusions, Council document EUCO 5/21 of 25 May 2021.

<sup>4</sup> COM(2021)120 final.

<sup>5</sup> Directive 2009/52/EC (OJ L 168, 30.6.2009, p. 24).

migration and to protect the rights of irregular migrant workers. The Commission is presenting, together with this renewed EU action plan, its assessment of the state of implementation, accompanied by a set of measures needed in order to reinforce its effectiveness, focusing on sanctions against employers, measures to protect the rights of irregular migrants and inspections<sup>6</sup>.

The renewed EU action plan against migrant smuggling (2021-2025) – which takes account of the results of targeted stakeholder consultations, as well as a public consultation<sup>7</sup> – sets out the key pillars and concrete actions needed to counter and prevent smuggling, and to ensure that the fundamental rights of migrants are fully protected. It builds on and promotes the continued implementation and renewal of the successful actions launched under the EU action plan 2015-2020<sup>8</sup>. At the same time, the EU needs to strengthen its response to the new and evolving reality and practices that are emerging along the migratory routes, in cooperation with countries of origin and transit, in a spirit of partnership and mutual responsibility.

The renewed EU action plan contributes to the implementation of the New Pact on Migration and Asylum (the New Pact), by aiming to prevent loss of life, reduce unsafe and irregular migration and facilitate orderly migration management and the establishment of a sustainable EU migration and asylum policy. By contributing to the disruption of criminal businesses, it also supports the objectives of the EU Security Union Strategy<sup>9</sup>, as well as the EU Strategies to tackle Organised Crime 2021-2025<sup>10</sup> and on Combating Trafficking in Human Beings 2021-2025 that will be implemented in full synergy<sup>11</sup>.

## 1. The migrant smuggling situation

According to the European Union Agency for Law Enforcement Cooperation (Europol), **more than 90% of the irregular migrants that reach the EU make use of smugglers**, either during parts or all of their journey. Two thirds of them do not meet the criteria for being granted international protection and will eventually need to be returned. Restrictive measures in the context of the COVID-19 pandemic made migrant smuggling more complex, leading to an increased involvement of criminal networks, higher prices and ultimately higher profits. In the first half of 2021, the illegal border crossings increased by 59% as compared to the same period in 2020. It is clear that migrant smugglers adapted quickly to new circumstances: after an initial slow-down during March and April 2020, activities quickly resumed<sup>12</sup>.

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<sup>6</sup> COM(2021)592 final.

<sup>7</sup> A public consultation was conducted from 19 March 2021 to 11 June 2021.

<sup>8</sup> COM(2015)285 final.

<sup>9</sup> COM(2020)605 final.

<sup>10</sup> COM(2021)170 final.

<sup>11</sup> COM(2021)171 final. The main difference between migrant smuggling and trafficking in human beings is that in the former migrants willingly engage in the irregular process by paying for the services of a smuggler to cross an international border; in the latter, people are trafficked for exploitation purposes, they are victims in need of assistance and support, and activities are not necessarily cross-border. The two phenomena are often linked as smuggled persons can become victims of traffickers for labour, sexual or other exploitation purposes. This is why the renewed EU action plan contributes to both disrupting traffickers' business and to fighting smuggling networks.

<sup>12</sup> European Migrant Smuggling Centre, 5<sup>th</sup> Annual Report – 2021 (Europol, 2021).

### *Criminal smuggling networks – how they operate*

Smugglers put **people's lives at risk, offering false perspectives and causing serious harm to migrants**. The fundamental rights of migrants are often gravely violated and migrants are often unable to seek help due to their irregular status. Migrants – particularly those in vulnerable situations such as children and unaccompanied minors – are exposed to violence, extortion, exploitation, rape, abuse, theft, kidnapping and even homicide<sup>13</sup>. According to the International Organization for Migration, since 2014, over 20 000 migrants have died while attempting to cross the Mediterranean Sea, of which 1 369 in 2021.

Migrant smuggling is a key activity for criminal networks **sustained by continued demand**. This demand is expected to continue, fuelled by several drivers: demographic growth with the accompanying socio-economic difficulties and lack of job opportunities, discrimination, instability, conflicts, environmental degradation and climate change, the perception of the EU as an economically, politically, socially and environmentally more stable region; disinformation and the false narrative of smugglers, attracting migrants to embark on perilous journeys with promises that do not match reality. In addition, in the medium and long-term, the sanitary, economic, social and political consequences of the pandemic may incentivise irregular migration towards Europe, thereby sustaining the demand for smuggling services. In the past, countries particularly affected by prolonged unemployment have become countries of origin, both for migrant smuggling and trafficking in human beings to more affluent countries<sup>14</sup>. Moreover, weakening economic conditions in the EU may increase the demand for cheap labour on the black market, which is more likely to attract irregular migrants and lead to labour exploitation, including forced labour.

Smuggling networks are able **to rapidly adapt their offer of illicit services**. They function in different ways, depending on the geographical locations and context in which they operate. They offer various services, including different transport modes, safe houses along the route and fraudulent travel documents. For air transport, document fraud for identity cards and visas plays a key role, whereas by land, concealment in vehicles or even walking across borders is part of the journey.

Smugglers make use of various payment systems, ranging from online methods to underground banking systems, where money is deposited and collected upon delivery of the agreed service. **Digital smuggling** is a new challenge to law enforcement and judicial authorities as smugglers increasingly 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.

It is estimated that smuggling networks make **substantial profits** from their criminal activities, ranging between EUR 4.7 – 6 billion worldwide annually<sup>15</sup>. While prices of smuggling services appear to vary according to the routes and the facilitation services

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<sup>13</sup> Global study on smuggling of migrants (United Nations Office on Drugs and Crime, 2018).

<sup>14</sup> United Nations Office on Drugs and Crime (UNODC), Research Brief 'How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America' (UNODC, 14 May 2020).

<sup>15</sup> Global study on smuggling of migrants (United Nations Office on Drugs and Crime, 2018).

provided, investigations of migrant smuggling cases have shown that prices of smuggling services can generally reach EUR 20 000 per individual.

The profile, organisation and activities of smugglers and smuggling networks, as well as the level of illicit services provided, differ significantly according to socio-economic, political and cultural contexts in partner countries. Migrant smuggling as an illicit economic activity supports a **much wider range of activities** in the countries of origin, transit and destination, from shop owners selling life jackets or travel supplies, to vehicle rentals, to owners of vessels and hotels in certain transport hubs, to money transfer shops. Smuggling networks often depend on established links within the community, through which smugglers' services are recommended to other potential migrants and payments are ensured<sup>16</sup>.

**Organised crime** structures capable of carrying out sophisticated operations that cover the full range of migrant smuggling services along the entire route constitute a high risk to Europe's security, in particular the individuals in the higher echelons of these criminal organisations. Approximately 50% of the networks involved in migrant smuggling are **poly-criminal**, involved also in trafficking in human beings, drug trafficking, excise fraud, firearms trafficking and money laundering<sup>17</sup>. Criminal networks increasingly organise sham marriages as part of sophisticated fraud schemes, generating profits by luring mainly women in vulnerable positions into an activity that appears to earn them 'easy money' but instead traps them in a web of exploitation and abuse<sup>18</sup>.

In some cases these networks have links with violent criminal organisations and/or armed groups, such as in some areas of the Sahel, paying for the safe transit across sections of territory under their control. In other cases, such as in Libya, local militias appear increasingly involved in smuggling activities.

### *Developments in irregular migration flows*

While the routes can change rapidly in response to increased border measures and controls, law enforcement activities or security risks, the smuggling hubs where the demand and supply of smuggling services meet, tend to be relatively stable. Usually these are capitals or main cities situated at crossroads of important migratory routes. Migrant smugglers recruit potential migrants proactively, including through misinformation campaigns concerning routes, risks and conditions in destination countries. The three Mediterranean Sea routes (Western, Central, and Eastern) as well as the Western African route (also often referred to as the Atlantic route) are still predominantly used by smuggling networks to bring irregular migrants into the EU. It is estimated that 85% to 90% of migrant smuggling into the EU is enabled by sea.

On the **Central Mediterranean route**, arrivals to Italy and Malta have shown a steady increase compared to 2020. On the **Western Mediterranean / Atlantic route**, Algeria has emerged as a key departure point to mainland Spain and the Canary Islands have been increasingly targeted along the West African route. Since August 2019, the Canary Islands

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<sup>16</sup> Typology of Migrant Smuggling: A holistic understanding (International Centre for Migration Policy Development, April 2021).

<sup>17</sup> EU Serious and Organised Crime Threat Assessment 2021 (Europol).

