

## **Toolbox addressing the use of commercial means of transport to facilitate irregular migration to the EU**

The use of commercial means of transport, mainly by air, to facilitate irregular migration to the EU has progressively emerged as a **new *modus operandi* of smuggling networks**. Criminal networks are increasingly taking advantage of commercial flights between third countries under various pretexts, such as visa-free policy regimes or apparent labour migration opportunities, to bring migrants to countries close to or bordering the EU, from where the migrants then seek to irregularly enter the EU.

This is also linked to a phenomenon of State-led instrumentalisation of migration with an increasing role of State actors in artificially creating and facilitating irregular migration, using migratory flows as a tool for political purposes. There are currently **several transport routes and transit hubs** to Europe that take advantage of the services provided by transport operators to bring irregular migrants close to the EU.

The **European Council**, in the conclusions of its special meeting on 9 February 2023, called on the Commission and the Council to take forward the work on relevant tools to address transport operators that engage in or facilitate trafficking in persons or smuggling of migrants. Furthermore, the EU Action Plan on the Western Balkans of 5 December 2022 proposes to consolidate an operational toolbox addressing the use of commercial means of transport to facilitate irregular migration to the EU.

As a leading force for open, fair and competitive markets, offering an extensive array of routes and high connectivity with neighbouring and other third countries, the EU plays a key role in setting high transport environmental, safety and security standards, both at home and globally. However, there are still gaps that need to be bridged to successfully counter the phenomenon of criminal networks taking advantage of services provided by transport operators to bring irregular migrants close to the EU. The current legislative framework in the area of irregular migration and transport is not fully suitable to address this phenomenon.

Moreover, there are currently no structured dialogues with the authorities of relevant partner countries or with concerned transport operators to address such situations.

Considering the importance and the attractiveness of the EU transport market, with its consumer base of more than 440 million people and high propensity to travel, the EU has significant leverage with third-country transport operators, and could potentially make use of market access measures to support its efforts to counter irregular migration.

The Commission already proposed, in November 2021, a *Regulation on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the EU*<sup>1</sup> to reinforce the EU's capacity to respond to such situations.

Nonetheless, organised criminal networks are very adaptive and change their *modus operandi* very quickly and very often rely on different means and modes of transport, making it

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<sup>1</sup> COM(2021)753 final.

necessary to have at hand a flexible and targeted toolbox of measures to counter the phenomenon, as well as to closely involve transport operators in preventing and countering these activities.

Some transport operators already have policies in place<sup>2</sup> to avoid becoming an accessory to trafficking in human beings; however, similar policies are needed as regards smuggling of migrants and more could be done together with the transport industry on these issues, in particular as regards sharing and implementing guidance and good practices. Furthermore, the provision of up-to-date information on smuggling routes, operators and nationalities, offering a complete situational picture and an early warning system are needed to act rapidly and effectively.

The role of diplomatic outreach at political level can make a difference, as seen in the case of instrumentalisation of irregular migration by Belarus and the constructive cooperation of Iraq in that context to prevent departures by air.

The present Toolbox brings together a full range of operational and diplomatic measures and legal instruments that aim at filling the existing gaps and providing a framework that would allow the EU to respond efficiently and in a targeted way to cases in which transport operators are, advertently or inadvertently, concerned with the facilitation of irregular migration to the EU, with a particular focus on air transport.

It provides a framework for cooperation with transport operators complementing the EU legal framework. When information received from the authorities of the Member States or from relevant EU Agencies (Europol, Frontex), including in the framework of the Blueprint Network, on emerging irregular migration routes and *modi operandi* of smugglers clearly indicates the use of services provided by transport operators, the Commission services, on a case-by-case basis and in cooperation with the European External Action Service, will identify the most appropriate of the **measures and instruments of the Toolbox** to address the challenges linked to the specific situation.

## *The Toolbox*

### *The EU legal framework*

- 1. Resume and swiftly conclude negotiations on the Commission proposal for a Regulation** on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the

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<sup>2</sup> The International Civil Aviation Organization (ICAO) has adopted Circular 357 on ‘*Guidelines for Reporting Trafficking in Persons by Flight and Cabin Crew*’ and in its Circular 352 provided ‘*Guidelines for Training Cabin Crew on Identifying and Responding to Trafficking in Persons*’. According to these circulars, States’ Civil Aviation Authorities should require that operators develop policies, procedures, training and guidance for their employees on these matters. The International Air Transport Association (IATA) also issued a Resolution against trafficking in persons in 2018 and has developed Guidance material for its members. The International Maritime Organization (IMO) published interim measures for combating unsafe practices associated with the trafficking, smuggling or transport of migrants by sea. The International Chamber of Shipping (ICS) has issued guidance on ensuring the safety and security of seafarers and rescued persons.

territory of the EU. This Regulation, once adopted, will be a key legal instrument in this area.

