

A renewed EU action plan against migrant smuggling

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European
Economic and
Social Committee

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- **PICUM:** Network of 160+ organisations working to promote the rights of undocumented migrants
- We work closely with **La Strada International** on monitoring EU developments
- Main observation: the conflation of criminal law and immigration policy makes migrants less safe + can harm their rights and lead to their exploitation
 - E.g.: Combating of human trafficking and migrant smuggling has been used to justify measures against irregular migration (e.g. rigid visa policy, increase border controls, obstruct family reunification)

- **Structure of the presentation :**
 - 3 main areas in which policies have a negative impact on migrants' rights
 - Recommendations

People who enter into smuggling arrangements can find themselves in situations of violence, extortion and trafficking

HOWEVER

Migrant smuggling and human trafficking are different phenomena and should be clearly **distinguished** in legal definitions

Anti-smuggling policies: Three main risks

1. **Counter-smuggling policies can lead to the criminalization of migrants themselves**
 - Over the past decade, nearly [1,000 migrants](#) have been accused of smuggling in Italy for steering a boat
 - e.g., in 2021 a Somali man was sentenced to [146 years imprisonment](#) in Greece
2. **Restrictive policies create situations in which more HR violations can occur, by making crossings more unsafe and increase dependance on migrant smuggling**
 - Since 2014, the increased EU focus on preventing irregular migration was accompanied by increased deaths at sea – 22,000 people ([IOM](#))



3. Member States use counter-smuggling legislation to prosecute activities in which there is no link with transnational organised crime nor any financial or material benefit

- [171 HRDs](#) criminalised between 2015 and 2019
- Access to housing and services is also affected: [in 2/3 MS](#), landlords risk a fine or imprisonment for renting a flat to undocumented people



Risk 2: Increasing risks of human rights violations

- Fails to recognise that restrictive migration policies incentives smuggling and THB
- Doesn't address the root cause of smuggling: lack of regular pathways to cross borders

Risk 3: Criminalisation of humanitarian acts and normal transactions with undocumented migrants

- Acts which are mandated by law should not be criminalised, but MS have discretion on “humanitarian acts not mandated by law” (e.g. providing food, shelter, car lifts or information) → these can still be [criminalised](#)



RECOMMENDATIONS:

1. Ensure that legislation and measures adopted to fight migrant smuggling are not used against migrants themselves nor people defending their rights.

The legislation should explicitly exclude normal interactions and transactions with undocumented migrants **without undue financial profit** and introduce an obligatory exemption of humanitarian acts.

2. Monitoring all immigration and organized crime legislation and policy for its impact on the rights of migrants and trafficked persons. In particular, this should be done through the collection of evidence base from an **intersectional approach** by a broad range of stakeholders, including migrant communities;

3. Shift the narrative from measures which are primarily focused on border control and criminalisation towards promoting good practices at national level around **regular pathways and regularisation** + measures to protect migrants workers and contribute to prevent exploitation and THB (e.g. information)