<sup>18</sup> Prices range from EUR 15 000 to EUR 20 000 per arranged smuggling activity a sham marriage (Report on national legislation and Eurojust casework analysis on sham marriages (Eurojust, 2020)).

have seen a gradual rise of detected illegal border crossings at sea, while an exponential surge has been observed since August 2020. On the **Eastern Mediterranean route**, although the overall migration flows to Greece and Bulgaria have decreased over time, they remain constant. The demand for migrant smuggling by migrants transiting the **Western Balkans** remains high. As a result of the travel restrictions imposed in response to the COVID-19 pandemic, the number of migrants who remain in the Western Balkans has increased during 2020 and 2021. Continued instability in countries like Syria or South Sudan could sustain or **increase migratory pressure**<sup>19</sup>. The ongoing crisis in **Afghanistan** may further increase the risk of forced displacement, migratory flows in the region and migrant smuggling towards the EU. In line with Council conclusions of 21 September 2021, the EU will also initiate a regional political platform of cooperation with Afghanistan direct neighbours to help prevent the negative spill-over effects in the region and support the economic resilience and regional economic cooperation, as well as humanitarian and protection needs.

Smuggling does not stop at the external borders of the EU. The offer for **facilitation services for unauthorised movements within the EU** is diverse. Smuggling networks continue to exploit routes within the EU from Spain, Italy or Greece to France, Germany and others, facilitating movements of irregular migrants by land, on foot or in vehicles, boats and airplanes. A common modus operandi is the concealment in closed compartments or the use of rental cars. Smugglers offer their services online and at places where most migrants are present, such as in the neighbourhoods of reception centres. Smugglers use document fraud to facilitate travel by air and, at times, offer services to legalise the residence status of migrants. Irregular migrants often aim to reach countries within the EU or the United Kingdom where they have family, friends or diaspora present, and where they consider to have the best prospects for getting a job and providing for themselves. There is emerging evidence that smugglers are facilitating the unauthorised movements of beneficiaries of international protection.

### ***Instrumentalisation of irregular migration by State actors***

A highly worrying phenomenon observed recently is the **increasing role of State actors in artificially creating and facilitating irregular migration**, using migratory flows as a tool for political purposes<sup>20</sup>.

Since June 2021, a new and serious development intended to destabilise the European Union and its Member States, has been observed with Belarus retaliating to EU sanctions by organised state-sponsored smuggling of migrants into the EU by plane from several third countries (mainly from Iraq, as well as from the Republic of the Congo, Cameroon, Syria and others), usually with a valid visa or visa-free. Belarus announced the suspension of the EU readmission agreement ratified in 2020 and refused to take back those irregular migrants who transited through Belarus. Migrant smugglers have taken advantage of the situation, notably of the actions of the Belarusian authorities, offering illicit services and on-line guidance to

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<sup>19</sup> 2021 Strategic foresight report - COM(2021)750 final.

<sup>20</sup> Ibid.

migrants on how to illegally reach Belarus and to irregularly cross the EU external border to Lithuania, Latvia or Poland.<sup>21</sup>

Incidents of orchestrated attempts to use irregular migration for political purposes<sup>22</sup> denote an increasingly worrying phenomenon, which should be tackled jointly by the EU and its Member States.

## 2. Building on the achievements of the first EU action plan (2015-2020)

A renewed European-wide fight against migrant smuggling needs to respond to persistent challenges, while addressing the ones that are emerging in the current landscape. New actions must be rooted in the achievements of the EU action plan against migrant smuggling (2015-2020), promoting the implementation of the main policy milestones and the operational framework against migrant smuggling.

In 2020, actions in the framework of EMPACT resulted in 2 110 international investigations, 2 280 arrests, of which 16 high-value targets, the identification of 27 and dismantling of 14 criminal networks, 2 350 document fraud cases, and the seizure of EUR 0.7 million in cash, as well as vehicles, firearms and drugs. In the framework of these actions, 26 175 irregular migrants were detected.

This work has been supported through the European Migrant Smuggling Centre. Since 2016, the Centre supported 175 on-the-spot investigations related to migrant smuggling.

The EU action plan 2015-2020 established for the first time a comprehensive and multidisciplinary EU approach to transform migrant smuggling networks from ‘low risk, high return’ operations into ‘high risk, low return’ ones, and to ensure the full respect and protection of fundamental rights of migrants. It set out concrete actions in four main pillars: improving the law enforcement and judicial response to migrant smuggling; gathering and sharing information; improving the prevention of migrant smuggling and the assistance to vulnerable migrants; and reinforcing cooperation with partner countries. Progress has been made in the implementation of all four pillars.

The establishment of Europol’s European Migrant Smuggling Centre in 2016 is a milestone in the enhancement of **law**

**enforcement cooperation.** The Centre provides operational support to Member States in their investigations, bringing together investigators from Member States, providing analysis and participating in action days, where Europol staff cross-checks operational information on smuggling cases. Furthermore, the European Multidisciplinary Platform Against Criminal Threats (EMPACT) improved the

Europol and Eurojust cooperate through the European Migrant Smuggling Centre. Eurojust supports the EMPACT activities of Member States regarding specific modi operandi, such as sham marriages and smuggling by sea or by air.

<sup>21</sup> Declaration of 30 July 2021 by the High Representative on behalf of the European Union on the instrumentalisation of migrants and refugees by the regime (<https://www.consilium.europa.eu/en/press/press-releases/2021/07/30/belarus-declaration-of-the-high-representative-on-behalf-of-the-eu-on-the-instrumentalisation-of-migrants-and-refugees-by-the-regime/>); Slovenian Presidency Statement on the situation at the EU's external borders with Belarus ( [ipcr-presidency-statement-final\\_18-8-2021.pdf](#) (europa.eu)).

<sup>22</sup> Statement of the Foreign Affairs Council of 6 March 2020.

criminal intelligence, information exchange and operational cooperation among Member States and with third partners. One of its priorities is to disrupt criminal networks along the main routes towards and within the EU, focussing on those networks whose methods endanger people's lives (such as using concealments in trucks and lorries, and using unseaworthy vessels), offering services online and making use of document fraud.

The European Union Agency for Criminal Justice Cooperation (Eurojust) is a key actor in the enhancement of the **judicial response to migrant smuggling**. Eurojust has been gradually

The Africa-Frontex Intelligence Community, covering 30 African countries, supports the increase of analytical, preventive and operational capacities in the fight against migrant smuggling, in particular through Risk Analysis Cells. On 9 February 2021, information exchange between The Gambia and Sierra Leone led to the arrest in a case of the trafficking of 13 young Sierra Leonean nationals, of which 10 were under the age of 18.

increasing its support to activities in this field. As of 2020, there were 217 complex cases entailing cross-border judicial coordination. Eurojust supported the implementation of 71 Joint Investigation Teams<sup>23</sup> related to criminal investigations of migrant smuggling cases. A Focus Group on migrant smuggling set up for judges and public prosecutors fosters the identification of challenges, and the exchange of best practices, and lessons learned in the investigation and prosecuting of migrant smuggling cases.

The Joint Operational Team Mare (JOT Mare), launched in 2015, supports an intensified exchange of intelligence with the European Border and Coast Guard Agency (Frontex) and close cooperation with the International Criminal Police Organisation (Interpol), including through the deployment of Member States' national experts to Europol. It collects, analyses, enhances and disseminates intelligence products, having supported tens of investigations tackling criminal networks involved in migrant smuggling by sea and associated unauthorised movements towards destination countries. With the cooperation of Frontex and other partners, more than 1 000 vessels suspected of being involved in migrant smuggling are included in Europol's databases.

The hotspot approach proved essential in the fight against migrant smuggling with EU agencies – the European Asylum Support Office (EASO), Frontex, Europol and Eurojust – working closely together with the authorities of Member States facing migratory pressures at the EU's external borders, to help to fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants. Frontex supported the identification and registration of migrants arriving at EU external borders and carried out debriefing interviews to collect information on smuggling networks and the routes for the purpose of risk analysis and to feed criminal investigations. Europol's involvement in debriefings and more systematic access for information gathering and intelligence collection have contributed to the identification of smuggling practices, networks and routes.

The EU and its Member States have mandated **Common Security and Defence Policy (CSDP) missions** over the past years to address security challenges related to irregular

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<sup>23</sup> Through Joint Investigation Teams, the authorities of two or more States enter into a legal agreement for the purpose of carrying out investigations, with the participation of prosecutors, law enforcement and judges. Eurojust provides operational, legal and financial support to such cooperation. During the period 2015-2020, 29 Joint Investigation Teams were newly signed.



migration, enhancing cooperation between CSDP and EU agencies to link up internal and external security issues. This led to several initiatives<sup>24</sup> with Europol, Frontex and Eurojust in the field of information sharing<sup>25</sup>. The scope of activities undertaken in the CSDP framework has ranged from support to host State authorities in their efforts to control and prevent irregular migration and combat associated crimes<sup>26</sup>, to ensure border management and fight against migrant smuggling and trafficking in human beings<sup>27</sup> and to tackle insecurity or a poor rule of law system as a root cause of irregular migration<sup>28</sup>. Furthermore, the two EU naval force operations IRINI<sup>29</sup> and ATALANTA<sup>30</sup> contribute to disrupting the business model of migrant smuggling and trafficking in human beings.