2. **Apply the EU Member States' legislation transposing the EU's Facilitators Package** to sanction transport operators that facilitate unauthorised entry, transit and residence to the EU. The Commission will convene the national contact points on migrant smuggling to explore the potential of this legal framework for the liability of legal persons (i.e. transport operators) and whether and how criminal and non-criminal fines and other sanctions (e.g. exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision, etc.) established by this legal framework could be applied to transport operators. This matter will also be considered in the Commission report on the implementation of the Facilitators Package announced for 2023 in the renewed EU action plan against migrant smuggling (2021-2025)<sup>3</sup>.
3. **Suspend or revoke the operating licence of an EU air carrier**, if the good repute requirements specified under the relevant EU transport legislation on licensing are no longer met.
4. If relevant, consider using existing **EU Common Foreign Security Policy restrictive measures** to target relevant transport operators facilitating irregular migration to the EU, for example, through dedicated discussion in the relevant fora.

#### *Situational awareness and early warning*

5. Make full use of the **Blueprint Network and reinforce its early warning capacity and the situational awareness** on the facilitation of irregular migration by transport operators. The Commission services will cooperate with the EEAS, including through the support of EU Delegations, EU Agencies and Member States in the routine monitoring and proactive exchange of information, and to flag emerging trends (e.g., nationalities, routes, operators involved), including by organising **Blueprint Network meetings** on the matter, if necessary.
6. Strengthen the cooperation and information exchange between the Commission, Frontex and the European Organisation for the Safety of Air Navigation (Eurocontrol) to better **monitor flights and gather data on the emerging routes and patterns of irregular migration**, including by using Advanced Passenger Information data for border management and law enforcement once the new rules<sup>4</sup> are adopted.
7. Support **EU neighbouring and transit countries to develop systems of travellers' intelligence**, notably through the use of Advanced Passenger Information in order to enhance situational awareness.

#### *Engagement with partner countries and transport operators*

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<sup>3</sup> COM(2021)591 final.

<sup>4</sup> COM(2022)729 final and COM(2022)731 final.

8. Based on the thorough mapping of transport operators' services utilised in the facilitation of irregular migration, launch targeted **political outreach, including as part of existing structured dialogues with third countries** of origin and transit, informing the competent authorities/relevant operators of the risks for third-country nationals and the expectations from the EU side.
9. **Organise targeted engagement with transport operators and transport authorities of third countries** to raise awareness of the phenomenon, identify targeted actions (e.g., stronger monitoring of passengers, improved communication to passengers, suspension of flights, etc.) and inform of possible measures that could be applied, on a case-by-case basis, in case of inaction, including in the context of the respective Joint Committees with the countries with which the EU has signed aviation agreements.
10. Support Member States, EU Agencies and international organisations and other relevant entities, in **providing training to third country authorities and personnel of air transport operators** involved in passport, visa and migration controls to improve their competences and skills in detecting and reporting irregular migration patterns and cases.
11. Explore with partner countries the possibility to **post liaison officers at key airports** and use to the full extent other liaison officers including European Migration Liaison Officers, to strengthen operational cooperation and facilitate exchange of information with the airlines and competent national authorities. This would facilitate identifying and recognising patterns of facilitation of irregular migration, emerging routes and nationalities, and taking appropriate operational measures (e.g., increasing monitoring, imposing tighter controls, off-boarding), in particular as regards **unaccompanied minors**.
12. Establish **information exchanges and networks with third countries' competent authorities and relevant transport operators**, where needed, to rapidly share information in a safe and confidential manner on the emerging specific patterns of irregular migration to identify immediate measures that authorities and operators could implement.
13. **Engage with the aviation industry and the civil aviation authorities and organisations** (such as the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA) and the Airports Council International (ACI)) to **raise awareness and develop international guidelines** on recognising and reporting on patterns of facilitation of irregular migration, to facilitate the sharing of best practices and to contribute to an early warning system. In particular, the Commission will coordinate with Member States to explore the possibility to call on the ICAO to develop guidelines on smuggling of migrants in addition to the recently adopted '*Manual on a Comprehensive Strategy for Combating Human Trafficking in the Aviation Sector*'.
14. **Organise information campaigns on specific routes, in close cooperation with transport operators and third country authorities**, targeting potential irregular migrants, both in countries of origin and of transit, about the risks of irregular

migration to the EU. In addition, use the InfoMigrants online platform to amplify these messages.

- 15. Use the Anti-Smuggling Operational Partnerships developed between the EU and relevant third countries or regions** to establish targeted measures to reinforce operational cooperation with partner countries along the migratory routes to the EU to address the role of transport operators.