The Regulation on the European network of immigration liaison officers<sup>31</sup>, which entered into force in 2019, reinforced the **gathering and sharing of information** through a new framework of cooperation and coordination among immigration liaison officers deployed to third countries by Member States, the Commission and EU agencies. Europol's Information Clearing House set the basis for a swifter exchange and processing of information from Frontex, Interpol and CSDP missions. It enhances the intelligence picture on migrant smuggling from countries of origin and transit. The EU Internet Referral Unit in Europol reinforced the capacity of authorities to investigate malicious content on the internet and in social media, to detect and request removal of content used by smuggling networks. The further development of the Africa-Frontex Intelligence Community, with risk analysis cells in The Gambia, Ghana, Niger, Nigeria and Senegal, strengthened the gathering and sharing of information.

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<sup>24</sup> Examples are the exchange of operational information through Europol's Information Clearing House and the Crime Information Cell, initially established within Operation Sophia in conjunction with Frontex and Europol. While this initiative allowed for a structured and innovative exchange of operational information, other CSDP missions only exchange strategic information with agencies, often following an ad hoc approach (the EU Capacity Building Mission (EUCAP) Sahel missions or the EU Border Assistance Mission (EUBAM) Libya, which cooperated with Eurojust).

<sup>25</sup> Further proposals on increased CSDP-Justice and Home Affairs cooperation in the field of migrant smuggling can be found in the Mini-concept on possible civilian CSDP efforts to address security challenges linked to irregular migration that was shared with Member States in November 2020.

<sup>26</sup> EUCAP Sahel Niger and EUBAM Libya.

<sup>27</sup> EUCAP Sahel Mali and EUBAM Rafah.

<sup>28</sup> EU Advisory Mission (EUAM) Ukraine, EU Rule of Law Mission (EULEX) Kosovo, EUAM Iraq, EUCAP Somalia, EU Police Mission for the Palestinian Territories (EUPOL COPPS) and EUAM Central African Republic.

<sup>29</sup> Operation IRINI implements the arms embargo imposed by the United Nations Security Council, contributing to stemming the flow of weapons into Libya and helping create the conditions for a permanent ceasefire. The operation also contributes to the disruption of the business model of smuggling and trafficking networks.

<sup>30</sup> Operation ATALANTA focuses on counter-piracy activity off the Somali coast. The operation also provides information to Interpol and Europol on all criminal and smuggling activities detected, including migrant smuggling.

<sup>31</sup> Regulation (EU) 2019/1240 (OJ L 198, 25.7.2019, p. 88).

With regard to the enhanced **prevention of migrant smuggling and assistance to vulnerable migrants**, the Commission launched information and awareness raising

An information and awareness raising campaign was conducted in Niger in 2019-2020 to promote informed decision making on migration. It consisted of direct community engagement through one-to-one migration counselling and larger scale community events, as well as online and media outreach. 10 580 people transiting Niger attended in-person consultations from more than 20 countries of origin, out of which 7 502 reported an increase in awareness across key risk areas.

campaigns in key partner countries, to inform potential migrants about the risks of smuggling and irregular migration and to counter the narrative of smugglers. Campaigns were launched in the Western Balkans, Africa, and Asia<sup>32</sup>. Based on the information gained during past campaigns, and a study the Commission carried out on this topic<sup>33</sup>, the Commission is developing a toolkit with good practices and recommendations on the research and design of campaigns, their delivery and working methods.

Under the fourth component of the 2015-2020 action plan, the Commission supported

The Joint Investigation Team in Niger started operations in 2016. Until 27 May 2021, it supported the arrest of 554 suspects and 338 court cases, as well as the identification of 50 national and 138 international criminal networks.

bilateral and regional operational cooperation against migrant smuggling for a **stronger and closer cooperation with partner countries** along the main migratory routes. This cooperation included support to law enforcement and judicial cooperation, capacity building in border management, information and awareness raising campaigns.

In 2020, a new Common Operational Partnership with Ivory Coast started implementation. French authorities launched training and mentoring activities to strengthen specialised investigative units on migrant smuggling and trafficking in human beings.

Regional and national **Common Operational Partnerships**<sup>34</sup> facilitated joint actions and provided capacity building for law enforcement and judicial authorities in partner countries, supporting the exchange of best practices and information. The Common Operational Partnership North Africa, implemented by Austria, France, Italy, Germany, the Netherlands and Interpol, with EU funding, works with the competent authorities of African countries, regions and organisations, with a focus on Ivory Coast, Guinea, Tunisia, Nigeria, as well as countries in the Horn of Africa and the African Union Mechanism for Police Cooperation (AFRIPOL). Common Operational Partnerships and Joint Investigation Teams have been

<sup>32</sup> Afghanistan, Albania, Bangladesh, Ethiopia, Ghana, Guinea, Ivory Coast, Mali, Morocco, Niger, Nigeria, Senegal, Somalia, Sudan, The Gambia, Tunisia and the Western Balkans.

<sup>33</sup> Study on best practices in irregular migration awareness-raising campaigns (European Commission, April 2021).

<sup>34</sup> Common Operational Partnerships are flexible cooperation frameworks to fight against organised crime networks engaged in migrant smuggling and trafficking in human beings, tailor made to the needs of the partner country. One or more Member States work alongside law enforcement, judiciary and other relevant authorities of a partner country, in cooperation with EU agencies and international organisations. Support may comprise of training, mentoring, exchange of information and provision of equipment.

developed with Mali, Mauritania, Niger, Senegal, The Gambia, Turkey and the Western Balkans, and support for setting up a network of Common Operational Partnerships in West and Central Africa has been provided<sup>35</sup>.

At **regional level**, the Joint Valletta Action Plan supported the enhancement of migration governance between Europe and **Africa**. The Ministerial Conference of July 2020 between the EU, its Member States and North African partners<sup>36</sup> confirmed the mutual determination to prevent and fight migrant smuggling. On 10-11 May 2021, a high-level seminar was organised with the participation of EU and African partners<sup>37</sup>, reaffirming the commitment of the participants to jointly address issues linked to the countering of irregular migration and migrant smuggling, the establishment of tools for return and readmission, as well as legal migration and mobility. Since 2018, the Niamey process supports cooperation between the EU, its Member States and countries in West and North Africa to prevent and combat migrant smuggling and trafficking in human beings. In addition, the Regional Operational Centre in Khartoum (ROCK), established in 2019 with assistance from the EU, supported law enforcement cooperation and information sharing, producing 245 intelligence reports and leading to 19 arrests. Significant funds are also invested by the EU to support partner countries, in particular in the EU Neighbourhood, enhancing their border management and capability to perform search and rescue operations on land and at sea.

The participation of **Western Balkan** partners in EMPACT's Operational Action Plan on the facilitation of irregular migration is contributing to disrupting organised criminal networks involved in migrant smuggling and in the abuse of legal channels for migration, including the use of fraudulent documents. The project Countering Serious Crime in the Western Balkans, funded by the EU, established five Joint Investigation Teams and supported 115 criminal investigations since 2017 (resulting in prosecution in 37 cases), of which 14 related to trafficking in human beings and migrant smuggling.

The **EU-Turkey statement** of 2016 contributes to breaking the business model of migrant smugglers, through increased border controls conducted by the Turkish authorities, and to preventing new sea or land routes for irregular migration. As part of the statement, Turkey and the EU agreed to continue stepping up measures against migrant smugglers. Furthermore, they agreed to facilitate returns of irregular migrants from the Greek islands, while at the same time increasing the opportunities for the resettlement of Syrians from Turkey to the EU. The EU expects Turkey to deliver on all elements of the EU-Turkey statement. Its full implementation will also be a topic in the context of the EU-Turkey High-Level Dialogue on Migration and Security in October 2021.

In relation to countries of the **Silk route**, a regional programme funded by the EU and implemented by the United Nations Office on Drugs and Crime (UNODC) and the

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<sup>35</sup> Through the Internal Security Fund – Police, EUR 12.9 million has been provided in EU contribution, while through the EU Emergency Trust Fund for Africa EUR 27.9 million was provided.

<sup>36</sup> Morocco, Algeria, Tunisia, Libya and Mauritania.

<sup>37</sup> With the participation of African States, Member States, the Commission, the European External Action Service, the African Union Commission, EU agencies and international organisations.

International Organization for Migration (IOM) supported the investigation and prosecution of 184 migrant smuggling cases, leading to 80 investigations and 69 court cases<sup>38</sup>.

### 3. Renewing the European fight against migrant smuggling

While the EU has taken significant steps forward in the fight against smugglers in recent years, challenges remain and new ones emerged requiring reinforced actions and a renewed comprehensive approach. This applies to both our work with partner countries, and the work within the EU and each of its Member States, combating criminal networks, boosting cooperation and supporting the work of law enforcement to tackle migrant smuggling.

The renewed EU action plan against migrant smuggling (2021-2025) is built on the following main pillars of action: (1) reinforced cooperation with partner countries and international organisations, (2) implementing the legal frameworks and sanctioning smugglers active within and outside the EU, (3) preventing exploitation and ensuring the protection of migrants, (4) reinforcing cooperation and supporting the work of law enforcement and the judiciary to respond to new challenges, and (5) improving the knowledge on smugglers' *modi operandi*.

#### 3.1 Reinforced cooperation with partner countries and international organisations

The New Pact underlines the importance of developing comprehensive, balanced, tailor-made and mutually beneficial migration partnerships with key countries of origin and transit, to address common challenges and capitalise on shared opportunities. Migration partnerships aim at improving migration governance and management, supporting refugees and host communities in partner countries, building economic opportunities, promoting decent work and addressing the root causes of irregular migration<sup>39</sup>, stepping up cooperation on return, readmission and reintegration, while developing legal pathways and attracting skills and talent to Europe. Countering migrant smuggling forms an important part of these partnerships.

The EU has already established successful cooperation frameworks with partner countries contributing to fighting irregular migration and smuggling. However, actions and efforts so far are fragmented and smuggling remains a phenomenon of growing concern for both the EU and partner countries. A more coordinated and structured approach is needed to enhance synergies, maximise the effectiveness of existing tools and address new challenges, to prevent smuggling and ensure the effective enforcement of investigations, prosecutions and convictions, a more coordinated and structured approach must be taken. In line with the New Pact, the EU should therefore build on the existing cooperation frameworks and develop **dedicated and tailor-made Anti-Smuggling Operational Partnerships** with third countries or regions along migratory routes towards the EU. These Anti-Smuggling Operational Partnerships should be an integral part of the EU's comprehensive migration partnerships with countries of origin and transit and support regional and international cooperation.

At international level, the fight against migrant smuggling requires continued active engagement with the United Nations (UN), Interpol, other international and regional

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<sup>38</sup> The Global Action against Trafficking in Persons and the Smuggling of Migrants – Asia and the Middle East (GLO.ACT), which includes actions in Afghanistan, Bangladesh, Iran, Iraq and Pakistan.

organisations as well as other donors. The EU should pursue its **active cooperation with the UN and its specialised agencies**, in particular UNODC, and its Working Group on the Smuggling of Migrants<sup>40</sup>.

In addition, a structured and coordinated approach is also necessary to ensure an effective and rapid response to irregular migration facilitated by State actors, which should also be discussed in multilateral and international fora.

### ***3.1.1 Anti-Smuggling Operational Partnerships***

To effectively counter the transnational nature of migrant smuggling beyond EU borders, closer cooperation is needed with key partner countries of origin and transit, both at bilateral and at regional level. As part of the EU's comprehensive partnerships, this cooperation will be translated into tailored-made Anti-Smuggling Operational Partnerships based on continuous exchange and mutually beneficial cooperation between the EU and the partner countries. Actions will aim at **strengthening legal, policy, operational and strategic frameworks** in partner countries and to increase the **impact, ownership and sustainability of efforts to tackle migrant smuggling**.

**Synergies and consistency with other policies and actions** need to be promoted and ensured, including in the field of security (e.g. border security, fight against organised crime), development cooperation (e.g. education and training, community development, sustainable and inclusive economic development) and good governance (e.g. fight against corruption).

The Anti-Smuggling Operational Partnerships will include **some or all of the following components**, adapted to the needs of partner countries or regions and aiming to reinforce operational cooperation through continued exchanges, which will provide targeted support by:

- Assisting in the establishment of solid **legal frameworks** – or the reinforcement of existing ones – building on the UN Protocol on Smuggling of Migrants by Land, Sea and Air. Where partner countries are not yet a Party to the UN Protocol, the EU, in cooperation with UNODC, will urge and support them to ratify the Protocol. This is a key step to deter and prosecute migrant smuggling effectively, so that smugglers can be arrested and punished for their crimes in the countries of origin. Robust legal frameworks are equally a necessity for an effective cooperation with Member States and EU agencies, including Europol, Frontex and Eurojust.
- Ensuring the implementation of the legal frameworks by developing evidence-based **policies, strategies and action plans** at national, regional and continental level. Supporting the partner country as well as regional and continental organisations, in data collection, analysis and research to guide decision-makers will be essential.
- **Building the operational capacity** of national and local authorities in partner countries to prevent and deter irregular migration, including, where relevant, by

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<sup>39</sup> COM(2021)56 final.

<sup>40</sup> In accordance with the Joint Communication on strengthening the EU's contribution to rules-based multilateralism - JOIN(2021)3 final.

building on existing structures<sup>41</sup> or establishing dedicated coordination centres. The capacity of partner countries should also be reinforced in providing assistance to people in a situation of vulnerability, in particular children and women, who may be exposed to violence, exploitation, abuse and trafficking.

- Supporting the **border management** capacity of partner countries to prevent irregular departures and transit.
- Offering operational support to **law enforcement and judicial cooperation** to create and reinforce the capacity and ownership in partner countries, strengthening the use of modern investigation tools and techniques and facilitating coordination and cooperation among relevant national authorities. This should build on the results of and experience with the current Common Operational Partnerships and Joint Investigation Teams.
- Reinforcing cooperation with partner countries on **identity and document fraud**, to help reduce the number of visas that are issued on the basis of stolen and/or falsified identity documents. This should promote the use of new technologies to detect document fraud, to control the issuance and delivery of passports, the modernisation and computerisation of civil registries, as well as possible training activities.
- Enhancing prevention and awareness raising activities through targeted **information and awareness raising campaigns** in communities of origin and transit (including in refugee and reception camps in transit countries and diaspora in the EU) about the risks of irregular migration and smuggling as well as relevant alternatives, countering the fake narrative promoted by criminal networks.
- Providing support, where relevant, to address **security concerns** linked to migrant smuggling, promoting synergies with actions aimed at fighting all forms of crime, terrorism and violent extremism.
- Continuous dialogue and coordinated engagement with countries of origin and transit impacted by **the new phenomenon of State-led instrumentalisation of migration**.

The Commission, together with the High Representative and the Member States, will systematically promote cooperation in addressing migrant smuggling as an issue of mutual interest in EU's relations with partner countries. They will support partner countries and regions in **determining the actual needs** in preventing and combating migrant smuggling, taking into account their specific situation, including the socio-economic aspects of smuggling for local communities. Based on such needs, the Anti-Smuggling Operational Partnerships **will be developed as a coherent framework encompassing the relevant components** indicated above.

The Commission, together with the High Representative and the Member States, and partner countries will launch and implement together these Anti-Smuggling Operational Partnerships, confirming mutual dedication to pursuing common goals against migrant smugglers. For this purpose, the Commission will also organise **high-level conferences with partner countries by route**, to analyse the existing challenges, promote cooperation, endorse recommendations

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<sup>41</sup> Such as Niamey Declaration, cooperation with AFRIPOL, follow-up to the Valetta Summit as well as Rabat, Khartoum, Budapest and Prague processes.

from technical working groups and take stock of the progress made against migrant smuggling networks. Anti-Smuggling Operational Partnerships along the **Eastern Mediterranean / Western Balkans route, based on a whole of route approach that includes the Silk Route countries, and in North and West Africa** will be launched as a priority, in cooperation with the partner countries or regions.

**Member State authorities**, through the pooling of knowledge and resources in a **Team Europe** spirit, should play a central role in the design and implementation of the Anti-Smuggling Operational Partnerships. Member States have the operational capacity and the knowledge for providing the necessary assistance to partner countries and should continue ongoing activities that are implemented in partner countries to support the fight against smuggling.

**EU agencies**, in particular Europol, Frontex and Eurojust, should offer assistance in line with their mandates, including through facilitating the exchange of information, providing technical support, capacity building and training, as well as deploying liaison officers. Depending on the partner countries or regions concerned and the needs identified, EU agencies may conclude new agreements (e.g. Frontex status agreements or working arrangements with competent authorities); where such agreements or arrangements already exist, their implementation should fully support the objectives of the new Anti-Smuggling Operational Partnerships. Contributions by Interpol will also be taken into account as appropriate.

The operational activities of **Common Security and Defence Policy missions** may support host State authorities. They could be mandated to provide strategic advice on the elaboration or reform of legal frameworks, strategies and action plans and offer capacity building in border management, law enforcement and judicial cooperation, identity and document fraud, etc.

To ensure the success of the new Anti-smuggling Operational Partnerships, the EU needs to ensure adequate financing that matches, supports and translates into action the ambition and objectives of the renewed EU action plan. Several financial instruments will bring their support, in a complementary manner, to the implementation of the various components of the partnerships: the **Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI) and the Instrument for Pre-Accession Assistance III for the period 2021-2027**, the **Internal Security Fund**, the **Asylum, Migration and Integration Fund** and the **Border Management and Visa Instrument**, as well as other relevant envelopes, taking into account partner's national strategies and ensuring their ownership. The **Anti-Smuggling Operational Partnerships** will inform the strategic and policy-driven programming of the EU's external funding and implementation of the instruments' programming documents. Out of the total budget of EUR 79.5 billion of NDICI – Global Europe, indicatively 10% will be dedicated to actions directly targeting specific challenges related to migration and forced displacement, including anti-smuggling.

### *3.1.2 Responding to the instrumentalisation of irregular migration by State actors*

The recent developments at the EU external border with Belarus are the latest examples of highly worrying events and show that **close cooperation and continued vigilance** are key to protecting the external borders, preventing and responding to irregular migration facilitated by

State actors. Member States, EU institutions and EU agencies (notably Frontex, EASO and Europol) have reacted swiftly to the rapidly evolving events at the EU Eastern border, providing support to the countries directly subject to pressure notably through the Union Civil Protection Mechanism. The use of the **EU Migration Preparedness and Crisis Management Network** (Blueprint network) provided the latest situational awareness for all concerned stakeholders and ensured a timely and coordinated operational response. Furthermore, the Commission is also providing emergency financial assistance to help Lithuania address short-term needs to ensure dignified reception conditions to migrants used for political purposes, as well as medium-term support for the protection of the external border to counteract orchestrated irregular migration.

These events show that through concerted collective engagement, partner countries, whose citizens have been used by this State-led scheme, can be willing to **cooperate with the EU** to stop this modus operandi, engaging in a constructive and comprehensive dialogue for the benefit of all sides. In this respect, the EU dialogue and joint engagement with Iraq has brought positive results, reducing attempts to reach the EU irregularly and facilitating voluntary return.

Examples like this of concerted EU action in addressing situations of orchestrated migratory pressure at its external borders demonstrate that close cooperation and solidarity among Member States as well as continuous and broad dialogue and coordinated engagement with countries of origin and transit on the prevention of irregular migration, on addressing the new phenomenon of instrumentalisation of migration and on the facilitation of return, can lead to concrete results.

To respond in a joint and effective manner to the challenges of this new phenomenon and ensure the protection of the EU external borders, the EU needs **a reinforced toolbox** that pulls together in a strategic way the full range of the operational, legal, diplomatic and financial instruments at its disposal.

EU agencies – notably Frontex, Europol and EASO, also in cooperation with Interpol and other international actors – must be able to rapidly mobilise their resources and assets and provide **operational support** to protect the EU external borders, gather intelligence and operational information and assist migrants who have become victims of State-led instrumentalisation. Responding to the use of irregular migration by State actors needs to feature and be further reinforced in the **dialogue with partner countries**, notably of the Anti-Smuggling Operational Partnerships. Where appropriate and applicable, the use of restrictive measures under the **EU Global Human Rights Sanctions Regime** could be considered to target individuals, entities and bodies participating in State-led schemes and responsible for, involved in or associated with serious human rights violations and abuses. In addition, the EU should **take consequential measures in various policy areas** that are relevant in the relations with the third country concerned, taking targeted action, where appropriate, in the area of visa, trade, development, financial assistance and others. The partial **suspension of the Visa Facilitation Agreement with Belarus**, which the Commission is adopting today together with this renewed EU action plan, is a concrete example of such measures.

As announced by President von der Leyen in her 2021 State of the Union address, the Commission will, *“as part of its work on Schengen, set out new ways to respond to such aggression and ensure unity in protecting our external borders”*. In this context, the



Commission will consider strengthening the EU's legal framework to ensure a common approach to better protect the external borders and the essential interests of the EU and its Member States, while always ensuring full respect for fundamental rights.

Moreover, finding common ground on how to manage migration in all circumstances will be essential so as to ensure that opponents will not continue to target the lack of a common effective and fair system. The New Pact contains all the components – including a dedicated instrument to allow for temporary derogations from normal procedures in times of crisis – needed to enable Member States to manage the different types of challenges they face and it is therefore essential for the Council and the European Parliament to advance speedily on its negotiations.

#### **Key actions**

- The Commission, together with the High Representative and the Member States, will establish Anti-Smuggling Operational Partnerships with partner countries along migratory routes, as part of the comprehensive, balanced, tailor-made and mutually beneficial migration partnerships under the New Pact.
- The Commission will promote regional cooperation, as well as cooperation with relevant international organisations, such as UNODC and Interpol.
- The Commission, the High Representative, the Member States and Union agencies will pull together and further develop all the operational, legal, diplomatic and financial tools at their disposal to respond to the instrumentalisation of irregular migration by State actors.

### **3.2 Sanctioning migrant smugglers and preventing the exploitation of migrants**

To combat the facilitation of irregular migration, an optimal implementation of methods to sanction migrant smugglers is needed, especially those that lead criminal networks. This calls for effectively addressing and improving the implementation of the applicable legal frameworks by Member States and partner countries based on the UN Protocol on Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime and, within the EU, the 'Facilitators package'<sup>42</sup>.

The loss of lives of migrants smuggled towards and within Europe, and the various forms of harm and exploitation that they are exposed to, is unacceptable. The fundamental rights of migrants need to be safeguarded at all times, starting with people in a situation of vulnerability. Migrants who are also victims of crime are often in a vulnerable situation and may have difficulties to access justice. Under the Victims' Rights Directive<sup>43</sup>, all victims of crime enjoy a series of rights, including to support and protection, which should be safeguarded under all circumstances. The EU should provide smuggled migrants, in particular vulnerable groups such as children and women, with assistance and protection.

#### **3.2.1 Sanctions against smugglers acting on the migratory routes**

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<sup>42</sup> Council Directive 2002/90/EC (OJ L 328, 5.12.2002, p. 17) and Council Framework Decision 2002/946/JHA (OJ L 328, 5.12.2002, p. 1).

<sup>43</sup> Directive 2012/29/EU (OJ L 315, 14.11.2012, p. 57).

The **UN Protocol on Smuggling of Migrants by Land, Sea and Air** relates to the prevention, investigation and prosecution of smuggling as well as to the protection of the rights of persons who have been the object of such offences. The UN Smuggling Protocol obliges States Parties<sup>44</sup> to establish as criminal offences smuggling of migrants and other forms of activity that support such smuggling, while migrants should not become liable to criminal prosecution for having been smuggled. To address migrant smuggling, either UN sanctions or autonomous sanctions by the EU can provide a tool to impose sanctions on responsible individuals or entities, such as a travel ban or a freeze on financial assets or the prohibition to make funds or economic resources available.

The EU transposes into EU law **sanctions agreed by the UN**. In this respect, on 7 June 2018 the Security Council Committee concerning Libya added six human traffickers and smugglers operating in Libya to its Sanctions List of individuals and entities subject to the asset freeze, travel ban and other measures. On 14 June 2018, the Council of the EU transposed these measures into EU law. In addition to transposing sanctions agreed at the UN level, the EU can make use of the autonomous tools at its own disposal whenever appropriate. The **EU Global Human Rights Sanctions Regime**<sup>45</sup>, adopted on 7 December 2020, has equipped the EU with a framework that allows it to target those responsible for, involved in or associated with serious human rights violations and abuses worldwide. This new sanctions regime covers, among others, trafficking in human beings, as well as abuses of human rights by migrant smugglers to the extent that these abuses are widespread, systematic or otherwise of serious concern as regards the objectives of common foreign and security policy<sup>46</sup>.

Within the EU, the **Facilitators package** defines the criminal offence of facilitation of unauthorised entry, transit or residence and sets out the related criminal sanctions. The Facilitators package requires Member States to appropriately sanction anyone who intentionally assists a third-country national to enter or transit through an EU country or, for financial gain, to reside there. Its primary aim is to respond to **criminal networks responsible for migrant smuggling**. The 2017 evaluation of the Facilitators package<sup>47</sup> concluded that its effectiveness in reaching its objectives remains partial. While it was considered that certain aspects of the instrument could be clarified, such as the definition of the offence by providing more legal certainty over the distinction between criminal facilitation and humanitarian assistance, the effectiveness of other key aspects of the package such as the general approximation of the penal framework of the Member States<sup>48</sup> was evaluated with positive and neutral considerations. While the provisions of the Facilitators package have been overall transposed by all Member States bound by it<sup>49</sup>, its effects on the

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<sup>44</sup> As of 18 February 2021, there were 150 Parties to the Smuggling of Migrants Protocol, including the EU (represented by the European Commission) and its Member States, with the exception of Ireland.

<sup>45</sup> Council Regulation (EU) 2020/1998 (OJ L 410, 7.12.2020, p. I/1) and Council Decision (CFSP) 2020/1999 (OJ L 410, 7.12.2020, p. I/13).

<sup>46</sup> Set out in Article 21 of the Treaty on European Union.

<sup>47</sup> SWD(2017)117 final.

<sup>48</sup> On the one hand by establishing a common definition of the offence, which is subject of the Directive and, on the other hand, by setting out minimum rules for penalties, liability of legal persons and jurisdiction, which are covered by the Framework Decision.

<sup>49</sup> All Member States with the exception of Denmark and Ireland. In accordance with Council Implementing Decision (EU) 2020/1745 (OJ L 393, 23.11.2020, p. 3), Ireland shall put the Facilitators package into effect and apply it, on a provisional basis, as from 1 January 2022 at the latest.

actual level of prosecution and conviction could not be evaluated, due to a lack of robust, comprehensive and comparable data. To improve the knowledge base of its implementation, Member States should enhance the quality and availability of data that is provided to the statistical office of the European Union (Eurostat). The Commission will support the exchange of best practices and provide guidance through the national contact points on migrant smuggling.

The Directive that is part of the Facilitators package allows Member States to **exempt humanitarian assistance not mandated by law from being criminalised**. To respond to the increasingly difficult environment for non-governmental organisations and individuals when assisting migrants including in the context of search and rescue operations at sea, the Commission provided guidance<sup>50</sup>, clarifying that humanitarian assistance mandated by law (for example in the framework of search and rescue operations) can never be criminalised and invited Member States that have not already done so to use the possibility to distinguish between humanitarian assistance (not mandated by law) and activities that aim to facilitate irregular entry or transit, and allows for the exclusion of the former from criminalisation.

As a follow-up to the evaluation of the Facilitators package, the Commission launched a process of **regular consultation with civil society and EU agencies**, including the Fundamental Rights Agency and Eurojust, to build up knowledge and gather evidence in order to identify the issues linked to interpreting and applying the Facilitation Directive. The Commission will work with Member States through the national points of contact on migrant smuggling in order to improve the enforcement of the Directive.

The Commission will also step up its **monitoring of the implementation** of the *acquis* to ensure that appropriate, effective and dissuasive criminal sanctions are in place while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress. The Commission will take close contact with Member States' national authorities, to collect information about the implementation of the Facilitators package and – where appropriate, in case of breaches of EU law – launch infringement procedures. The Commission intends to **report on the implementation of the Facilitators package**, including on the implementation of the 2020 guidance, in 2023. If necessary, the Commission will propose to revise the legal framework to ensure that the EU is equipped to implement the policy framework created by this EU action plan to respond to the constantly evolving challenges in this area.

### ***3.2.2 Prevention of exploitation and ensuring protection of smuggled migrants***

Smuggled migrants are at great risk of losing their lives or experiencing harm during their journey. Their fundamental rights are often gravely violated through abuse and exploitation. Providing **protection and assistance** to smuggled vulnerable migrants is key, with a particular attention to children and women, including within the framework of the EU strategies on victims' rights 2020-2025<sup>51</sup> and on Combatting Trafficking in Human Beings 2021-2025, as well as the EU Strategy on the rights of the child<sup>52</sup>. The protection of

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<sup>50</sup> C(2020)6470 final.

<sup>51</sup> COM(2020)258 final.

<sup>52</sup> COM(2021)142 final.

fundamental rights in police and judicial proceedings needs to be ensured, with specific attention for cases where migrants become victims of trafficking.

Migrants go missing during their journeys and families risk getting separated<sup>53</sup>. With EU financial support, Member States and partner countries should prevent the separation of families during migratory journeys and develop search mechanisms for missing migrants. Such work should build on the activities already implemented by the International Committee of the Red Cross and the National Red Cross and Red Crescent Societies, as well as other relevant international organisations and civil society organisations.

Upon arrival on EU territory, people with **special needs** should be identified as a priority and referred to adequate support by appropriate entities. The role of the future pre-entry screening<sup>54</sup>, with the support of EU agencies, notably Frontex and EASO, is important in this respect. In the meantime, EU agencies will continue to support Member States, in particular with the procedures for identification and referrals, in line with the Reception Conditions Directive<sup>55</sup> and Asylum Procedures Directive<sup>56</sup>.

Reception centres for asylum seekers are targeted by smugglers to recruit people willing to engage in unauthorised movements within the EU or who can fall victim of trafficking and exploitation. Migrant smugglers move them to destination countries, either clandestinely or when they are in possession of asylum documents. To prevent migrant smuggling and trafficking within the EU, asylum authorities and other relevant Member State authorities should increase their monitoring activities within and around reception centres. Moreover, Member State authorities and EASO should include information regarding the risks of smuggling in the information material that they need to provide to asylum seekers and other migrants.

A third of migrant children arriving in the EU are unaccompanied minors. They are a highly vulnerable group that faces various risks, including trafficking in human beings. A number of unaccompanied minors go missing after their arrival in the EU, before they are registered by the asylum authorities<sup>57</sup>. Reception centres are used by traffickers to identify potential victims and to arrange transportation to the destinations where the children and other vulnerable persons will be exploited<sup>58</sup>. The **Anti-trafficking Directive**<sup>59</sup> provides for binding rules to prevent trafficking, to prosecute criminals effectively and protect the victims. The EU Strategy on Combatting Trafficking in Human Beings 2021-2025 sets out the Commission's plan to support the implementation of this Directive and identifies the need to evaluate it. Based on the outcome of the evaluation, the Commission will consider reviewing it. In

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<sup>53</sup> Between 2015 and 2018, the Red Cross National Societies together with the International Committee of the Red Cross collected tracing requests from families in Europe and countries of origin to search for almost 60 000 third-country nationals who were travelling irregularly towards or through Europe. This shows that a significant number of persons have gone missing or been separated from their families, also after arrival in the EU.

<sup>54</sup> COM(2020)612 final.

<sup>55</sup> Directive 2013/33/EU (OJ L 180, 29.6.2013, p. 96).

<sup>56</sup> Directive 2013/32/EU (OJ L 180, 29.6.2013, p. 60).

<sup>57</sup> For additional information, please refer to the 2020 European Migration Network Inform [https://ec.europa.eu/home-affairs/sites/default/files/00\\_eu\\_inform\\_uam\\_2020\\_en\\_0.pdf](https://ec.europa.eu/home-affairs/sites/default/files/00_eu_inform_uam_2020_en_0.pdf)

<sup>58</sup> Europol.

<sup>59</sup> Directive 2011/36/EU (OJ L 101, 15.4.2011, p. 1).

parallel, the Commission will continue to support Member States in implementing the Anti-trafficking Directive, in particular as regards the gender specific and child sensitive aspects.

The **Victims' Rights Directive** provides for a set of binding rights for all victims of crime and their family members. Victims' rights must apply to victims in a non-discriminatory manner, independently of their residence status<sup>60</sup>. The Commission will also launch a study on the implementation of the **Residence Permit Directive**<sup>61</sup>, which sets rules on residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been smuggled, who cooperate with the competent authorities.

The possibility for irregular migrants to find a job in the informal economy, hence gaining resources that can support the subsistence of family members in the country of origin, is one of the key drivers of irregular migration. The effective implementation of the Employers Sanctions Directive is important to deter irregular migration and to protect the rights of irregular migrant workers. This is done by sanctioning employers hiring irregular migrants with no right to stay, by ensuring that there are effective mechanisms for recovering unpaid wages, lodging complaints and reporting crimes, as well as by carrying out effective inspections in the economic sectors most at risk of illegal employment. For this purpose, the Commission is presenting, together with this renewed action plan, its assessment accompanied by a set of measures needed in order to reinforce the **effectiveness of the Employers Sanctions Directive**.

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<sup>60</sup> Article 1(1) of Directive 2012/29/EU (OJ L 315, 14.11.2012, p. 57).

<sup>61</sup> Council Directive 2004/81/EC (OJ L 261, 6.8.2004, p. 19).

### **Key actions**

The Commission will:

- work with Member States through the national points of contact on migrant smuggling and other competent national authorities to improve the enforcement and the implementation of the Facilitators package, and, where relevant, open infringement proceedings;
- report on the implementation of the Facilitators package in 2023 and consider further action;
- improve the protection of migrants by strengthening the implementation of the Anti-trafficking Directive and the Residence Permit Directive;
- improve the effectiveness of the Employers Sanctions Directive, in cooperation with Member States, relevant agencies and stakeholders.

The Council and Member States should:

- sanction migrant smugglers by transposing UN sanctions and, whenever appropriate, using the EU Global Human Rights Sanctions Regime.

Member States should:

- fully implement the Facilitators package and apply adequate sanctions on migrant smugglers, with a particular focus on high value targets;
- improve the identification of migrants in need of protection, in particular children and unaccompanied minors, applying the procedures for identification and referrals in line with the *acquis* and with the support of EU agencies;
- fully implement the Anti-trafficking Directive, with the support of the Commission and EU financial assistance, in line with the EU Strategy on Combatting Trafficking in Human Beings 2021-2025.

### **3.3 Reinforcing cooperation and supporting the work of law enforcement and of the judiciary**

Migrant smugglers are quick in adapting to changing circumstances, as exemplified during the COVID-19 pandemic. To be successful, law enforcement and judicial cooperation frameworks need to be agile and also adapt to the changing circumstances, based on reinforced **operational cooperation and the exchange of information**.

There is a need to build on the operational activities implemented under the EU action plan against migrant smuggling 2015-2020 and further strengthen cooperation between national authorities and with EU agencies. EU agencies, including EASO, Frontex, Europol and Eurojust, should intensify strategic inter-agency information exchange and analysis. They should cooperate at an early stage of migrant smuggling cases to use their complementary mandates in support of national authorities, building on the successful common drafting of strategic analysis reports by EASO, Frontex and Europol. To fight digital smuggling, conduct effective financial investigations and asset recovery and to fight document fraud, law enforcement and judicial authorities should develop new targeted actions to enhance operational cooperation and information exchange.

### *3.3.1 Enhancing law enforcement operational cooperation against migrant smuggling*

The focus of law enforcement investigations should not stop with the arrest of low-level criminals. It is crucial to scale up the **dismantling of organised crime structures**, targeting those groups that pose a higher risk to Europe's security and on the individuals in the higher echelons of criminal organisations. Investigations should target such criminal networks active across the EU and disrupt their business models. This should lead to increased numbers of investigations, prosecutions and convictions, in particular of high-value targets.

Building on the successful actions of the previous years, Member States and operational partners should make optimal use of the specialised services provided by **Europol's European Migrant Smuggling Centre** and share information from immigration liaison officers, common operational partnerships, and Common Security and Defence Policy missions and operations through the **Information Clearing House**<sup>62</sup>. Member States consolidating the use of the Secure Information Exchange Network Application (SIENA), involving Europol, would avoid a fragmented intelligence picture. In line with the EU Strategy to tackle Organised Crime 2021-2025, the Commission will step up negotiations on cooperation between Europol and partner countries in order to facilitate the exchange of personal data for investigation purposes<sup>63</sup>.

Europol's Operational Task Forces will continue to support and bring together Member States and operational partners' efforts in common investigations of identified high value targets, including from partner countries. To increase intelligence-led, coordinated action against criminal networks active in the EU, Member States should support the work of the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings, established in 2019.

The **European Multidisciplinary Platform Against Organised Crime (EMPACT)** is a key tool to implement this EU action plan and to step up cooperation among national and European actors. EMPACT, supported through the Internal Security Fund and the EMPACT envelope of Europol's budget, includes the fight against migrant smuggling as one of its priorities for 2022-2025. In defining the specific actions for this priority, Member States and EU agencies should follow a multidisciplinary and integrated approach across relevant EU crime priorities in the 2022-2025 cycle, embedded within national and EU strategies and actions.

To improve the coordination at national level between all relevant services, such as law enforcement, labour inspections and services managing reception centres, Member States should renew their engagement in the work of **national contact points on migrant smuggling**. The network of national contact points, established by the Commission, will promote the exchange of best practices to develop national counter smuggling strategies of Member States. In the same vein, the **European network of immigration liaison officers (ILO network)** will continue supporting capacity building and operational exchanges in and with partner countries against migrant smuggling.

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<sup>62</sup> The Information Clearing House processes information from various related actions to enhance the intelligence picture on organised migrant smuggling from countries of origin and transit.

<sup>63</sup> With Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia, Turkey and New Zealand.

The successful actions of the **Joint Operational Team Mare** in carrying out coordinated and intelligence-driven actions against facilitators of irregular migration should be continued, using the information of the European Border Surveillance System (EUROSUR)<sup>64</sup> – which now has a stronger role in fighting cross-border crime – and the Common Information Sharing Environment<sup>65</sup>. **Frontex** should use its reinforced analytical capabilities in the maritime domain by making full use of its mandate to provide information on the external borders and on the pre-frontier area<sup>66</sup>. Frontex should continue to assist law enforcement authorities of Member States and Europol by providing an updated profile of suspicious vessels to be monitored, identified, seized and, once the relevant criminal investigations have been completed, disposed of, and exchange information of such vessels with Europol.

With the New Pact, the Commission has proposed a seamless procedure at the external border, comprising of pre-entry screening, an asylum border procedure and a swift return border procedure – thereby integrating processes which are currently separate. The new **pre-entry screening**<sup>67</sup> will foster closer cooperation between all relevant national authorities and EU agencies, including for the collection of information and intelligence on smuggling. Moreover, the revised Eurodac Regulation<sup>68</sup>, by making mandatory the registration of irregular entry and stay and by including the possibility to store and search information on irregular migrants, will reduce the possibilities for unauthorised movements of irregular migrants within the EU after crossing its external borders. The Commission calls upon the European Parliament and the Council to advance with the negotiations on the Screening regulation and adopt the Eurodac Regulation as a matter of priority.

### ***3.3.2 Strengthening judicial cooperation against migrant smuggling***

To disrupt migrant smuggling networks and to bring perpetrators to justice, judicial authorities need to be involved in migrant smuggling cases at an early stage of investigations. Similar to law enforcement cooperation, also the judicial response to migrant smuggling should be directed to target and dismantle high-risk and high-value criminal networks active across the EU.

Achieving this objective requires strong cooperation among judicial authorities. However, the number of referrals of migrant smuggling cases to Eurojust is relatively low<sup>69</sup>. Member States should make more extensive use of **Eurojust support**, in particular for **Joint Investigation Teams** and operational tools, such as coordination meetings and coordination centres to exchange case-related information. The Focus Group of prosecutors on migrant smuggling, established within Eurojust in 2020, will reinforce the exchange of information amongst practitioners regarding existing challenges, trends and possible solutions, including addressing

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<sup>64</sup> Regulation (EU) 2019/1896 (OJ L 295, 14.11.2019, p. 1) and Commission Implementing Regulation (EU) 2021/581 (OJ L 124, 12.4.2021, p. 3).

<sup>65</sup> The Common Information Sharing Environment is an EU initiative which aims to make European and national maritime surveillance systems interoperable.

<sup>66</sup> The geographical area beyond the external borders which is relevant for managing the external borders through risk analysis and situational awareness.

<sup>67</sup> COM(2020)612 final.

<sup>68</sup> COM(2016)132 final and COM(2020)614 final.

<sup>69</sup> While the number of registered cases at Eurojust showed an increasing trend in the period 2017 - 2020, their absolute numbers remain below those of most other crime areas (Eurojust).



the misuse of administrative procedures such as sham marriages. The Focus Group offers a forum of discussion for judges and prosecutors from Member States and those countries with a cooperation agreement with Eurojust.

Furthermore, in order to support cooperation between law enforcement and the judiciary, Eurojust and judicial authorities should be part of the Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings. Eurojust and judicial authorities should further increase their participation in EMPACT, and Eurojust should be more closely involved in the information sharing activities of Europol's Information Clearing House. To enable judicial cooperation with Eurojust, in line with the EU Strategy to tackle Organised Crime 2021-2025, the Commission will start negotiations for agreements on cooperation between Eurojust and third countries<sup>70</sup>.

Asylum and reception services can assist in the investigation and prosecution of smuggling activities through the provision of information to migrants, exploring indicators related to smuggling activities during asylum interviews or through observations by reception services. This information should be provided to prosecutors' offices where appropriate. The exchange of information between asylum and reception services and the national prosecutors' offices should be strengthened through a harmonised approach, supported by Eurojust and involving Member States<sup>71</sup>.

### *3.3.3 Addressing new challenges in digital smuggling, financial investigations and document fraud*

A renewed law enforcement and judicial response to migrant smuggling needs to be able to adjust rapidly to the constantly evolving criminal landscape. In particular, there is a need to address digital smuggling, financial investigations and asset recovery, as well as document fraud.

Reinforcing **social media monitoring** is necessary for the continuous development of a clear, real time picture of migrant smuggling dynamics. This would help anticipate immediate developments as well as forecast medium-term trends. It would apply to the monitoring of the activities of criminal networks and general developments in partner countries with an impact on future migratory movements towards the EU. **Frontex** should deploy its monitoring capabilities in social media to improve risk analysis regarding future irregular migratory movements whilst taking into account data protection considerations. Frontex should also cooperate with third countries in this area, including through exchange of information and capacity building.

To disrupt migrant smuggling networks involved in digital smuggling, it is necessary to reinforce the capacity of law enforcement and judicial authorities to **target their online presence** and their use of modern technologies for communication purposes with the support of the **Internet Referral Unit of Europol**. Specialised training should be provided, including with the support of the European Union Agency for Law Enforcement Training (CEPOL) and

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<sup>70</sup> Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey.

<sup>71</sup> Factsheet on the judicial use of information following the debriefing of migrants at external borders (Eurojust, 2021).

the European Judicial Training Network, and the availability of technical equipment and software for investigative units should be ensured.

The **e-Evidence package**<sup>72</sup> will provide national law enforcement and judicial authorities with the tools adapted to the specificities of the digital world and at the same time contains strong safeguards. As soon as the package is adopted, it will foster the efficient investigation and prosecution of all crimes where e-evidence is involved.

In addition, Eurojust can support Member States by facilitating and ensuring the collection of electronic evidence, especially where it is related to encrypted communication means. Eurojust should promote the exchange of best practices regarding the **collection of electronic evidence**, especially as long as the e-Evidence package has not been not adopted. Europol's and Eurojust's cooperation with third countries in this area should be strengthened to support international investigations and ensure effective prosecutions.

Migrant smuggling generates large amounts of criminal profits, which is the main objective of such activities. To counter these networks by preventing those profits from being used to reinforce criminal activities, every investigation into a migrant smuggling case should include a **financial investigation** to trace, seize and recover criminal assets. This is not happening on a sufficiently regular basis. Financial investigations to 'follow the money' have to be launched in parallel with existing regular investigations on suspects, *modi operandi* and routes. The use of unregulated financial channels and links between criminal networks and legal business structures hampers this approach.

In line with the EU Strategy to tackle Organised Crime 2021-2025, financial investigations and asset recovery procedures should be enhanced at national, European and international level. In particular, **Member States should systematically conduct financial investigations and asset recovery** in organised crime investigations, with the support of Europol's Financial and Economic Crime Centre and Eurojust. Europol's risk analysis in cooperation with third countries and international organisations (i.e. Interpol) should support and guide Member States' actions. The assistance of Eurojust<sup>73</sup> in the coordination and cooperation between Member States and with third countries should be used on a more systematic basis, including through the use of best practices and recommendations for cross-border asset tracing, freezing, confiscation and disposal<sup>74</sup>.

In recent years, the use of fraudulent visas for entry into the Schengen area has been continuously detected. Between 2016 and 2019, 32 029 third-country nationals were detected using fraudulent documents at border crossing points on entry to the EU or the Schengen area<sup>75</sup>. Migrant smugglers organise breeder documents for the visa application procedures and then provide the irregular migrants with genuine visas issued by embassies of Member States to facilitate irregular entry by air routes in the Schengen area. The digitalisation of visa procedures, announced in the New Pact and to be presented next year, will further reinforce the security of the current visa procedure and stickers and significantly reduce the risks of

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<sup>72</sup> COM(2018)225 final and COM(2018)226 final.

<sup>73</sup> Including through the exchange and facilitation of the implementation of freezing and confiscation orders, certificates, seizing of assets, enforcement of confiscation orders and European Investigation Orders.

<sup>74</sup> As per the report on Eurojust's casework in asset recovery of 12 February 2019.

<sup>75</sup> Frontex (data as per 20 September 2021).

forgery and fraud. Better support to Member States tackling **identity and document fraud**, including through training on awareness for consular staff, is crucial for dismantling these networks. Inside the EU, document fraud is also problematic. Migrant smugglers offer fraudulent documents, which can be used to legalise the residence status. Closer collaboration between document issuing and document control authorities is needed, including by performing checks on Interpol's Stolen and Lost Travel Documents (SLTD) database, as well as links to private industries in relation to secured document production and document inspection.

For this purpose, Member States should **use new information systems**<sup>76</sup> to identify falsified documents. The role of the Frontex Centre of Excellence for Combatting Document Fraud should be strengthened, including through the deployments of document fraud experts within the framework of Frontex operational activities in the Member States and third countries. As part of the Anti-smuggling Operational Partnerships, cooperation to combat identity and document fraud with partner countries should also be pursued.

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<sup>76</sup> False and Authentic Documents Online (FADO), the Frontex Interpol Electronic Document System (FIELDS), Profiling of False Identity Documents (PROF ID) and the Europol forensic laboratory.

## Key actions

Member States should:

- intensify the use of Europol's European Migrant Smuggling Centre and of the Information Clearing House;
- make more use of Eurojust support to cross-border investigations, through Joint Investigation Teams;
- develop national counter smuggling strategies, also profiting from the best practices exchanged through the network of national contact points on migrant smuggling.

The Commission:

- will present a proposal for the full digitalisation of visa procedures in the first half of 2022;
- calls upon the European Parliament and the Council to finalise the negotiations on the Screening Regulation and adopt the Eurodac Regulation as a matter of priority;
- calls upon the European Parliament and the Council to finalise the negotiations on the e-Evidence package;
- calls upon Frontex to further reinforce its capacity to monitor designated maritime areas and identify suspicious vessels;
- calls upon Eurojust and judicial authorities to further increase their participation in EMPACT, while Europol's Information Clearing House should ensure timely information sharing connected to judicial investigations and prosecutions;
- calls upon Frontex, Europol and Eurojust to further support cooperation with partner countries to combat digital smuggling and international investigations and prosecution.

The Commission calls upon the Member States, supported by EU agencies Europol, Frontex, Eurojust and CEPOL to:

- continue to reinforce the law enforcement and judicial response through EMPACT;
- strengthen their response to new smuggling services offered on-line;
- conduct financial investigations and asset recovery in migrant smuggling cases;
- strengthen the fight against identity and document fraud.

### 3.4 Increased knowledge base

**Research and data collection** is of primary importance to better understand migration trends, the nature and span of criminal networks involved in migrant smuggling, the impact of anti-smuggling policies, the role and importance of migrant smuggling activities in local communities, as well as the links between migrant smuggling and other criminal areas, such as trafficking in human beings, drug trafficking and terrorism. Technological advances and innovative approaches that support the prevention of and fight against migrant smuggling,

including the use of **artificial intelligence**<sup>77</sup>, can enable turning data into rapidly actionable information in a more efficient manner.

**Horizon Europe**, the research and innovation framework programme for 2021-2027, should be used for this purpose, identifying relevant research needs and themes related to the prevention of and fight against migrant smuggling.

Also **EU agencies should strengthen their role in research and innovation**, maximising the role of Europol's Innovation Hub initiative and Frontex' participation in the development and management of research and innovation activities, including in cooperation with industry, to identify opportunities for developing new capacities for detecting, preventing and combatting migrant smuggling. To improve the knowledge of migrant smuggling activities, EU agencies should step up their cooperation with the **private sector**, notably with the banking sector, the rental sector (including car sharing), parcel services, travel agencies, air companies, money-transferring services as well as online service providers.

Europol and Frontex should work together to **jointly and regularly report on migrant smuggling**, covering both the migration and law enforcement perspectives. Such a comprehensive overview of the smuggling phenomenon will be key to assess the impact of this renewed EU action plan and identify the necessary policy responses.

#### **Key actions**

- Europol and Frontex should produce regular joint reports on migrant smuggling;
- Member States, with the assistance of the Commission, and EU agencies should support the development of new technologies, including artificial intelligence, to increase the knowledge base on irregular migration and migrant smuggling;
- EU agencies, such as Europol and Frontex, should establish cooperation with the private sector to improve the knowledge base of smuggling practices.

#### **4. Conclusion**

Preventing and fighting migrant smuggling is a key strategic objective of the New Pact on Migration and Asylum and the EU Security Union Strategy.

The Commission, the High Representative, the Member States, EU agencies and EU delegations will work together with partner countries, international organisations and stakeholders involved in migration policy, to implement all aspects of this renewed EU action plan to ensure that actions at EU and national level are well designed and coordinated to promote and support the prevention of and fight against migrant smuggling.

Working closely with partner countries will be key to implement several aspects of this EU action plan. The New Pact on Migration and Asylum signalled a change of paradigm in the EU's engagement with international partners on migration. To this effect, the Commission, in close cooperation with the High Representative, will engage with priority countries along

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<sup>77</sup> See the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts (COM(2021)206 final).

migratory routes towards the EU and will develop with them Anti-Smuggling Operational Partnerships with concrete tools as part of comprehensive, balanced, tailor-made and mutually beneficial migration partnerships, further building on trust and mutual cooperation. The Commission, the High Representative, the Member States and EU agencies will pull together all the operational, legal, diplomatic and financial tools at their disposal to respond to the instrumentalisation of irregular migration by State actors.

The Commission will support the implementation of the renewed EU action plan to ensure that it contributes to the comprehensive approach to migration of the New Pact. It will do so in close cooperation with the national contact points on migrant smuggling and EU agencies, notably through the dedicated Commission's expert group on migrant smuggling and the European Multidisciplinary Platform Against Organised Crime (EMPACT). For the period 2021-2027, the Asylum, Migration and Integration Fund, the Border Management and Visa Instrument, the Internal Security Fund, the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI) and the Instrument for Pre-Accession Assistance III will support its effective implementation for activities both inside and outside of the EU. The Commission will inform the European Parliament and the Council regularly of the implementation of the EU action plan and the results achieved under its actions.